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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-1248

TAI A. PHAM,
Petitioner

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
STATE OF FLORIDA
Respondent

REPLY PETITION FOR WRIT OF HABEAS CORPUS

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COUNSEL FOR PETITIONER

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PRELIMINARY STATEMENT

The Petitioner, Tai A. Pham relies on his Petition for Writ of Habeas Corpus for all purposes, and does not concede nor waive any argument or issues asserted in it. The Petition for Writ of Habeas Corpus sufficiently replies to the arguments put forth by the Respondent in the Response to the Petition for Writ of Habeas Corpus and cites to the relevant facts from the record on appeal. However, the Petitioner will discuss below one factual discrepancy.

Citations shall be as follows: The record on appeal from Mr. Pham's trial proceedings shall be referred to as "R" followed by the appropriate volume and page numbers. The post-conviction record on appeal shall be referred to as "P" followed by the appropriate volume and page numbers. All other references will be self-explanatory or otherwise explained herein.

GROUND I

APPELLATE COUNSEL FAILED TO RAISE ON APPEAL MERITORIOUS ISSUES WHICH WARRANT REVERSAL OF MR. PHAM'S CONVICTIONS AND SENTENCES.

B. Mr. Pham received ineffective assistance of appellate counsel due to counsel's failure to raise a specific claim regarding the trial court's denial of Mr. Pham's motion to interview jurors.

In Ground I (B) of his Petition for Writ of Habeas Corpus, Mr. Pham argued that he received ineffective assistance of appellate counsel due to counsel's failure to raise a specific claim regarding the trial court's denial of his motion to interview jurors. In their Response to Petition for Writ of Habeas Corpus, the Appellee states the following on page 8 (in the body, as well as in footnote 4):

A hearing was held on this motion on June 18, 2008. (DAR, V17, R1077). Defense counsel Caudill relied on the following facts to support his suspicion of juror misconduct: that there was a two and one-half hour deliberation period (DAR, V17, R1083), that it was a 10-2 vote (DAR, V17, R1084), that he felt he was arguing to a "brick wall" (DAR, V17, R1080), and the fact that he did not have an opportunity to see the demeanor of the jurors while they deliberated (DAR, V17, R1085) . . . Not, as Pham now alleges that the jurors' "inappropriate" demeanor after the verdict led to a suspicion of further juror misconduct.

A slight variation of the above statement is repeated on page 14 of the Response to Petition for Writ of Habeas Corpus (in the body, as well as in footnote 6).

The Appellee's Response implied that the statement on page 14 of Mr. Pham's Petition for Writ of Habeas Corpus that Attorney Caudill argued to the trial

court that “the inappropriate demeanor of some of the jurors following the deliberation warranted further juror interviews” is somehow untrue or misleading to this Court. On the contrary, Mr. Pham’s allegation is clearly supported by the record on appeal. In his argument to the trial court regarding his Motion for New Sentencing Hearing and for Interview of Jurors, Attorney Caudill informed the court of the inappropriate demeanor of the foreperson of the jury following the jury’s sentencing recommendation:

And what I’m taking a long time to get around to here, your Honor, is that Ms. Appleman, the foreperson of the jury, who was identified as having been one of the jurors who had committed misconduct during the trial came into this courtroom as the foreperson and provided the verdict, the advisory recommendation of sentence to the Court, to the clerk of Court with a completely **inappropriate** grin on her face as though she had just been invited to a major party.

And this coming from – this type of **demeanor** on the face of a jury who had completely already shown an unwillingness to follow the Court’s instructions on giving our client a fair trial, I think is further evidence of the fact that our client didn’t get one.

What we’re asking the Court to do is to convey the province of the jury to remain quiet in their discussions and to conduct – allow us to conduct or to conduct, which the Court can do under the Marshall decision and the pertinent case law, the Court can conduct **further interviews of jurors**.

The only way we will have a complete knowledge of the exact extent of the misconduct that occurred here is to conduct those further interviews.

R17/1086-87 (emphasis added).

CONCLUSION AND RELIEF SOUGHT

To the extent that further fact finding is necessary to determine the issues raised herein or to the extent that an objection is raised to the effect that the allegations asserted herein must be based only on the record as it stands and that additional facts should not be considered, Petitioner moves that jurisdiction be relinquished to the trial court to hear and decide the facts at issue. Otherwise, Petitioner moves that he be afforded a new trial, a new direct appeal, or for such relief as this Court may deem proper.

Respectfully submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply Petition for Writ of Habeas Corpus has been furnished by United States Mail to Tai A. Pham, DOC# 953712, Union Correctional Institution, 7819 N.W. 228th Street, Raiford, Florida 32026, on this 16th day of October, 2014.

I HEREBY FURTHER CERTIFY that a PDF copy of the foregoing was served via electronic mail to **Stacey Elaine Johns Kircher**, Assistant Attorney General, Office of the Attorney General, 444 Seabreeze Blvd, 5th Floor, Daytona Beach, Florida 32118, at Stacey.kircher@myfloridalegal.com and at CapApp@myfloridalegal.com on this 16th day of October, 2014.

I HEREBY CERTIFY that, in compliance with this Honorable Court's Administrative Order *In re: Electronic Filing in the Supreme Court of Florida via the Florida Courts E-Filing Portal*, dated February 18, 2013, a copy of the PDF document of the foregoing brief has been transmitted to this Court through the Florida Courts E-Filing Portal on this 16th day of October, 2014.

Respectfully submitted,

/s/ Raheela Ahmed

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, pursuant to Fla.R.App.P. 9.210, that the foregoing
was generated in Times New Roman 14 point font.

Respectfully submitted,

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