

IN THE SUPREME COURT OF MISSISSIPPI  
*Mississippi Supreme Court Case No. 2014-DR-01689-SCT*  
*Lafayette County Circuit Court No. LK09-380*

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CALEB CORROTHERS, *Petitioner*

v.

STATE OF MISSISSIPPI, *Respondent*

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**MOTION FOR LEAVE TO PROCEED IN THE TRIAL COURT  
WITH A PETITION FOR POST-CONVICTION RELIEF**

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COMES NOW the Petitioner, CALEB CORROTHERS, by and through his attorney of record pursuant to the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution; Article 3, 8, 14, 17, 21, 22, 23, 24, 25, 26, 27, 28, and 31 of the Mississippi Constitution; Mississippi Code Annotated Section 99-39-1, *et seq.*; Mississippi Rule of Appellate Procedure 22; and all other applicable federal and state law, and requests this Court to order that post-conviction relief be granted.

Introduction

Criminal defendants anticipate and deserve a fundamental right to a fair trial. On May 19, 2011, Mr. Caleb Corrothers was convicted of capital murder with the underlying felony of robbery, and on May 20, 2011, he was sentenced to death for the murders of Frank Clark and Taylor Clark. He was convicted on a third count of aggravated assault for shooting Tonya Clark.

Caleb did not have a fair trial. Caleb's trial counsel failed to conduct a thorough investigation of his family, educational, institutionalization, and mental

health background. Such an investigation would have revealed a disturbed childhood, the fact that he was institutionalized much of his life, and severe psychological and neurological problems which should have been presented as mitigating evidence during the sentencing phase of his trial. An adequate investigation of Caleb's background would have also shown the need for a neuropsychological expert and psychiatric expert to develop and present such evidence in mitigation. Although an expert testified during the mitigation phase, this expert's testing was limited to general psychological testing such as intelligence testing and did not provide a complete picture of Caleb's mental health and psychological background.

Trial counsel's deficient performance prejudiced Caleb during the sentencing phase and resulted in Caleb being denied due process and a fair trial. Trial counsel's performance fell below prevailing professional standards and was objectively unreasonable. Had trial counsel conducted a thorough investigation and presented an adequate mitigation case, there is a reasonable probability that the sentencing verdict would have been different. Thus, Caleb was deprived of his right to effective assistance of counsel under the Sixth and Fourteenth Amendments, and under the standards of *Strickland v. Washington*, 466 U.S. 668 (1984).

Caleb was also denied a fair trial due to several additional trial errors, including but not limited to the allowance of flawed identification testimony; improper communication between a juror and a victim and witness, Tonya Clark; and improper arguments during closing arguments to which trial counsel failed to

object. Because of the numerous errors at trial, he is entitled to have post-conviction relief granted, his conviction and sentenced vacated, and his case remanded for a new trial pursuant to Mississippi Code Annotated Section 99-39-27(7).

### Preliminary Statement

Caleb Corrothers's petition is incomplete. Counsel is awaiting requested Juvenile Records regarding Caleb and Department of Human Services ("DHS") records for his parents. When Caleb receives the requested records, he will provide them to the experts for their final reports and will be able to file a complete Petition for Post-Conviction Relief. Counsel is also awaiting television footage regarding the investigation of Caleb's case and his trial. Accordingly, not all of the issues can presently be addressed in this petition. This petition is being filed to ensure that Caleb will not miss any filing deadlines this court or the legislature has established. *See* Miss. Code Ann. § 99-39-5(2). Under these circumstances, caution demands that Caleb's petition be filed in order to avoid having his petition barred.

In *Pace v. DiGuglielmo*, the United States Supreme Court held that a prisoner should file a protective petition to avoid having his limitations period run. *Pace v. DiGuglielmo*, 544 U.S. 408, 416 (2005). Thus, Caleb requests that this Court accept the current petition and allow him reasonable time to amend and/or supplement his petition after Counsel receives the requested discovery.

### Required Information and Procedural History

Petitioner, Caleb, is seeking post-conviction relief for his conviction and death sentence for capital murder. Caleb was convicted of capital murder and sentenced

to death on or about May 19 and 20, 2011. Caleb's conviction was affirmed on or about June 26, 2014. *See Corrothers v. State*, 148 So. 3d 278 (Miss. 2014). Rehearing was denied on or about October 23, 2014. The Mandate issued on October 30, 2014.

On or about December 9, 2014, upon Caleb's *pro se* motion, the Mississippi Supreme Court entered an order allowing the Mississippi Office of Capital Post-Conviction Counsel ("the Office") to select counsel to represent Caleb in post-conviction proceedings. The Office notified the Supreme Court on December 15, 2014, that the Office would accept representation of Caleb in his post-conviction proceedings. On January 5, 2015, by order of the Circuit Court of Lafayette County, Caleb was determined to be indigent, and the Office was appointed as counsel to represent him in his state post-conviction proceedings. Exhibits 1 and 2, Order of Indigency and Appointment. By order of this Court, Caleb's Petition for Post-Conviction Relief is due on October 30, 2015. Exhibit 3, Order.

#### All Claims Are Properly Preserved

The Mississippi Statute requires Mr. Caleb Corrothers to show the facts necessary to prove his claims are not procedurally barred. Miss. Code Ann. § 99-39-21(6). All of the issues raised by Caleb in this petition are procedurally preserved in accordance with the law, and are as follows:

**I. In Violation of the Sixth and Fourteenth Amendments, Trial Counsel was Ineffective for Failing to Perform an Adequate Pretrial Investigation and Present Available Mitigation Evidence from Petitioner's Available Family Members and Friends at Sentencing, Such That Petitioner Was Denied a Fair Trial and Sentencing Free from Any Arbitrary Factors as Required by the Eighth Amendment.**

II. Petitioner was Denied Due Process and a Fair Trial When the State Presented Identification Testimony from a Witness Who could Only Provide an In-Court Identification of Mr. Corrothers.

III. Mr. Corrothers is Entitled to an Evidentiary Based on Recanted Identification Testimony.

IV. In Violation of the Eighth and Fourteenth Amendments, Petitioner's Death Sentence is Unconstitutional Because an Execution Will Create a Substantial Risk of Cruel and Unusual Punishment.

V. In Violation of the Sixth and Fourteenth Amendments, Trial Counsel was Ineffective for Failing to Perform an Adequate Pretrial Investigation and Present That Petitioner Has Been Institutionalized Most of His Adolescent Life and Adulthood, Such That Petitioner Was Denied a Fair Trial, and Sentencing Free From Any Arbitrary Factors as Required by the Eighth Amendment.

VI. Counsel Failed to Reasonably Ensure that Jurors Gave Full Effect to Mitigating Evidence.

VII. In Violation of the Sixth and Fourteenth Amendments, Trial Counsel Was Ineffective for Failing to Object to the Prosecution's Improper Arguments During the Capital Sentencing Closing Arguments, Such That Petitioner Was Denied Due Process, a Fair Trial, and Sentencing Free From Any Arbitrary Factors as Required by the Eighth Amendment.

VIII. Petitioner's Constitutional Right to an Impartial Jury was Violated When a Juror Had Improper Communication with the Victims' Family Member and Witness, Tonya Clark.

IX. In Violation of the Sixth and Fourteenth Amendments of the United States Constitution, Trial Counsel's Cumulative Errors Deprived Petitioner of His Constitutional Right to Effective Assistance of Counsel, a Fundamentally Fair Trial, and Due Process of Law.

X. Petitioner's Sentence is Disproportionate and in Violation of the Eighth and Fourteenth Amendments to the United States Constitution and the Corresponding Portions of the Mississippi Constitution.

The purpose of capital post-conviction proceedings is to "bring 'to the trial court's attention the facts not known at the time of judgment.'" *Williams v. State*,



669 So. 2d 44, 52 (Miss. 1996) (quoting *Smith v. State*, 477 So. 2d 191, 195 (Miss. 1985)). See also Miss. Code Ann. § 99-39-5. Post-conviction proceedings afford courts the opportunity “to review those matters which, in practical reality, could not or should not have been raised at trial or on direct appeal.” Miss. Code Ann. § 99-39-3(2); see also *Brown v. State*, 798 So. 2d 481 (Miss. 2001). As a result, this Court must go beyond the specific points raised on direct appeal and determine whether a death sentence was imposed under unfair influences. Miss. Code Ann. § 99-19-105(3)(a). Therefore, a claim may not be denied simply because of a procedural defect related to the direct appeal. *Rowland v. State*, 42 So. 3d 503, 507 (Miss. 2010); *Smith v. State*, 477 So. 2d 191 (Miss. 1985).

This Court has a tradition of ensuring that the interest of justice be served when reviewing death penalty cases in awareness of the finality of the death penalty and, as a result, will relax procedural rules when necessary. *Williams v. State*, 445 So. 2d at 810; see also *Randall v. State*, 806 So. 2d 185, 232 (Miss. 2001) (noting that the Court will “address the merits of an otherwise procedurally barred issue where there is plain error in violation of constitutional rights.”); *Conerly v. State*, 760 So. 2d 737, 740 (Miss. 2000) (“This Court has recognized an exception to procedural bars where a fundamental constitutional right is involved.”); *Gilliard v. State*, 614 So. 2d 370, 375 (Miss. 1992) (“This Court has looked beyond a procedural bar in instances where the error was of constitutional dimensions.”); *Smith v. State*, 477 So. 2d 191 (Miss. 1985); *Cole v. State*, 666 So. 2d 767 (Miss. 1995); *Pinkney v. State*, 602 So. 2d 1177 (Miss. 1992). In addition, claims that arise in the context of

death penalty cases that constitute “plain error” are routinely reviewed by this Court even where procedural preservation is lacking. This Court holds that procedural bars will not prevent the consideration of issues when errors at trial “affect fundamental rights.” *Rowland*, 42 So. 2d at 507; *see also Gallion v. State*, 469 So. 2d 1247, 1249 (Miss. 1985) (citing *Brooks v. State*, 46 So. 2d 97 (Miss. 1950)).

There is no doubt the claims in this Motion implicate fundamental rights. *See, e.g., Furman v. Georgia*, 408 U.S. 238 (1972) (discussing the right not to be sentenced to death except in accordance with legal and constitutional principles). Moreover, this is the first time Caleb has had the opportunity to raise many of the issues presented in this petition.<sup>1</sup> The failure of this Court to consider the claims would be a fundamental miscarriage of justice. *See Smith v. Murray*, 477 U.S. 527, 538 (1986); *Murray v. Carrier*, 477 U.S. 478, 496 (1986); *Sawyer v. Whitley*, 505 U.S. 333 (1992).

### Standard of Review

This Court has recognized “that post-conviction efforts . . . have become an appendage, or part, of the death penalty appeal process at the state level.” *Jackson v. State*, 732 So. 2d 187, 190 (Miss. 1999). The well-established standard of review for capital convictions and sentences is “one of ‘heightened scrutiny’ under which all bona fide doubts are resolved in favor of the accused.” *Flowers v. State*, 773 So. 2d 309, 317 (Miss. 2000) (internal citations omitted); *see also Randall v. State*, 806 So.

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<sup>1</sup>To the extent this Court does consider and/or apply any procedural bars found in the Post-Conviction Collateral Relief Act to Mr. Caleb Corrothers’s claims, those provisions are unconstitutional. They are an invasion of this Court’s rule-making powers, as they are a legislatively-created limitation on the scope of this Court’s review of post-conviction petitions.

2d 185 (Miss. 2001) (“[T]he rule in this State is clear: death is different. In capital cases, all bona fide doubts are resolved in favor of the defendant.”). This Court recognizes that “[w]hat may be harmless error in a case with less at stake becomes reversible error when the penalty is death.” *Flowers*, 773 So. 2d at 317. Because all bona fide doubts must be construed in the petitioner’s favor, Caleb is entitled to an evidentiary hearing “unless it appears *beyond a doubt* that he cannot prove any set of facts entitling him to relief.” *See Marshall v. State*, 680 So. 2d 794, 794 (Miss. 1996) (“a post-conviction collateral relief petition which meets basic requirements is sufficient to mandate an evidentiary hearing unless it appears beyond doubt that the petitioner can prove no set of facts in support of his claim which would entitle him to relief”); *accord Archer v. State*, 986 So. 2d 951, 957 (Miss. 2008) (“If [petitioner’s] application states a *prima facie* claim, he then will be *entitled* to an evidentiary hearing on the merits of that issue in the Circuit Court . . . .”) (emphasis added).

In determining whether trial counsel provided ineffective assistance of counsel, pursuant to the Sixth and Fourteenth Amendments, this Court must apply the standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). The *Strickland* standard is satisfied if a petitioner establishes both that his attorney’s representation “fell below an objective standard of reasonableness,” 466 U.S. at 688, and that the petitioner was “prejudiced” by his attorney’s substandard performance, *id.* at 692.

#### A. Deficient Performance.

In determining whether “counsel’s representation fell below an objective standard of reasonableness,” counsel’s conduct must be judged under “prevailing professional norms,” *id.* at 688, “when the representation took place,” *Bobby v. Van Hook*, 130 S. Ct. 13, 16 (2009). “Prevailing norms of practice as reflected in American Bar Association standards and the like, are guides to determining what is reasonable.” *Strickland*, 466 U.S. at 688-89. Further, in applying the *Strickland* standard, this Court has held that “an attorney’s lapse must be viewed in light of the nature and seriousness of the charges and the potential penalty.” *Doss v. State*, 19 So. 3d 690, 695 (Miss. 2009) (quoting *Ross v. State*, 954 So. 2d 968, 1004 (Miss. 2007) (citing *State v. Tokman*, 564 So. 2d 1339, 1343 (Miss. 1990))). Trial counsel’s decisions must be based on reasoned strategic judgment and not the result of inattention, lack of investigation, or other shortcomings of counsel. *Wiggins v. Smith*, 539 U.S. 510, 526 (2003).

#### B. Prejudice.

In order to demonstrate prejudice, “[t]he defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The *Strickland* test is not a sufficiency of the evidence test. *Johnson v. Scott*, 68 F.3d 106, 109 (5th Cir. 1995) (citing *Kyles v. Whitley*, 514 U.S. 419, 432–41 (1995)). Nor does the *Strickland* test require demonstration by a preponderance of the evidence. *Id.* Rather, prejudice is established if “there is a reasonable probability

that at least one juror would have struck a different balance” but for the constitutional error. *Wiggins v. Smith*, 539 U.S. 510, 537 (2003); *see also Neal v. Puckett*, 286 F.3d 230 (5th Cir. 2002); *Lockett v. Anderson*, 230 F.3d 695 (5th Cir. 2000); *State v. Tokman*, 564 So. 2d 1339 (Miss. 1990); *Leatherwood, v. State*, 473 So. 2d 964 (Miss. 1985); *Woodward v. State*, 635 So. 2d 805 (Miss. 1993); *Moody and Garcia v. State*, 644 So. 2d 451, 456 (Miss. 1994). Finally, in determining prejudice, the Court must look at the totality of the available evidence. *Wiggins v. Smith*, 539 U.S. 510, 536 (2003) (citing *Williams v. Taylor*, 529 U.S. 362, 397-98 (2000)).

#### Grounds for Review with Supporting Facts

Caleb presents the following issues to the Court at this time, and he requests the right to supplement and/or amend this petition.

**I. In Violation of the Sixth and Fourteenth Amendments, Trial Counsel was Ineffective for Failing to Perform an Adequate Pretrial Investigation and Present Available Mitigation Evidence from Petitioner’s Available Family Members and Friends at Sentencing, Such That Petitioner Was Denied a Fair Trial and Sentencing Free from Any Arbitrary Factors as Required by the Eighth Amendment.**

- A. A thorough investigation into Caleb’s social history and an appropriate use of experts would have uncovered specific examples of family dysfunction, substantial evidence of a family history of mental illness, and Caleb’s own mental illness, which should have been presented to the jury in order to provide constitutionally adequate representation during the sentencing phase.

Caleb was born into a chaotic environment that severely hampered his chances of thriving. As one friend of the family stated, “he never had a chance.” *See* Ex. 4, [Pam Pernel]. Caleb was a product of generations of dysfunction. His father, Lee Edward Green, was never a meaningful part of his life. His mother, Vonda

Corrothers Agulanna, was present in his life, but her own psychological and financial issues hindered her from providing the type of support that Caleb and his two older brothers, Marcus Corrothers and Timothy Agulanna, needed. Overwhelmed with depression, other mental illness, low self-esteem, chronic unemployment, and the instability of moving from one place after another, she did not know how to deal with the challenges of raising three sons in high-poverty, drug-infested environments.

Struggling to live with problems that he could not solve himself as a young boy, Caleb did not fit in with the well-behaved children who stayed away from trouble. He found himself falling into a crowd of “outcasts” who would steal and engage in other mischief. *See Ex. 6, [Dr. Richard Dudley, Jr.]*. Caleb’s delinquent behavior began as early as the age of nine. *See Ex. 7, Youth Court Offense Sheet*. When Caleb would get caught stealing and be sent to youth court, Ms. Agulanna was often present for youth court proceedings. However, she did not know how to address Caleb’s behavior. She thought that with prayer, his behavior would improve. *See Ex. 5, [Vonda]*. But prayer alone was not enough.

Caleb exhibited signs of mental issues from an early age. *See Ex. 8, [Joel Price]*. Starting at age 14, his childhood offenses led to him spending several stints in Mississippi’s juvenile training facilities, East Columbia Training School and Oakley Training School. *See Ex. 7, Youth Court Offense Sheet*. Yet, his mother never sought diagnosis and treatment for him. *See Ex. 5, [Vonda]*.

During trial, defense counsel only offered evidence of a subset of Caleb's mitigating circumstances. Further, of the mitigating circumstances that trial counsel presented, trial counsel failed to present to the jury the essential details of the circumstances, which should have been considered by the jury in order to satisfy Caleb's Sixth Amendment right to effective assistance of counsel. As demonstrated below, trial counsel's use of broad strokes in an attempt to paint a picture of the complex circumstances of Caleb's life fell far short of adequate representation where fine details were needed to provide the jury an understanding of Caleb's mitigating circumstances.

#### **A Summary of Caleb's Family History and Background**

Caleb Corrothers was born in 1982 to Vonda Corrothers Agulanna and Lee Edward Green. At the time, she was recently divorced from Godwin Agulanna, to whom she was married from 1980 to 1981 and from 1985 to 1988. *See* Ex. 5, [Vonda]. Caleb is the youngest of Vonda's three children. Vonda's oldest child, Marcus Corrothers, also the son of Lee Green, was born in 1976 when she was only 16 years old. Vonda's middle child, Timothy Agulanna, was born in 1978 and is the son of Godwin. *See id.*

#### ***Caleb's Paternal Family***

Caleb's father, Lee Green, is the fourth of ten children born to Mrs. Lovie Green and Mr. Ira J. Green. *See* Ex. 9, [Lovie Green]. Lovie and Ira were together for 27 years before separating. *Id.* Even after the couple separated, Ira remained

active in his children's lives, and he continued to contribute to the family financially. *Id.*

Ira and Lovie worked extremely hard to make sure that the children had necessities and lived a fair life. *Id.* For half of her life, Lovie worked domestic jobs for various people, and for the other half, she was a farmer. Ira was a carpenter and worked in construction. Lovie and Ira passed their work ethic on to their children. Lovie made it a point to be home from work by the time her children returned from school. When the children arrived home, they immediately began their chores, including gathering wood and working in the field. *Id.*

Lee Green, like his father, was a carpenter who worked in construction. *See* Ex. 10, [Lee Green]. He met Vonda while he was working on a construction project in the neighborhood that Vonda lived, Western Hills. *Id.* At the time, she was about 14 years old, and he was about 18 years old. *See* Ex. 5, [Vonda]. Not long after they met, Vonda became pregnant with Marcus. *Id.* Vonda and Lee never married. *Id.*

Despite having the benefit of being raised by both his mother and father, Lee neglected to provide the same support for Marcus, and later Caleb, that he had received from his parents. *See* Ex. 9, [Lovie Green]; Ex. 10, [Lee Green]. He never developed a meaningful relationship with them or provided financial support for them. *See* Ex. 5, [Vonda]; Ex. 9, [Lovie Green]; Ex. 10 [Lee Green]; Ex. 4 [Pam Pernell].

When Marcus was born, Lee bought a case of diapers and several jars of baby food for him, and that was it. Ex. 5, [Vonda.] When Vonda and Lee reunited



and had Caleb after Vonda's first marriage to Godwin, Lee's involvement with the children was again very limited and short-lived. He moved to Memphis when Caleb was young and did not return until Caleb was about 13 years old. *See id.* By that time, Caleb had already become entangled in youth court delinquency proceedings. *See Ex. 7, Youth Court Offense List.*

Although Mrs. Lovie encouraged her son to be more involved in Marcus's and Caleb's lives, Lee did not comply. Ex. 9, [Lovie Green]. Contributing to Lee's lack of involvement in his children's lives was his approximately twenty-year addiction to drugs, including cocaine, and his excessive use of alcohol. Ex. 9, [Lovie Green]; Ex. 10, [Lee Green]; Ex. 5, [Vonda]. Lee did not overcome his drug addiction until he moved back into Lovie's house about 10 years ago after returning to Oxford from Memphis. Ex. 10, [Lovie Green]. By that time, Caleb was already about 23 years old and was serving a 10-year sentence in prison for armed robbery. *See Ex.11, Order Transferring Prisoner.*

### *Caleb's Maternal Family*

Caleb's maternal great-grandmother, Willie Frierson Ruffin (hereinafter "Ruffin"), was the pillar of Vonda's family. Ex. 5, [Vonda]; Ex. 12, [Kathy Sanders]. She was an active member of Second Missionary Baptist Church in Oxford, where she served on the usher board until she became ill. Ex. 14, W.F. Ruffin Obituary. She worked as a cook at Old Gilmore Clinic and Lafayette County Hospital. *Id.* She retired in 1977. *Id.*

Ruffin was married to Wilbur Ruffin, who preceded her in death. *See* Ex. 14, W.F. Ruffin Obituary; Ex. 5, [Vonda]; Ex. 12, [Kathy Sanders]. However, from Ruffin's relationship with Levi Kirkwood, Vonda's mother, Mary Frierson Corrothers, was born. *See* Ex. 5, [Vonda]; Ex. 12, [Kathy Sanders]. Kirkwood was not active in Ruffin's or Mary's life. *See* Ex. 5, [Vonda]; Ex. 12, [Kathy Sanders].

Mary lived in her mother's home almost her entire life. Mary was married to George Corrothers and took his surname, but they had no children together. George was deceased before Mary had her four children: Kathy Sanders, Vonda Corrothers, David Craig Corrothers (hereinafter referred to as "Craig"), and Jacque Elise "Lisa" Corrothers (hereinafter referred to as "Lisa"). Ex. 12, [Kathy Sanders]. Mary raised her children in Ruffin's home—first on Jefferson Street in Oxford, and later, after urban renewal relocated many families, on Luther Street in Oxford's Western Hills subdivision. Ex. 12, [Kathy Sanders]. Mary worked as a cook at a local hospital. *Id.*

Kathy, Mary's oldest child, is the daughter of Edward Buford. Kathy notes that her relationship with her dad was much like Mary's relationship with her father; that is, there was no relationship. Ex. 12, [Kathy Sanders]. She does not have many memories of Buford. *Id.*

At some point, Mary began a relationship with David Webb, with whom she had Vonda and Craig. *See* Ex. 5, [Vonda]. For many years, everyone thought that Mary's youngest child, Lisa, was also Webb's daughter. However, on her death bed, Mary revealed that another local businessman was Lisa's father. *See* Ex. 5, [Vonda]; Ex. 12, [Kathy Sanders]. Although Kathy and Lisa were not Webb's biological

children, he reportedly treated them as his own. *See* Ex. 12, [Kathy Sanders]. He was the only man who served as a father figure in their lives. *Id.*

David Webb was well known in the Oxford community. *See* Ex. 5, [Vonda]. He was one of the first black officers on the Oxford Police Department, and the first black detective in the department. *Id.* He also owned a café. *See* Ex. 5, [Vonda]. While enjoying a successful work life, Webb also had a full social life. It was not a secret around town that he had children by numerous women in the Oxford area. Ex. 5, [Vonda]. According to Vonda, Webb had 13 children. *Id.* Even while Webb was in a relationship with Mary, Webb was known to have also shared time with other women *See* Ex. 5, [Vonda]; Ex. 12, [Kathy Sanders]. Webb spent a lot of time with Mary and the children at Ruffin's home, but he did not live there full time. He would come and go. This was the arrangement for years. Mary, for the most part, kept her cool about Webb's wandering. *See* Ex. 5, [Vonda].

Mary's children have fond memories of Webb and his involvement in their lives. Kathy describes him as having been a supportive and loving father. Ex. 12, [Kathy Sanders]. Vonda was very fond of her father. She considered him to have been her greatest supporter. While she was growing up, he was the only person in whom she had confidence. Ex. 5, [Vonda].

### *Vonda's Hardships from Childhood and Early Adulthood*

#### *Sexual Abuse*

Despite Vonda's good relationship with Webb, her childhood was far from a fairy tale. Vonda's childhood was marred by two incidents of sexual abuse. Ex. 5,

[Vonda]. As a young girl, Vonda often went to the home of an elderly neighbor to help him clean his house and to check on him when he was sick. The man was well known in the community where the family lived, on Jefferson Street. The children in the community enjoyed going to her neighbor's home because he had an array of toys, including a carousel. Ex. 5, [Vonda]; Ex. 12, [Kathy Sanders]. When Vonda was about nine years old, he raped her. Vonda's mother and grandmother had never talked to her about sex, but she knew that what he had done to her was wrong. She never returned to his house again. Ex. 5, [Vonda]. He is now deceased. *Id.*

Vonda lived with this experience without telling anyone until she was 32 years old. *Id.* She explains that at that time, children just did not talk about things like that. She did not know at that time that her neighbor was rumored to have abused other children in the neighborhood. Nor did she know that he had molested her older sister when her sister was between 12 and 14 years old. Ex. 5, [Vonda]; Ex. 12, [Kathy Sanders].

After being raped, Vonda's life changed drastically. She began to have nightmares, and her demeanor changed from happy and talkative to quiet and withdrawn. Ex. 5, [Vonda]. She began hating boys. Around the age of 10, she considered suicide and overdosed on pills, but she did not go to the hospital. *Id.* Adding insult to injury, Vonda was raped again when she was about 11 years old. *Id.* A neighbor whom the family knew well came into Ruffin's house and climbed on top of Vonda while she was lying on the couch. *Id.* At some point, Vonda's mother

Mary saw what was happening through a window. *Id.* Instead of defending Vonda, Mary called her a “whore” and told her that she better not be pregnant. *Id.*

### Challenges at School

Unlike her mother and her older sister Kathy, who excelled in school and made primarily A’s, Vonda struggled to make passing grades. Ex. 5, [Vonda]. Her mother often fussed at her and talked down to her when she had difficulty completing homework assignments, making her feel like she was dumb. *Id.* She felt like she was on the losing end of a competition with Kathy. *Id.* Eventually, Mary sought out an afterschool program for Vonda to participate in to receive assistance. *Id.* With the exception of a few courses in which she received Ds on her report card, Vonda managed to get Cs or above in her courses while matriculating through Oxford Public Schools. Ex. 13, Vonda’s High School Transcript.

In addition to struggling with her schoolwork, Vonda did not develop many friendships or strong relationships with teachers. Ex. 5, [Vonda]. Two experiences with teachers have stuck out with her over the years because of the devastating effect that they had on her. *Id.* In fourth grade, Mary would dress Vonda in dresses and matching bows in an effort to make her look nice. Vonda’s fourth grade teacher, however, would make fun of her and force her to sit on the floor. Vonda was too afraid to tell her mother, so she kept it to herself and toughed it out. *Id.* That year turned out to be the worst year for Vonda academically. Although she passed, three of her six final grades were Ds. Ex. 13, Vonda’s High School Transcript.

In the sixth grade, Vonda witnessed a white teacher beat on three black boys on a daily basis. This was too much for her to bear. She would cry and finally asked her mother to remove her from the classroom. She was transferred to the only available classroom for the remainder of the year, a class for slow learners. Ex. \_\_, [Vonda].

In the seventh grade, Vonda's teacher realized that Vonda and other students in the class could not read. The teacher had to teach this particular group of seventh graders phonics. Ex. 5, [Vonda]. Despite her academic struggles, Vonda earned a diploma from Oxford High School in 1978 with a high-average grade point average. Ex. 13, Vonda's High School Transcript.

#### *Instances of Hunger and Need*

When Vonda and her siblings were growing up, for the most part, Ruffin and Mary were able to meet the children's basic needs—food, shelter, and clothing. Ex. 12, [Kathy Sanders]. However, there were times when the family would not have anything to eat because Mary would give their last to someone less fortunate. As Kathy described Mary, she was “so giving” and trusting in God that she would tell the children that God would take care of them. *Id.* She would tell them that because of their faith, someone would come along and bless them such that they would have more than what Mary gave away. *Id.* Vonda also recalls that Ruffin taught them that they should give 110% with the understanding that they will not have anything in the end. Ex. 5, [Vonda].

#### *Childcare Responsibilities*

When Vonda was about 11 years old, her older sister Kathy gave birth to a girl. According to Kathy, in their household, sex was referred to as “it.” Ex. 12, [Kathy Sanders]. Although “it” was mentioned occasionally, the adults never had an educational talk with her about “it” and what “it” meant. *Id.* So, Kathy explains, after she did “it,” she ended up having a baby at the age of 18. *Id.* This occurrence not only affected Kathy, but also Vonda. Ex. 12, [Kathy Sanders]; Ex. 5, [Vonda]. Kathy married her child’s father and moved out of Ruffin’s home, but she would often leave her baby at Ruffin’s house. *Id.* One day, the baby was in the house unattended while Vonda was outside. Ex. 5, [Vonda]. Vonda overheard Ruffin instruct Mary to tell Vonda to come inside and look after the baby. *Id.* Mary responded that Kathy should be taking care of her own child. *Id.* In response, Ruffin told Mary that if she did not tell Vonda to get in the house and take care of the baby, Mary would have to move out. *Id.* Mary began to cry because she had no means of making it on her own. *Id.* After overhearing the exchange, Vonda simply walked inside, picked up the baby, and took on the role of caring for her, and later, Kathy’s second child, who was born about one year later. *Id.* This early responsibility, along with the sexual trauma that Vonda experienced, effectively robbed her of a normal childhood. *Id.*

#### *Feelings of Disconnect from Family*

Growing up, Vonda felt as if she was the “black sheep” of the family and that she was not loved by her family members. Ex. 5, [Vonda]. She noticed that her mother was constantly comparing her to Kathy, and she sensed that Kathy was her

mother's favorite. *Id.* Circumstances such as Mary's reaction to witnessing Vonda's second rape, as well as Vonda's responsibility as a young girl for taking care of Kathy's children caused Vonda to feel as if her family was not concerned with her happiness. Ex. 5, [Vonda]; Ex. 12, [Kathy Sanders]. Vonda recalls that her demeanor changed after her first rape, but she does not think that her family even noticed the change. Ex. 5, [Vonda].

### Teenage Pregnancy

Similar to Kathy, Vonda became pregnant around the age of 16 with Marcus. Ex. 5, [Vonda]. Vonda was presented with the option of terminating the pregnancy, but she did not want to choose that path, especially because she knew that her mother had tried to abort her. *Id.*

After Marcus was born, Vonda got a job at her father's café so that she would be able to buy milk and pampers. *Id.* She worked, on the days that she did not have school, from the time the café opened until the time it closed for \$20 per week. *Id.* During the school year, she worked on some weekends. It was not until a man asked her if she had paid her taxes that she realized that she was supposed to file taxes and that she should have been earning much more. *Id.*

At age 18, Vonda gave birth to her second child, Timothy. *Id.* Timothy's father was Godwin Agulanna (hereinafter as "Godwin"), a student at the University of Mississippi at the time. *Id.*

### Marriage to Godwin Agulanna



In 1980, not quite two years after Timothy was born, Vonda and Godwin married. Ex. 15, 1980 Marriage License of Vonda and Godwin. Part of Vonda's motivation for marrying Godwin was that she did not want to be a single mother. Ex. 5, [Vonda]. Upon reflection, Vonda realizes that she was manipulated into marrying Godwin, who was from Nigeria but wanted to remain in the United States. *Id.* Even after they were married, Godwin did not allow Vonda to live with him. Ex. 5, [Vonda]; Ex. 12, [Kathy Sanders]. This caused Vonda's family to question whether the marriage was a sham. Ex. 12, [Kathy Sanders].

Less than a year into the marriage, the relationship was already failing. Vonda and Godwin's divorce was finalized on January 30, 1981. Ex. 16, 2<sup>nd</sup> divorce Decree of Vonda and Godwin, at 3. Not long after the divorce, Vonda and Lee conceived Caleb, who was born in January 1982.

In 1985, Vonda and Godwin remarried, despite Vonda knowing that Godwin was cheating with other women in the area. Ex. 5, [Vonda]; Ex. 17, 1985 Marriage License of Vonda and Goodwin. Again, Godwin did not allow Vonda to live with him. She and the three boys continued to live in Ruffin's home. In 1988, Vonda and Godwin divorced for the second and last time. Ex. 16, 2<sup>nd</sup> Divorce Decree of Vonda and Godwin.

Unlike Lee, who was not involved in Marcus and Caleb's life, Godwin made an effort to be a part of Tim's life. Ex. 5, [Vonda]. He provided child support, although sometimes sporadically, and Tim saw him on a regular basis. Ex. 5, [Vonda]; Ex. 18, Child Support Petition. Once Godwin moved to the Jackson area,

Tim even spent a short period of time living with Godwin. Ex. 5, [Vonda]. Godwin wanted Tim to be exposed to a different type of lifestyle than what he experienced living with Vonda in Oxford. *Id.* However, Godwin kicked Tim out after he found out that he was involved with drugs. *Id.* Godwin died on October 28, 2012. *Id.*

### *Challenges with Raising Her Sons*

Caleb and his brothers spent their early years growing up in Ruffin's home on Luther Street in Western Hills. Western Hills was a low-income community that by the early 1990s was full of drug and gang activity. Ex. 12, [Kathy Sanders]. Ruffin's house had four bedrooms and one-and-a-half bathrooms. Ex. 5, [Vonda]; Ex. 12, [Kathy Sanders]. For a period of time, ten people were cramped into the home: Ruffin, Mary, Vonda and her three boys, Kathy and her two children, and Vonda's youngest sister Lisa. Ex. 19, Vonda Agulanna's Medical Records. Vonda and the three boys shared a bedroom. Ex. 12, [Kathy Sanders].

While Caleb was still a baby, with the family's approval, Vonda began attending Draughons College in Memphis, Tennessee in 1983. Ex. 5, [Vonda]. During weekdays, Vonda stayed in Memphis with a paternal cousin, and she came home to Oxford on the weekends. *Id.* Vonda's family agreed to take care of her three boys while she was in Memphis. *Id.* When Vonda was at home, she sometimes isolated herself and the boys from the family by confining them to her bedroom. Ex. 5, [Vonda]; Ex. 12, [Kathy Sanders]. Vonda thought that the family treated her children less favorably than Kathy's children. Ex. 5, [Vonda]. For example, Vonda recalls times when Kathy's children were allowed to sit on the couch, but Vonda's

children were not. *Id.* Vonda thought that she was protecting her children by keeping them out of everyone's way and by personally keeping a close eye on them in her bedroom. *Id.*

Vonda's time at Draughons was short-lived. According to a December 1983 psychiatric report, Vonda reported that she left school within months because she became ill with "an infection and blackout spells," which limited her ability to concentrate. Ex. 19, Vonda Agulanna's Medical Records.

After returning to Oxford, the health issues that Vonda suffered in Memphis resolved, although she was described as having borderline diabetes and remained on medication for high blood pressure. Ex. 19, Vonda Agulanna's Medical Records.

Contributing to Vonda's struggles with raising three boys, Vonda's mother was diagnosed with colon cancer when Vonda was in her early 20s. Ex. 5, [Vonda]. Mary died on January 29, 1983. *Id.*; Ex. 12, [Kathy Sanders].

In December of 1983, at the age of 23, Vonda sought psychiatric treatment at Region Two Mental Health Center for the first time. Ex. 19, Vonda Agulanna's Medical Records. Her father had convinced her to seek help because she was struggling to deal with the death of her mother. Ex. 5, [Vonda]. Vonda reported feelings of worthlessness and lack of energy, and a perception that her "family members tend[ed] to put their troubles on her and [were] not concerned about her welfare." Ex. 19, Vonda Agulanna's Medical Records. She described enjoying her children, loving them, and being interested in their progress in school, but also feeling very distant from them. *Id.* She reported having difficulty concentrating

and a poor memory. *Id.* at 2. The psychiatrist concluded that she “appear[ed] to have a depression which [was] likely becoming clinical in proportions,” and he prescribed the anti-depressant Tofranil. *Id.*

Vonda decided not to take the medication that was prescribed to her. Ex. 5, [Vonda]. Although she continued to suffer from depression, she did not follow through with her treatment at Region Two, in part because she was having problems getting transportation to and from her appointments. Ex. 19, Vonda Agulanna’s Medical Records.

Despite numerous adults living in the same household, money was tight in Ruffin’s house. Ex. 5, [Vonda]. At some point, the family got behind on the mortgage and was faced with a possible foreclosure. The issue was ultimately resolved. *Id.* There was not always enough food. Ex. 12, [Kathy Sanders]; Ex. 5, [Vonda]. When food was scarce, Vonda and her grandmother would forego eating so that they could give what little food was available to the children. Ex. 5, [Vonda]. Vonda even struggled with clothing the boys. Ex. 5, [Vonda]. While they were young, she resorted to sewing their clothes. Ex. 5, [Vonda]; Ex. 4, [Pam Pernell]. She stopped when Marcus complained that the children at school were making fun of him. Ex. 5, [Vonda]; Ex. 4, [Pam Pernell].

Even though Vonda was without a stable job for years and did not have a driver’s license or personal means of transportation, Vonda wanted desperately to move out of Ruffin’s house. Ex. 5, [Vonda]. The environment at the home was stressful to her. She thought that her children were being negatively influenced by

her family and that the family was sabotaging her methods of discipline. Ex. 5, [Vonda]; Ex. 19, Vonda Agulanna's Medical Records. One of Vonda's methods of discipline was whipping her children, at times severely and when they were naked. Ex. 5, [Vonda]. During some of the whippings, Vonda would take her frustration out on the children. *Id.*

Although the timing is unclear, at some point Vonda witnessed her older son being assaulted by an older cousin. *Id.* This occurrence may have contributed to her desire to leave Ruffin's home. Vonda was financially unable to move out until about 1990. Ex. 5, [Vonda]. She would later learn about abuse that her other two boys had experienced, including Caleb being fondled by a babysitter as a little boy. *Id.*

In 1985, Vonda enrolled in Northwest Junior College, eventually earning an Associate of Applied Science in 1987. Ex. 20, Vonda Agulanna's Northwest Transcript; Ex. 5, [Vonda]. Although she was successful in this latest academic pursuit, she still had issues that affected her ability to function and to balance her responsibilities. Ex. 19, Vonda Agulanna's Medical Records. In March 1986, when Caleb was four years old, she reported back to Region Two. According to Region Two's records, in the interim, she also visited the counseling center at the University of Mississippi. *Id.; see also* Ex. 5, [Vonda]. The intake assessment describes Vonda's presentation and her own assessment of her mental state at the time:

Vonda is an overweight 26 year old who appeared cheerful throughout the session, [sic] at times this affect seemed inappropriate. Vonda is extremely verbal, but her presentation was somewhat fragmented.

Vonda did not exhibit any psychotic symptomatology but her thought process seemed very irrational and quite bizarre at times. . . .

. . .  
Vonda states that she currently is experiencing feelings that she is "[l]osing it". She described this feeling with the words "can't think." Vonda states she has a lack of [self-worth] and lets people take advantage of her. Vonda feels she has "messed up everything" in her life and is finding it very difficult to put things in perspective.

Vonda is currently attending North West [sic] Jr. College and appear [sic] to be functioning fine academically but states that her interpersonal interactions have changed. She described a recent incident that caused her to blow up, she feels inappropriately, at a fellow student.

Ex. 19, Vonda Agulanna's Medical Records. According to the report of a mental health counselor and child services supervisor, "Vonda ha[d] numerous stressors in her life, [and] she appear[ed] to be very fragmented and unable to sep[ar]ate her issues to be able to work through and cope with them effectively." Ex. 19, Vonda Agulanna's Medical Records. A psychological assessment and individual therapy were ordered. The summary of the findings of her psychological examination were as follows:

Vonda Agulanna is a 26 year old black female currently functioning in the average range of intelligence with her verbal abilities commensurate with her performance abilities. Personality is characterized by extreme levels of subjective discomfort which significantly reduce Vonda's effectiveness in dealing with daily situations. She displays numerous unsubstantiated physical complaints, tension and anxiety, low self-esteem and is a dependent, demanding, and self-centered individual. Her primary defense mechanism involves overcontrol and repression. She lacks insight, self-awareness, and interpersonal effectiveness often avoiding the complex demands of her environment. She demonstrates concentration on easily managed aspects of situations as a means of problem solving, but becomes overwhelmed by more complex and demanding circumstances and fears a loss of control. She harbors hostility toward individuals perceived as failing to offer sufficient attention and

support. Vonda's response to psychotherapy is likely to be poor as she is not introspective, lacks insight into her own behavior, and resists psychological interpretations of her difficulties. She is likely to expect definite answers and solutions to her problems and may terminate therapy prematurely when the therapist fails to respond to her demands.

Ex. 19, Vonda Agulanna's Medical Records. The diagnostic suggestions were generalized anxiety disorder and mixed personality disorder. The severity of psychosocial stresses was rated as moderate, and her highest level of adaptive functioning in the past year was rated as fair. *Id.*

Vonda attended individual therapy sessions at Region Two until the next year, but she discontinued treatment by the date of her discharge on April 29, 1987.

Ex. 19, Vonda Agulanna's Medical Records. Records show that she made some progress, but was still in need of further treatment. *Id.*

Having still not fully addressed her mental issues, Vonda, along with her three boys moved from Western Hills into a mobile home located in a trailer park. At the time, she was working as a clerk at a local hospital. Ex. 21, [Sharron Lipsey]; Ex. 5, [Vonda]. Moving out of her grandmother's home was a monumental step for Vonda. Ex. 5, [Vonda]. She did not know basic things about how to live on her own. *Id.* She struggled with finding transportation to get to work on time. Ex. 21, [Sharron Lipsey]. Sometimes she would have to take a taxi to get to or from work. Although she did not always have the money, she worked it out to pay the taxi fare after she received her paycheck. Ex. 21, [Sharron Lipsey]; Ex. 5, [Vonda]. Vonda was 32 years old by the time she received her driver's license, and she was finally able to buy a car with her income tax return. *Id.*

Although Vonda tried to be independent, she could not seem to get ahead financially. Ex. 21, [Sharron Lipsey]. It did not help that Godwin was inconsistent with paying child support. *Id.* There were many times when there was not enough food for the household. *Id.* Because her bills were often too high to pay, the lights and water were frequently turned off. *Id.* Sharron Lipsey, one of Vonda's coworkers who attended Northwest Community College with her, gave Vonda and the children food from time to time. *Id.* Vonda also borrowed money from Ms. Lipsey occasionally. *Id.*

Barely managing to provide the essentials for her and the children, Vonda could not afford to pay for childcare for when the children were dismissed from school. Ex. 5, [Vonda]. The children were, therefore, unsupervised and left to their own devices until she got home from work. *Id.* Living in neighborhoods with negative influences like the sale and use of drugs, the boys got into their fair share of trouble. *Id.* Around this time, Tim and Caleb had their first encounter with youth court because they smashed out a window in a truck. *Id.*

Marcus ultimately left Vonda's home around the age of 14 or 15. *Id.* He found that he could escape the life of poverty that he was living by making money selling drugs. *Id.* He earned enough money to buy a nice car and clothes, which Caleb saw and wanted for himself. *Id.* Caleb, therefore, in the absence of a positive male role model, looked at Marcus as someone to aspire to be like. Ex. 21, [Sharron Lipsey]; Ex. 5, [Vonda].



Likely contributing to Marcus's decision to leave Vonda's home was Vonda's constant struggle with trying to provide a place for her family to live. After leaving her grandmother's home, Vonda and the children moved from place to place, often being forced to move because of her inability to pay rent or utilities. Ex. 4, [Pam Pernell]; Ex. 5, [Vonda]. Vonda recalls going to court on at least one occasion because she had been sued in an eviction proceeding. Ex. 5, [Vonda]. Vonda rented a trailer, another trailer, and later an apartment, but in between, she and the boys were forced to seek shelter from different church members on at least three different occasions. *Id.*

The second trailer burned down leaving them homeless. Ex. 21, [Sharron Lipsey]; Ex. 5, [Vonda]. Caleb was about 13 or 14 years old at the time. Ex. 22, [Jessie Thompson]. After the fire, Jessie Thompson, a member of Vonda's church, His Harvest Ministries, allowed Vonda, Tim, and Caleb to stay with her and her family for a few months. Ex. 22, [Jessie Thompson]; Ex. 5, [Vonda]. By that time, Marcus was already living on his own.

When Caleb was about 14 years old, Vonda and her youngest two boys also stayed for a couple of months with another family at the church, the Pernells. Ex. 4, [Pam Pernell]; Ex. 5, [Vonda]. Vonda often called on Stan Pernell to help her and the boys move, which was quite frequently. Ex. 4, [Pam Pernell]. On one such occasion, Stan asked Vonda where she was going, and Vonda replied that she did not know. *Id.* Stan moved their belongings into the Pernells' garage, and the Pernells invited them to stay until Vonda could get on her feet. *Id.*

When living with the Pernells, Tim and Caleb came and went from the house at will. *Id.* Pam Pernell thought that Vonda had lost control of the boys and that she did not know how to get them back on track. *Id.* Mrs. Pernell observed that Vonda tried to raise the boys, but she was too mentally, emotionally, and physically drained herself to be an effective parent. *Id.* According to Mrs. Pernell, Vonda “was pretty stretched out just trying to live her life.” *Id.*

Vonda, Caleb, and Tim also spent a period of time staying with the daughter of Vonda’s pastor. Ex. 5, [Vonda]. They stayed for about two or three weeks because Vonda could not afford the electricity bill for the trailer she was renting at the time. The electricity was turned off for about two months during a cold season. Ex. 5, [Vonda].

By the time Caleb was 17 years old, the instability of moving from place to place had become the norm.

Around the time that Vonda was staying in the first trailer, Kathy also lived with her and the boys for a brief time. Ex. 5, [Vonda]; Ex. 12, [Kathy Sanders]. Kathy had begun to use crack several years earlier, around the age of 30, but was supposedly doing better. *Id.* Vonda told Kathy that she could only stay if she refrained from using drugs and went to church. Ex. 5, [Vonda]. Kathy was unable to hold up to the conditions. *Id.* After Kathy’s relapse, she soon moved out. *Id.*

Another stressor on Vonda’s life during Caleb’s childhood was the death of her father, David Webb, on September 30, 1989, at about the age of 54. *Id.* Webb’s death was particularly devastating for Vonda because she had a close relationship

with him and received a lot of support from him. For example, when he was available, he would give her rides to where she needed to go. Ex. 5, [Vonda]; Ex. 21, [Sharron Lipsey]. After suffering the heart attack, Webb was on life support. Ex. 5, [Vonda]; Ex. 12, [Kathy Sanders]. Despite resistance from one of Webb's sisters, Vonda made the call to take him off of life support. Ex. 5, [Vonda]. Vonda held her father's passing against God because she did not understand why God did not send the Apostle from her church to pray for Webb and heal him before he died. *Id.* Along with the pain of her father's loss, Vonda also had to deal with Webb's siblings jockeying for a claim on Webb's assets. Ex. 5, [Vonda]. Vonda was hurt by the fact that she and her brother ended up receiving no inheritance from their father. Ex. 5, [Vonda]; Ex. 21, [Sharron Lipsey].

Webb's death also had an effect on Caleb. Ex. 5, [Vonda]. Webb was the only adult male figure in Caleb's life. *Id.* Vonda, therefore, considers Webb's death to have been a trigger for Caleb's beginning to get in trouble. *Id.*

While so many other parts of Vonda's life were turbulent and inconsistent, one of the constant influences in Vonda's life beginning in about 1989 was her church, His Harvest Ministries. *Id.* She joined the church at age 29 when Caleb was about seven years old, not too long after her father died. *Id.* She was one of the early members of the evangelical Christian church. Ex. 5, [Vonda]; Ex. 4, [Pam Pernell]; Ex. 23, [Stan Pernell].

As Vonda dealt with the grief of her father's passing amidst her other day-to-day struggles, the church was a haven for her. She became active in the church by

volunteering her time and devotedly giving tithes. Vonda helped keep the bathrooms at the church clean, and she cooked meals for the church using her own money. Ex. 5, [Vonda]. Given Vonda's nomadic lifestyle, stints without water and power, and occasions of not having enough food for the children to eat, Vonda's family thought that the time and money that she spent on the church demonstrated an inappropriate prioritization of the church over her own family. Ex. 12, [Kathy Sanders]; Ex. 8, [Joel Price].

Caleb attended the church regularly as a young boy. Ex. 5, [Vonda]; Ex. 4, [Pam Pernel]; Ex. 23, [Stan Pernel]; Ex. 12, [Kathy Sanders]. Although he did not act out in church, church members and Vonda's family knew that he resented Vonda's devotion to the church. Ex. 22, [Jessie Thompson]; Ex. 12, [Kathy Sanders]; Ex. 8, [Joel Price]. As Kathy explains, "Caleb and his brothers had animosity towards Vonda because they felt that she 'sold out' to the church by ignoring them and doing everything for the church." Ex. 12, [Kathy Sanders]. Those around Vonda observed that Vonda gave money to the church at the expense of her ability to consistently take care of the children's needs. Ex. 12, [Kathy Sander]; *see also* Ex. 5, [Vonda]. One of Caleb's cousins stated that Vonda would give money to the church rather than buy food for her children. Ex. 8, [Price]. She tithed on a regular basis. Ex. 5, [Vonda]. She bought food and cooked meals for the church, Ex. 5, [Vonda]; Ex. 23, [Stan Pernel]; Ex. 4, [Pam Pernel]; Ex. 24, [Makyia Sanders], yet there were numerous times when there was not enough food at home for the children, or she could not pay for all of her household needs. Ex. 21, [Sharron

Lipsey]; Ex. 5, [Vonda]; Ex. 8, [Price]. She may have been emulating the philosophy of generosity and faith that she saw as a child when her mother and grandmother would give so much to others that there was not enough left for her own family. Regardless of her motivations, however, Vonda's involvement in the church caused Caleb to suffer from feelings of neglect that were similar to those she felt as a child. Ex. 22, [Jessie Thompson]; Ex. 12, [Kathy Sanders]. At some point, Caleb became so frustrated with the church that he stopped going. Ex. 5, [Vonda]; Ex. 23, [Stan Pernell]; Ex. 4, [Pam Pernell]. His cousin recalls Vonda locking Caleb and Marcus out of her house because they did not go to church. Ex. 8, [Price].

In addition to Vonda's involvement with her church, she often leaned heavily on her faith to cope with problems concerning Caleb. Vonda admits that her approach to dealing with a lot of Caleb's issues was to believe that God "will work it out." Ex. 5, [Vonda]. Although she would go to the school or to youth court when asked or summoned, she did not know what to do to address Caleb's problems. *See id.*

### *Caleb*

Caleb's family recalls Caleb being energetic and fun-loving as a boy. Ex. 24, [Makyia Sanders]; Ex. 12, [Kathy Sanders]. He was a prankster and liked to joke around. Ex. 12, [Kathy Sanders]. He got into everything. *Id.* He taught one of his cousins how to play pool and dodge ball. Ex. 24, [Makyia Sanders]. One of his favorite activities was drawing, and he became good at it. *See* Ex. 5, [Vonda]; Ex. 25, [Queenie Barnes].

Caleb tried to be helpful to the family in his own way. Ex. 24, [Makyia Sanders]. Once, he cooked fried chicken for the family and pulled out the best dishes for the family to use. *Id.* Despite his good intentions, he would later be punished for using the dishes. *Id.*

After moving out of Ruffin's house, with little or no food at home at times, limited clothing, Vonda's mental illness, and no supervision after school, Caleb started hanging with the wrong crowd, stealing, and committing other offenses. Ex. 5, [Vonda]; Ex. 7, Youth Court Offense Sheet. At age nine, Caleb had his first encounter with the youth court system. He was ordered to pay restitution and submit to the supervision of the youth court for a charge of vandalism and malicious mischief stemming from a November 1991 incident. Ex. 5, [Vonda]; Ex. 7, Youth Court Offense Sheet. Caleb began using marijuana around the age of 13. Ex. 6, [Dudley]. During his teen years, he had several youth court cases, some of which led to him being committed to Columbia or Oakley Training School. Ex. 7, Youth Court Offense Sheet. Although Vonda attended the youth court proceedings and genuinely cared about Caleb, she never took him to a mental health professional to seek an evaluation to help determine the underlying causes of his behavior. Ex. 5, [Vonda].

Caleb also had challenges at school. His transcript reflects that he failed the first grade and was below grade level. *See* Ex. 26, School Records (Elementary Permanent Record). In the third grade, Caleb scored below average on the Stanford Achievement Test. His problem areas were vocabulary, reading comprehension,

addition of whole numbers, mathematics application, problem-solving, language mechanics, language expression, and study skills. *See* Ex. 26, School Records (Test Results).

According to reports from Caleb's elementary teachers, Caleb was very active, unable to sit still, unable to focus, and needed redirection often. *See* Ex. 26, School Records (Oxford School District In-School Child Find Reviews); Ex. 25, [Barnes]. One of his teachers placed his seat next to her or at the front of the classroom. Ex. 27, [Burt]. If he was placed in a structured environment, he was able to function. Ex. 25, [Barnes].

Caleb's artistic ability and creativity were recognized as early as elementary school. *See id.*; Ex. 28, [Marshall]. His third grade teacher used his talent to her advantage to help him focus in the classroom setting. *See* Ex. 25, [Barnes]. She allowed him to draw pictures for the bulletin board. *Id.* Additionally, to help redirect his energy, she would send him on errands. *See id.* Although Caleb was active, some of his teachers reported that Caleb's behavior was controlled based on their classroom management styles. *See* Ex. 25, [Barnes]; Ex. 27, [Burt].

Caleb's grades dropped dramatically in the fifth grade. *See* Ex. 26, School Records. His teacher recalled that he had issues focusing on his work and would often keep his head on his desk. Ex. 27, [Burt]. He then had to repeat the sixth grade. *See* Ex. 26, School Records.

While in the sixth grade, several referrals were made regarding Caleb's academics and behavior. *See id.* (In-School Child Find Review). Caleb was

suspended several times for being disrespectful to the teacher, damaging school property, and fighting. *See id.* Written recommendations indicated that Caleb may have had ADD and should have been referred to a special program called LSC. *See id.* (In-School Child Find Review) (“I believe he should be referred to LSC. My intervention packet was given to Mrs. Hack. The packet indicates my concern that Caleb may be ADD.”). According to Vonda, a teacher directed her to have Caleb tested for ADD, but Vonda declined to do so. *See Ex. 5, [Vonda].*

Caleb’s sixth grade Iowa Tests of Basic Skills scores were mostly in the low range, with a few categories extending into the average range. His strengths were in word vocabulary/organizing, and his weaknesses were in the areas of inferential meaning, problem-solving analyzing, and integrating/evaluate. Ex. 26, School Records. The Performance Profile also indicated that in integrated language arts, he fell below average in the areas of constructing meaning and extending meaning. In the area of mathematics, his scores were also below average. *Id.* He presented little to no evidence of understanding in problem-solving. He exhibited some emerging understanding in the areas of geometry, problem probability, and statistics. *Id.*

Caleb’s mother now acknowledges that she was not completely aware of Caleb’s grades. She does not remember any of her children bringing progress reports or notes from teachers. *See Ex. 5, [Vonda].* However, if teachers called her for a conference, she would always attend. During the time that Caleb attended alternative school due to multiple suspensions, his mother was at the school often because of his behavior. *See id.; Ex. 29, [Toles].* Sometimes she would accompany



Caleb to class so that he would not leave. Ex. 5, [Vonda]. Vonda recalls that on one such occasion, Caleb asked her to go home because she fell asleep. *Id.*

While attending the alternative school, Oxford Learning Center, Caleb often arrived at the school and walked right out the back door. *Id.*; Ex. 28, [Marshall]. Although he skipped school frequently, a social worker at the school said that he had the ability to complete missed assignments when he returned to school without any problems. Ex. 29, [Toles]. She described him as being smart and capable of being anything that he wanted to be. *Id.* However, she made the following observations: “Caleb needed a positive male figure in his life who could have reached him at an early age. The system failed him due to the stereotype placed on black males. I believe that something was influencing his life that caused him to go astray.” *Id.*

Caleb would speak to the social worker about his mother not being supportive of him. *Id.* He would make comments like “man my mama doesn’t care.” *Id.* His perception was that his mother loved Tim more than him. *Id.* Tim played football and was considered by his family to be smart and destined for success. *See* Ex. 24, [Makyia]; Ex. 5, [Vonda]. The social worker thought that his mother was doing the best that she could as a single mother. *See* Ex. 29, [Toles].

Caleb demonstrated extreme emotional difficulties while at the Learning Center. He would act out by throwing books, and he would inexplicably laugh to himself. Ex. 30, [Anderson]. He talked about wanting to be like Marco. *Id.*; Ex. 28, [Marshall]. The principal at the learning center during that time thought that

Caleb's behavior could have been the result of circumstances that were beyond his control. Ex. 28, [Marshall]. For example, she noted the period of time that Caleb was homeless and had to live with another family for a period of time. *Id.* She observed that even when Caleb appeared to be a cheerful person, "it was clear that he was not. Caleb was trying to mask whatever was going on with him. Caleb never took anything seriously; he covered his emotions and problems with a smile." *Id.*

Caleb's mother did what she could about Caleb's behavior. Anytime the school called her or needed her, she was there if she was allowed to leave work. Ex. 29, [Toles]; Ex. 5, [Vonda]. But her responses to issues regarding Caleb were often "we will pray about it." *See* Ex. 30, [Anderson]; Ex. 5, [Vonda]. She did not take any steps to seek outside help. *See* Ex. 5, [Vonda].

Lacking the type of assistance that he needed, Caleb, like his brother Marcus, did not complete high school. *See* Ex. 26, School Records.

At Columbia and Oakley Training Schools, as a teenager, Caleb also demonstrated academic deficiencies. His scores on their achievement tests showed that he was on a fourth grade level in some areas and experienced problems with reading and spelling. Ex. 26, School Records.

Despite his academic troubles while living with Vonda, Caleb ultimately earned a GED while in the structured environment of prison. Ex. 47, GED Certificate. Coincidentally, he and Marcus were imprisoned at the same institution, the Wilkinson County Detention Facility, and they both earned their GEDs around the same time. Ex. 5, [Vonda].

After spending several stints in training school, Caleb's run-ins with the law became serious when in May of 1999, at age 17, he was arrested for four armed robbery incidents and faced the possibility of life imprisonment. Ex. 48, Booking Report. He pled guilty to armed robbery and was sentenced to twenty years incarceration, with ten years to serve, five years of probation, and ten years suspended. Ex. 49, Notice of Criminal Disposition.

In 2006, while Caleb was in prison, his grandmother, Ruffin, passed away. Ex. 14, W.F. Ruffin Obituary; Ex. 5, [Vonda]. He nor Marcus, who was also in prison at the time, were allowed to attend the funeral. Ex. 5, [Vonda]. Missing Ruffin's funeral was hurtful to Caleb because she had been such an integral part of his life when he was younger. *Id.*

At age 27, Caleb was discharged from prison on May 19, 2009, after ten years of incarceration. As explained more fully in Section IV, Caleb had not matured much, if at all, during his incarceration. Ex. 24, [Makyia Sanders]. Further, he was paranoid and uncomfortable interacting with people. Ex. 4, [Pam Pernell]; Ex. 23, [Stan Pernell]. His incarceration had indeed had an effect on him. *See id.*

While Caleb's maturity level had remained about the same while he was incarcerated, he would notice when he returned home that his brother Timothy had changed a lot during that time as a result of mental illness. Ex. 5, [Vonda]. Timothy showed promise as a teenager; he played football in high school and even attended college. Ex. 5, [Vonda]. However, he underwent a drastic change after going to Africa with his father when he was about 21 years old. Ex. 5, [Vonda]; Ex.

4, [Pam Pernell]; Ex. 23, [Stan Pernell]. Those around him reported that he was never the same after the trip. *Id.* The trigger for this change is said to have been an incident in which he supposedly saw someone be shot and killed, only to be brought back to life by voodoo. Ex. 5, [Vonda]; Ex. 4, [Pam Pernell]; Ex. 23, [Stan Pernell]. Since that time, Timothy has been in and out of psychiatric hospitals and treatment facilities. Exs. 31-34, Tim Agulanna's Medical Records. He has been diagnosed with schizophrenia, bipolar, psychosis, delusional thinking, delusional disorder, and altered mental status. *Id.* Tim's conditions have caused symptoms such as confusion, auditory hallucinations, paranoia, inability to sleep, and suicidal ideations. *Id.* Although he has been prescribed medication, he does not always take it. Ex. 5, [Vonda]. He, therefore, has had episodes of extreme irritability and violence. *Id.* On multiple occasions, he has wandered off and lived as a homeless person. *Id.*; Exs. 31-34, Tim Agulanna's Medical Records.

Caleb was not so lucky as to escape the unfortunate pattern of psychiatric problems that has plagued his family. His behavioral difficulties as a boy, *see supra*, were early indications of such issues. *See* Ex. 6, [Dudley] at 20 [Dudley ("[H]is behavioral difficulties were his most obvious and most focused on psychiatric difficulties . . .")]. His cousin commented, "I thought he needed mental help. Everyone knew that something was wrong with him, but he never received enough help." Ex. 8, [Joel Price]. He also exhibited signs of his psychiatric issues, including paranoia, within the months leading up to his arrest in the present case. *See* Ex. 4, [Pam Pernell]; Ex. 23, [Stan Pernell].

### Ineffective Assistance of Trial Counsel

As explained more fully *supra*, trial counsel's performance is unconstitutionally inadequate when counsel's representation falls below an objective standard of reasonableness and when there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694. Prejudice is established if "there is a reasonable probability that at least one juror would have struck a different balance" but for the constitutional error. *Wiggins v. Smith*, 539 U.S. 510, 536 (2003). Although trial counsel put on several witnesses for mitigation during the sentencing phase of trial, trial counsel fell short of objective standards of representation by failing to present to the jury key mitigation evidence which had a reasonable probability of changing at least one juror's mind regarding whether Caleb should have been sentenced to life without the possibility of parole.

- B. Trial counsel provided ineffective assistance of counsel by failing to request an assessment of executive functioning or other neuropsychological domains, and, therefore, failing to conduct a thorough investigation.

Dr. Joseph Angelillo, a psychologist, evaluated Caleb in May 2011 and was the only expert who testified on Caleb's behalf during the sentencing phase of trial. Dr. Angelillo's pre-trial examination of Caleb focused only on general psychological functioning. Tr. 817-43. Therefore, prior to Caleb's trial, there was no assessment of his executive functioning or other neuropsychological domains. *See Ex. 36, [Spical]*, (stating that assessment of executive functioning or other neuropsychological domains was not a component of Dr. Angelillo's examination). Trial counsel failed to

request that such an evaluation be performed, despite trial counsel's professional responsibility to provide a thorough investigation of mitigating circumstances. *See Williams v. Taylor*, 529 U.S. 362, 396 (2000); *Ross v. State*, 954 So. 2d 968 (Miss. 2007).

“Executive functioning” has been described as “abilities related to judgment and problem-solving and planning and the ability to stop oneself and to start, initiate behaviors and then also to shift back and forth, to understand that something is not working now, I should try something else.” *Duncan v. Carpenter*, No. 3:88-00992, 2015 WL 1003611, at \*22 (M.D. Tenn. Mar. 4, 2015) (quoting testimony of Dr. Dale Watson, an expert in the field of neuropsychology). “[P]eople with these kinds of problems tend to be impulsive. So they don’t inhibit themselves very well. They go with—sometimes they become bound to the environment so the stimulus in the environment controls their behavior more than they control their behavior.” *Id.* (quoting expert neuropsychologist). That a defendant has impairments in executive functioning is important mitigating evidence because it provides a neuropsychological reason that a defendant is not in complete control of his actions. *See id.*; *Appendix A*, Stephen P. Garvey, *The Emotional Economy of Capital Sentencing*, 75 N.Y.U.L. Rev. 26 (2000) (concluding that mitigation does matter, especially mental impairment and mental illness). Therefore, evidence of a defendant’s deficits in executive functioning should be presented to the jury during the sentencing phase of a capital case. *See, e.g., State v. Payne*, 314 P.3d 1239, 1273

(Ariz. 2013) (stating that evidence of executive functioning deficiencies is relevant to a statutory mitigating circumstance).

Unlike Dr. Angelillo, Dr. Malcolm Spica, a licensed psychologist and neuropsychologist, conducted a comprehensive neuropsychological examination of Caleb on September 25 and 26, 2015. *See* Ex. 36, [Spica]. The evaluation consisted of a complete psychological battery of tests, including neuropsychological tests, as well as an extended clinical review. *Id.* He reviewed numerous medical and educational records from Caleb's past, including Dr. Angelillo's report. *See* Ex. 36, [Spica].

Unlike Dr. Angelillo, Dr. Spica assessed Caleb's executive functioning. Dr. Spica defines "executive function" as cognitive operations that organize input and/or output of information, such as planning, organizing, sequencing, and abstracting information. Ex. 36, [Spica]. This group of functions is typically referred to collectively as "Mental Organization." Deficits in these areas become worse with more complicated tasks (i.e., in situations that more closely resembled real-life conditions)." *Id.* at 6.

Caleb's neuropsychological examination results revealed a converging pattern of scores indicating severe difficulty with executive functioning.

Psychological testing also revealed that Caleb has severe symptoms of anxiety.

Dr. Spica opined that with Caleb's executive functioning deficits ranking as low as the severely impaired range, Caleb is left susceptible to confusion and substantial lapses in judgement when he must process multiple sources of

information under pressure. Ex. 36, [Spica]. To a reasonable degree of professional certainty, Dr. Spica found that Caleb's mental defect in executive control, particularly during times of pressure, is likely to produce significantly disorganized behavior. *Id.* This information was not, however, presented to the jury at trial because trial counsel never sought such an evaluation, even though indications of an impairment were obvious and should have been followed up on. *See* Ex. 36, [Spica] (noting Caleb's noticeable disorganized behavior, and stating that the disparity between verbal comprehension index and perceptual reasoning index indicated a need for further frontal lobe testing).

"It has been held that consideration of all relevant mitigating evidence is required at the sentencing phase because the imposition of the death sentence should reflect a reasoned, moral response to the defendant's background and character and the crime." *Brown v. State*, 749 So. 2d 82, 91 (Miss. 1999) (quoting *Russell v. Collins*, 998 F.2d 1287, 1291 (5th Cir. 1993)). Thus, trial counsel's failure to investigate and present evidence of Caleb's deficits in executive functioning constituted deficient performance because there is a "belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse." *Boyd v. California*, 494 U.S. 370, 382 (1990). Further, because trial counsel never gave the jury the opportunity to learn that Caleb's ability to make decisions was hampered by a neuropsychological impairment, a fact which had a reasonable probability of



changing the outcome of the sentencing hearing, Caleb was prejudiced. *See, e.g., Harries v. Bell*, 417 F.3d 631, 639–42 (6th Cir. 2005) (holding at least one juror might have been persuaded by evidence of defendant’s “[f]rontal-lobe damage [that] . . . can interfere with a person’s judgment and decrease a person’s ability to control impulses”); *Frazier v. Huffman*, 343 F.3d 780, 798–99 (6th Cir. 2003) (holding that at least one juror might have been persuaded by evidence of defendant’s brain damage that “could have impaired his ability to deal with stressful or emotional situations, even ones of his own making”).

- C. Trial counsel were ineffective because they did not request a psychiatric exam, despite evidence that such an exam was appropriate and necessary to determine the extent of Mr. Corrothers’s psychiatric issues.

Caleb suffers from psychiatric difficulties that significantly impair his ability to function. *See* Ex. 6, [Dudley]. Dr. Dudley opined that based on the information available to him, Caleb had an extremely difficult childhood as a result of numerous factors, including but not limited to his mother’s unpredictable treatment of him and his feelings that she did not want him, being abandoned by his father, the crowded and chaotic environment of his grandmother’s home, rejection by peers, instability once his mother left his grandmother’s home, and early inappropriate exposure to sexual situations. *See id.* at 19-20.

As a direct result of his extremely difficult childhood, Caleb “developed clinically significant difficulties regulating his mood, clinically significant anxiety, and other development difficulties characterized by instability in his attachments to others, instability in his sense of self, mood instability, and impulsivity.” *Id.* at 23.

As he got older, “he also began to evidence a more severe mood disorder, characterized by symptoms of depression and at least hypomania, which at least appears to be a mood disorder that runs in his family.” *Id.* Dr. Dudley also concluded that Caleb “suffers from at least some difficulty in executive functioning, and has suffered from difficulties associated with substance abuse and addiction.” *Id.* Additionally, Caleb’s psychiatric difficulties are complicated by the added impact of long-term institutionalization on his ability to function and his fragile sense of self. *Id.*

Lastly, Dr. Dudley opined as follows:

It is the opinion of this psychiatrist that individually, each of the above noted major psychiatric difficulties significantly impaired CC’s ability to function. Given that the symptoms of each of these major psychiatric difficulties exacerbated the symptoms of the other psychiatric difficulties, collectively, they resulted in a severe impairment of CC’s ability to function.

*Id.* at 23.

While Caleb’s post-trial evaluations demonstrate the neuropsychological and psychiatric issues that have plagued Caleb throughout his life, Caleb has demonstrated signs of such problems since childhood. Caleb’s behavioral difficulties at school and in the community were his most obvious psychiatric difficulties. *Id.* at 20 (“[H]is behavioral difficulties were his most obvious and most focused on psychiatric difficulties . . .”).

Indications of Caleb’s psychiatric problems were also noticeable within the months leading up to his arrest for this offense. Trial counsel did not request a psychiatric exam when it was obvious such examination was needed. Dr. Dudley

noted that Caleb's "psychiatric difficulties impaired his ability to function are the type of mental health information that could have been identified and considered for presentation as mitigation at the time of [his] trial." *See* Ex. 6, [Dudley].

Had trial counsel made a thorough investigation of Caleb's history, jurors would have heard testimony that Caleb's extremely difficult childhood contributed to him developing clinically significant difficulties regulating his mood, anxiety, and other development difficulties. *See* Ex. 6, [Dudley]. They would have also heard about Caleb's mood disorder characterized by symptoms of depression and signs of his psychological issues shown while at the training schools due to the impact of long-term institutionalization on his ability to function. *Id.* Dr. Dudley noted that Caleb experienced major psychiatric difficulties, and that such difficulties resulted from an extremely difficult childhood. *Id.*

In *Ross v. State*, this Court noted "strategic choices made after less than complete investigation will not pass muster as an excuse when a full investigation would have revealed a large body of mitigating evidence. . . . It is not reasonable to refuse to investigate when the investigator does not know the relevant facts the investigation will uncover." *Ross*, 954 So. 2d at 1006 (quoting *Dickerson v. Bagley*, 453 F.3d 690, 696–697 (6th Cir. 2006)).

Trial counsel failed to make a thorough investigation of Caleb's history and background, or to fully investigate his family history and background. This investigation was critical to understanding the psychological, psychiatric, biological, and environmental risk factors that formed Caleb's development.

Trial counsel's failure to fully investigate and explain these risk factors prevented jurors from accurately understanding Caleb's history and background, and its impact on his behavior and moral culpability.

Had the jury been provided with this detailed information, there is "a reasonable probability that at least one juror would have struck a different balance" and voted in favor of a life sentence. *Wiggins v. Smith*, 539 U.S. 510, 537 (2003); *see also Davis v. State*, 87 So. 3d 465, 474 (Miss. 2012) ("In order for counsel's inadequate performance to constitute a Sixth Amendment violation, petitioner must show that counsel's *failures* prejudiced his defense.") (emphasis added). Trial counsel had notice of a family history of mental health related problems, yet did not investigate further to determine whether Caleb also suffered from a mental disease or defect. Therefore, trial counsel's failure to fully investigate and present this evidence was prejudicial.

D. Trial counsel fell short of professional standards and prejudiced Caleb by failing to thoroughly investigate and present relevant mitigating evidence about his family history and turbulent upbringing.

As described above, a thorough investigation of Caleb's family history and childhood reveal a myriad of mitigating circumstances that should have been presented to the jury during sentencing, including but not limited to the following: familial history of absent fathers, teenage pregnancy, and single parenthood; lack of a father figure; lack of a positive male role model; extreme poverty; a chaotic home environment; lack of a consistent place to live; temporary homelessness; feelings of neglect by his mother; lack of appropriate supervision; sexual victimization as a

child; periodic lack of basic necessities such as food, running water, electricity, and appropriate clothing; early exposure to drug sale and drug use in his community and within the home; early exposure to gangs; early involvement in youth court system; commitment to juvenile training facilities; mental illness of his mother and brother; and lack of professional treatment, despite exhibiting signs of emotional, behavioral, and psychological problems as a child.

Trial counsel neglected to present crucial mitigation evidence, without which the jury did not have a complete picture of the circumstances that had a bearing on the appropriateness of sentencing Caleb to death. For example, the jurors never heard about how Caleb had to move from place to place throughout his childhood, or how sometimes there was not enough food at Vonda's home. Nor did they hear that he lived in the same household with his aunt at a time that she was using drugs. The jurors did not hear testimony regarding Caleb being molested as a child. They did not know that Caleb's mother gave him and his brother severe whippings, sometimes when they were naked, and that she sometimes took her frustrations out on him in the process. They did not learn that as a child, Caleb sometimes lived in homes without running water or electricity. The jury did not hear that as a young boy, Caleb had to wear clothes that his mother sewed because his mother could not afford to buy him clothes.

Additionally, a crucial component of Caleb's mitigation story is his mother's traumatic and stressful life, including her mental illness, lack of self-esteem, and variable moods, and the effect her hardships had on Caleb. The jury could not fully

understood and appreciate Caleb's upbringing without insight into the emotional and sexual trauma that his mother experienced as a child, and the stressors that she faced while raising him and his brothers. Her traumatic background and mental health problems impaired her ability to successfully parent her children. Although Vonda gave brief, conclusory statements during sentencing about some of these things, [Tr. 782-93], her testimony on the issue was incomplete and was insufficient to shed sufficient light on the topic. An adequate interview of Caleb's mother, in addition to other perspectives of people close to her were needed to give a well-rounded and complete account. Testimony of mitigation witnesses other than Vonda regarding her childhood and its effect on her mental health, self-esteem, and child-rearing, as well as Vonda's behavior when dealing with stressors while raising Caleb, should have been offered. Several people have insight on these issues, including Vonda's sister, niece, former church members, and former classmate and coworker. *See* Ex 12, [Kathy]; Ex. 24, [Makyia]; Ex. 23, [Stan Pernell]; Ex. 4, [Pam Pernell]; Ex. 21, [Lipsey]. However, the jury did not hear much of the context of the depression and stress that Caleb's mother experienced, and how they affected Caleb as a child, because trial counsel did not solicit relevant testimony from witnesses on the matter.

Caleb "had a right—indeed, a constitutionally protected right—to provide the jury with the mitigating evidence that his trial counsel either failed to discover or failed to offer." *Williams v. Taylor*, 529 U.S. 362, 393 (2000). Trial counsel's failure to present the key evidence discussed above amounted to deficient performance. *Id.*

at 396 (finding trial counsel's performance deficient where, among other things, counsel failed to present pertinent mitigating evidence that was available). Further, trial counsel's subpar performance prejudiced Caleb because this type of evidence has been found to resonate with jurors. *See Appendix B*, John H. Blume, Sheri Lynn Johnson & Scott E. Sundby, *Competent Capital Representation: The Necessity of Knowing and Heeding What Jurors Tell Us About Mitigation*, 36 Hofstra L. Rev. 1035, 1038, 1051 (2008) (noting that studies reveal that many different types of mitigation resonate with jurors and can lead jurors to choose life over death, including mental illness, child abuse, and extreme poverty). There is a reasonable probability that Caleb would have been sentenced to life without parole rather than death if the above crucial evidence had been presented. Therefore, Caleb sentence should be vacated and remanded for a new sentencing hearing or in the alternative for an evidentiary hearing.

## II. Petitioner was Denied Due Process and a Fair Trial When the State Presented Flawed Identification from the Witnesses.

Caleb is entitled to post-conviction relief based on the flawed witness testimony. During Caleb's trial, Karen Hickinbottom testified that Taylor Clark stopped by her house around 9:00 p.m. on July 11, 2015, to return a cell phone belonging to her boyfriend. The phone had been left in Taylor's car earlier that day. Tr. 396- 97. Ms. Hickinbottom testified that "Taylor went outside again to talk to the man, then came back in and said 'man, I got to get out of here.'" Tr. 398-99. Ms. Hickinbottom saw the man get in the passenger seat of Taylor Clark's car, and they drove off. Tr. 399. She further testified that the man and Taylor Clark left her

house between 9:30 p.m. and 10:30 p.m. *Id.* The Court, in its opinion, noted that Ms. Hickinbottom would later describe the man who left with Taylor Clark as a “6 foot to 6’2” black male, medium build, very low cut hair.” *Corrothers*, 148 So. 3d at 288. However, Ms. Hickinbottom did not provide a description during her testimony.<sup>2</sup> Tr. 398. Ms. Hickinbottom, however, did identify Caleb in the courtroom, Tr. 398, 408, and also testified to identifying him from a photograph at the police station. Tr. 400. Ms. Hickinbottom testified in trial that after her daughter (Jazmine Hickinbottom) opened the front door, she saw Caleb standing at the door, and he wanted to speak to Taylor. Tr. 398.

Information obtained from, Karen Hickinbottom, as well as, Justin Montez, Jazmine Hickinbottom, and Jocelynn Montez, who were all there that night, have since stated that they could not identify the person who came by the house the night of the murder and who left with Taylor Clark. Karen Hickbottom swore in her affidavit that:

I’m not totally sure what the man looked like because I could not see his face. I did not get a good look at the man in the car when Taylor drove away from my house.

I was able to see the man’s figure and hair, but I could not make any specific features because it was dark and the man did not enter the house.

I informed the police officers on numerous occasions that my son, Justin Montez, would be a better person to ask who the man was because he would have had a better look at the man.

While I was at the police station, the police officers showed me a

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<sup>2</sup> Karen Hickinbottom stated in her voluntary statement to the Lafayette County Sheriff’s Department that the man she saw was a “tall black man with short hair darker complexion in a sleeveless shirt.” See Exhibit 46, Karen Hickinbottom’s Voluntary Statement page 2 of 3, Dated 7/14/09.



picture of a man, but it was a blurry photograph. I told the police officers that it could be the man I had seen the night of the crime, but I was unable to state with certainty if it was the man on the picture or not.

I later learned the man on the blurry picture was Caleb Corrothers.

To my knowledge, the police officers only showed me one picture at the police station. I did not see a line up.

Ex. 37, [Karen Hickinbottom].

Other individuals present that evening also could not provide an identification. Justin Montez swore in his affidavit that he told “Investigator Mills that Caleb Corrothers looked like the guy who came by the house to talk to Taylor but [he] told him [he] wasn’t for sure if it was Caleb Corrothers. [He] can’t be 100% sure.” Ex. 38, [Justin Montez]. Mr. Montez also swore that when he talked to Investigator Mills at the county jail, he “was only shown a video clip of Caleb Corrothers,” and “was not shown a lineup.” *Id.* He further stated he “was the only other person besides Taylor who saw the man at the house that night. This man did not enter the house.” *Id.* Although it was noted in this Court’s opinion that Jazmine Hickinbottom opened the door, she swore in her affidavit that she “did not answer the door on the night that Taylor visited [her] mother’s home” and that “[her] brother, Justin Montez, was outside when the man stopped at the house and would have seen the man.” Ex. 39, [Jazmine Hickinbottom]. However, Karen Hickinbottom testified that Jazmine Hickinbottom answered the door. Tr. 398. Jazmine Hickinbottom also stated she does not “remember who the man was at the door because [she] didn’t look outside that door when Taylor opened it. It was dark

outside and the man never entered the house so [she] would not [have been] able to identify him.” *Id.*

That same night, Jocelynn Montez was at the house, and she stated she “could not see who the man was inside of the car. It would have been difficult for anyone inside of the house to see who was inside of the car with Taylor.” Ex. 40, [Jocelynn Montez].

The United States Supreme Court has held that pre-trial identification procedures violate a defendant’s Due Process rights if, under the totality of the circumstances, those procedures so taint any in-court identification as to render it unreliable. *Manson v. Brathwaite*, 432 U.S. 98, 115 (1977). To pass muster under *Manson*, any pre-trial identification procedure must pass a two-pronged test: 1) it must not be unduly suggestive, and 2) it must not render any subsequent identification unreliable to the extent that there is a substantial likelihood of misidentification. *Manson*, 432 U.S. at 114. *See also York v. State*, 413 So. 2d 1372, 1384 (Miss. 1982) (adopting two-prong inquiry and *Biggers* factors and “totality of the circumstances” analysis).

It is well established that eyewitness identification has a “great potential” for misidentification and unreliability with eyewitness identifications generally. The “innumerable dangers” inherent in such identifications which have led to a “high incidence of miscarriage of justice” were described by the United States Supreme Court in *United States v. Wade*, 388 U.S. 218, 228-229 (1976). As the Court observed in *Wade*, the lack of reliability of such evidence is well documented. *Id.*

Hence, if the totality of the circumstances of the pretrial identification procedures fail the suggestivity/reliability two-prong test, the State must show by clear and convincing evidence that the in-court identification made by the eyewitness is “based upon observations of the suspect other than the lineup identification.” *York*, 413 So. 2d at 1375.

In addition to the constitutional issues that arise with eyewitness identification suggestibility, reliability and taint, the Mississippi Rules of Evidence must also be satisfied. If they are not, as they were not here, that in and of itself independently violates Caleb’s constitutional right to due process. *Payne v. Tennessee*, 501 U.S. 808, 825 (1991). As this Court recognizes, to be admissible in a court of law in Mississippi, even otherwise relevant and constitutionally admissible evidence must past through the filter for admissibility of Rule 403 of the Mississippi Rules of Evidence.

[E]ven otherwise relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” M.R.E. 403. Under Rule 403, the exclusion of prejudicial evidence is permissive; that is, if a trial court determines that the prejudicial effect of evidence substantially outweighs its probative value, it is not obligated to exclude the evidence, but may do so at its discretion. See *Foster [v. State]*, 508 So.2d [1111,] at 1117 [(Miss. 1987)].

*Ross v. State*, 954 So.2d 968, 993 (Miss. 2007).

If prejudicial testimony is erroneously admitted under state law, that error, in and of itself independently violates Caleb’s constitutional right to due process. *Payne*, 501 U.S. at 825.

Ms. Hickinbottom's testimony identifying Mr. Corrothers to the jury was therefore both state evidentiary and state and federal constitutional error in and of itself. She made no independent pretrial identification of Mr. Corrothers.

### III. Mr. Corrothers is Entitled to an Evidentiary Based on Recanted Identification Testimony.

Ms. Hickinbottom's affidavit serves as recantation of her trial testimony. Her affidavit clearly states that she did not make an out of court identification of Mr. Corrothers. This Court has held that recanted testimony is adequate to entitle a petitioner to an evidentiary hearing. *Yarborough v. State*, 514 So. 2d 1215, 1220 (Miss. 1987). This Court noted "[w]here the witness's recantation undermines the Circuit Court's confidence in the correctness of the outcome at trial, a new trial should be ordered." *Id.* (citing *Gathings v. State*, 46 So. 2d 800 (Miss. 1950)); *cf. Malone v. State*, 486 So.2d 367, 369 (Miss. 1986)). The Mississippi Uniform Post-Conviction Collateral Relief Act specifically requires that "affidavits of the witnesses who will testify" be attached to the motion, or a showing of "good cause why they cannot be obtained." *See* Miss. Code Ann. § 99-39-9(1)(e) (Rev. 2000). An affidavit is a sworn statement in writing made before an authorized official. Black's Law Dictionary (10th ed. 2014); *see also Wilborn v. State*, 394 So. 2d 1355, 1359 (Miss. 1981) (Patterson, C.J., dissenting). Because these affidavits were sworn to before a notary public, the statements asserted are regarded as truthful and should be treated with great seriousness. Therefore, Caleb is requesting an evidentiary hearing so that the trial court can evaluate the testimony of the trial witness. Because of the trial witness's flawed statements and the new witnesses' statements

supporting the trial witness's current statements, Caleb's conviction and sentence should be vacated and remanded for a new trial, or in the alternative, an evidentiary hearing.

**IV. In Violation of the Eighth and Fourteenth Amendments, Petitioner's Death Sentence is Unconstitutional Because an Execution Will Create a Substantial Risk of Cruel and Unusual Punishment.**

The manner of execution for individuals sentenced to death in Mississippi is "by continuous intravenous administration of a lethal quantity of an ultra-short-acting barbiturate or other similar drug in combination with a chemical paralytic agent until death is pronounced by the county coroner where the execution takes place or by a licensed physician according to accepted standards of medical practice." Miss. Code Ann. § 99-19-51. The method of execution is currently being challenged in *Jordan, et. al. v. Marshall*, CA 3:15cv295-HTW-LRA. See Exhibit 42. As a result, the State is currently "enjoined from using pentobarbital, specifically in its compounded form, or midazolam, from executing any death row inmate at this time." *Id.* An appeal is also pending regarding a jurisdictional matter concerning challenges to the Mississippi Department of Corrections' proposed method of execution in *Crawford v. Fisher, et. al.* Miss. Supreme Court Case No. 2014-CA-01606. Given the posture of the current litigation, Caleb raises this claim to preserve the right to challenge any method of execution claims that may occur as a result of this litigation. Caleb asks this Court that he be allowed to amend and/or supplement this claim as necessary.

**V. In Violation of the Sixth and Fourteenth Amendments, Trial Counsel was Ineffective for Failing to Perform an Adequate Pretrial Investigation and**

**Present That Petitioner Has Been Institutionalized Most of His Adolescent and Adult Life, Such That Petitioner Was Denied a Fair Trial, and Sentencing Free From Any Arbitrary Factors as Required by the Eighth Amendment.**

Approximately 16 years of his 33 years on earth, Caleb has spent behind bars. Caleb's first youth court appearance was at the early age of nine (9). Two years later, in 1993, at the age of eleven (11), he was committed to East Columbia Training School ("Columbia") in Columbia, Mississippi. At the age of twelve (12), he was again committed to Columbia for a period of time. In 1996, at the age of fourteen (14) years old, he was again committed to Columbia. In 1997 at the age of fifteen (15), he was committed to Oakley Training School (Oakley) in Raymond, Mississippi. In 1999, at the age of seventeen (17) years old, he was arrested and charged as an adult. He was subsequently sentenced to twenty (20) years and served ten (10) years with the Mississippi Department of Corrections ("MDOC").

At age 27, Caleb was discharged from prison. He had spent more than a third of his life in prison. After his release, those around him noticed that he was paranoid and displayed extreme discomfort being around a lot of people. Ex. 4, [Pam Pernel]; Ex. 23, [Stan Pernel]. Stan and Pam Pernel, who attended His Harvest Ministries, saw him at church with Vonda and Timothy one day. Mrs. Pernel recalls that "[i]t was obvious that Caleb had been in prison when he returned to church. He was unsettled, afraid, and uncomfortable being around people." Ex. 4, [Pam Pernel]. He could not be still and was acting as if he was nervous. *Id.* People would do certain things, and he would take their actions in the

wrong way. *Id.* Mrs. Pernell thought that he needed to be on medication that would level him out. *Id.*

Mr. Pernell remembered that Caleb kept looking at the ground and would not look up, even when greeting Mr. Pernell. Ex. 23, [Stan Pernell]. This was something that Caleb had trouble doing even before his ten-year imprisonment. *Id.*

Caleb's family also noticed that Caleb was extremely immature, acting as if he were still a child and picturing everyone as they were before he was incarcerated Ex. 24, [Makyia Sanders]. When he would go with his family to McDonald's, he would order a "happy meal." *Id.* When he ran across a woman whom he knew when they were both children, all he wanted to do was tickle her because that is what he used to do when they were children. *Id.* Caleb stated that he "had a hard time trying to adjust to the outside world." Ex. 41, [Caleb Corrothers]. He also stated that "[w]hen [he] got out everything was different. People were different. [He] did not know how to act. [He] did not know how to talk to people because [he] remembered things as a child, not a grown man. It was hard to try to adapt." *Id.*

Two months after his release, he was charged with capital murder and subsequently convicted and sentenced to death in 2011. Dr. Dudley noted that "[Caleb] has been suffering from the effects of being institutionalized since his adolescent years." Ex. 6, [Dudley]. Dr. Dudley also noted that "both the lack of capacity to function in the real world that resulted from such long term institutionalization and the negative impact of his experiences in the institutions on

[Caleb's] already unstable sense of self further complicated and exacerbated" Caleb's psychiatric difficulties that were described in Dr. Dudley's affidavit. *Id.*

The training schools were ill-equipped to provide children with the education, behavior modification, counseling, substance abuse treatment, and the mental and physical health care they needed to survive. The United States Supreme Court stated in 1966 that "[t]here is evidence . . . that the child receives the worst of both worlds: that he gets neither the protection adults nor the solicitous care and regenerative treatment postulated for children." *See Kent v. United States*, 383 U.S. 541, 556 (1966) (citing Joel F. Handler, *The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 *Wis. L. Rev.* 7, 12 (1965); David R. Barret et al., *Note, Juvenile Delinquents: The Police, State Courts, and Individualized Justice*, 79 *Harv. L. Rev.* 775, 775 (1966)).

The conditions of Columbia and Oakley were inhumane and had been for years. These institutions continued to be dangerous places for juveniles. In 2002, the Department of Justice ("DOJ") conducted an investigation of these training facilities. *See Appendix I, DOJ Investigation Report.* DOJ's report can attest to the endemic problems that occurred in the training schools. Prior to the investigation of the training schools, Oakley was subject to the Federal District Court order for twenty-five years for violating the constitutional and statutory rights of the juveniles confined there. In 1977, the district court found that Oakley (1) confined non-violent, and sometimes suicidal, children around the clock in isolation units in dark, cold cells bare except for a hole in the floor for a toilet; (2) maintained



understaffed medical and mental health facilities that denied children needed treatment; (3) maintained overcrowded living units that denied children basic privacy; and (4) provided little or no general or vocational education, and virtually no special education programs for the “extremely high percentage” of juveniles who were mentally retarded or otherwise required these services. *See Morgan v. Sproat*, 432 F. Supp. 1130, 1138-53 (S.D. Miss. 1977). The Federal District Court ordered corrective action at Oakley but was disregarded by the governor’s office, the legislature and the state Division of Youth Services. *See id.* at 1130, 1159 (S.D. Miss. 1977). *See also, e.g., Appendix C*, David Halbfinger, *Care of Juvenile Offenders in Mississippi Is Faulted*, N.Y. Times, Sept. 1, 2003 (“Perhaps most alarming about the Justice Department’s conclusions . . . is how loudly their echo those of a federal judge in a landmark 1977 court ruling on conditions at Oakley.”) (last visited October 30, 2015).

The safety conditions went downward when DOJ investigated the training schools in 2002. The DOJ found constitutional and federal statutory violations in the conditions at each of the training schools. *See Appendix I*, DOJ Investigation Report. It was found that Oakley and Columbia still denied confined juveniles adequate mental health and medical care. *Id.* Oakley continued to have unsanitary conditions, and each training school denied the required general and special educational services. *Id.* at 34. The training schools violated the Federal Court order in which the training schools continued routine, unchecked beatings and other physical assault that staff performed on children “with impunity.” *Id.* at 10. It was

found that Oakley and Columbia operated on a paramilitary model. *Id.* The paramilitary training program, even when the physical aspects are eliminated, is not only ineffective, but harmful to such youth. *Id.* at 22. DOJ found both training school institutions' paramilitary programs particularly unsuitable for younger boys, girls, youths with developmental disabilities, and physically or emotionally fragile youths. *Id.*

After contested litigation that resulted in settlement, in 2005 the court entered a Consent Decree that listed the measures the State was required to make to address the unlawful conditions. The Decree directed the State to implement reforms in the following areas: (1) protection from harm; (2) education; (3) mental health; (4) programming; and (5) medical care. Columbia was eventually closed in 2008. In 2014, DOJ's Civil Rights Division agreed that the State had satisfied all remaining obligations under the Decree. On August 19, 2014, the Court dismissed the case.

It can be inferred that Caleb experienced such inhumane conditions while attending these training schools in the mid to late 1990s. Caleb described Columbia as not being a nice place and Oakley being a difficult experience. Ex. 41, [Caleb Corrothers]. He stated that the "guards and staff were very mean." *Id.* He explained that "[s]ometimes they would have us fight each other and place bets on who would win." *Id.* He even described times when a young boy "would wet the bed most nights," and "a guard named Mr. Harvey would have one of the bigger boys beat" the young boy. *Id.*

Apparently the inhumane conditions were ongoing and continued even after the Federal investigations. Caleb's initial conduct and the consequences of him not receiving proper treatment after entering the juvenile justice system were an indication that he did not stand a chance in society as a rehabilitated youth. If he received the proper treatment at the training schools and afterwards, there is a reasonable probability that he would have been rehabilitated. Juveniles require special treatment in order to facilitate their rehabilitation because they are developmentally different from adults. *See Appendix D*, Jennifer M. O'Connor & Lucinda K. Treat, *Getting Smart About Getting Tough: Juvenile Justice and the Possibility of Progressive Reform*, 33 Am. Crim. L. Rev. 1299, 1315 (Summer 1996); *see also Appendix E*, Christina Dejong & Eve Schwitzer Merrill, *Getting "Tough on Crime": Juvenile Waiver and the Criminal Court*, 27 Ohio N.U. L. Rev. 175, 177 (2001). Juvenile defendants are considered "more vulnerable, more impulsive, have less capacity for self-control, lack experience, and are more inclined to focus on the immediate rather than the long-term consequences of their choices." *See Appendix F*, Ellie D. Shefi, *Waiving Goodbye: Incarcerating Waived Juveniles in Adult Correctional Facilities will not Reduce Crime*, 36 U. Mich. J.L. Reform 653, 663 (2002-2003); *See also Appendix G*, Elizabeth S. Scott & Thomas Grisso, *The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88J. Crim. L. & Criminology 137, 147 (Fall 1997). In addition, a juvenile is at a "greater risk of developing mood disorders due to poor relationship with his parents" (i.e. Caleb's father was not present in life and did not provide support) or

“having poor peer relations” (some of Caleb’s friends attended the training schools or were incarcerated and considered criminals) in which increased Caleb’s risk of entering the juvenile justice system. *See Appendix H*, Eileen P. Ryan, D.O. & Richard E. Redding, J.D., Ph.D., *A Review of Mood Disorders Among Juvenile Offenders*, Psychiatric Services, December 2004, Vol. 55, No. 12, 1397, 1399. Thus, [i]nexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is more apt to be motivated by mere emotion or peer pressure than is an adult. *Id.* (citing *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)).

MDOC was not well equipped to handle the special needs that Caleb had when he was incarcerated at the age of seventeen (17) years old. It should be noted that juveniles incarcerated in adult jails are considered to be in a worse condition than when they entered due to the lack of treatments, education programs, and support services necessary for the youths’ rehabilitation. *See e.g. Appendix F*, Ellie D. Shefi, *Waiving Goodbye: Incarcerating Waived Juveniles in Adult Correctional Facilities will not Reduce Crime*, 36 U. Mich. J.L. Reform 653, 666 (2002-2003).

In 2002, the American Bar Association’s (“ABA”) Task Force found that “[y]oung people placed in a jail or other secure facility are more vulnerable to psychological and physical harm than adults, and they are at greater risk for suicide.” *See Appendix J*, ABA Task Force Report. The ABA believes that underage defendants should not be placed in the adult system. *Id.* However, at the age of seventeen (17), Caleb was sentenced to ten (10) years with MDOC. The ABA Task

Force noted that “[a] youth committed to the adult system is likely to have few independent living skills. They may never have looked for a job, contacted an employment service, had a job interview, held a job, gotten a driver’s license, arranged transportation, had a bank account, rented a room or an apartment, managed a budget, or paid bills. These ‘adult’ experiences will pose challenges that may predispose them to failure unless good transition services are in place.” *Id.*

The impact of the training schools on minorities is particularly severe and probably worsened any pre-existing mental or social problems that Caleb may have had when he entered the training schools. Because of the institutional failures, Caleb lacked the desperately needed interventions due to the training schools being inadequately funded and understaffed. Institutional failure was prominent in Caleb’s life. As such, trial counsel was ineffective for failing to present that Caleb was institutionalized most of his adolescent life and adulthood. This failure denied Caleb a fair trial because jurors did not consider the social and background information relating to Caleb’s institutionalization that would have helped in their decision of whether to grant mercy or life in prison without the possibility of parole. Therefore, Caleb’s sentence should be vacated and remanded for a new sentencing hearing.

**VI. Counsel Failed to Reasonably Ensure that Jurors Gave Full Effect to Mitigating Evidence.**

Trial counsel unreasonably failed to ensure that, considering the context of this case and the totality of circumstances, jurors properly applied the instructions and fully considered all constitutionally relevant mitigating evidence. *Cf. Boyde v.*

*California*, 494 U.S. 370 (1990). As a result, there is a reasonable likelihood that jurors misunderstood the instructions and verdict form in a way that unconstitutionally constrained their ability to give effect to mitigating evidence. *See Buchanan v. Angelone*, 522 U.S. 269, 279 (1998); *see also Penry v. Lynaugh*, 492 U.S. 302 (1989).

The Eighth and Fourteenth Amendments of the Constitution require “individualized consideration of mitigating factors” in capital cases. *Lockett v. Ohio*, 438 U.S. 586, 606 (1978). Jurors in capital sentencing proceedings must consider and give full effect to mitigating evidence of the defendant’s character, family history and background, circumstances, and individual worth. *See, e.g., Eddings v. Oklahoma*, 455 U.S. 104, 112–13 (1982). Circumstances at Caleb’s trial created confusion about jurors’ constitutional duty to consider mitigating evidence and their option to sentence Caleb to life imprisonment, even if they found that aggravating evidence outweighed mitigating evidence. Trial counsel’s failure to ensure that the jurors fulfilled this Constitutional requirement before imposing a death sentence and understood their sentencing options undermined confidence in their sentencing decisions.

Mississippi law allows jurors to sentence a capital defendant to life imprisonment even though the jurors find that aggravating evidence outweighs mitigating evidence. Despite having this option, Caleb’s jurors were never directly instructed that they could sentence Caleb to life if they found aggravating evidence

outweighed mitigating evidence.<sup>3</sup> See Exhibit 45, Lafayette County Circuit Court, Sentencing Instructions S-1 and S-2; Tr. 862 - 870. Instead the judge only directly instructed the jurors that they could not sentence Caleb to death if they found that the mitigating evidence outweighed the aggravating evidence. *Id.*

The sentencing instructions which included the verdict form did not provide an option where jurors could find that aggravating evidence outweighed mitigating evidence, but still could consider sentencing Caleb to life imprisonment. *Id.* Furthermore, the verdict form did not provide for jurors to find that aggravating evidence outweighed mitigating evidence.<sup>4</sup> *Id.*

Jurors' constitutional obligations to consider and give effect to mitigating evidence in all circumstances were not made clear during *voir dire*. The trial judge assured jurors that they would receive detailed instructions on how to weigh aggravating and mitigating circumstances and specified that the death penalty cannot be automatically imposed, but failed to state that, or describe how, jurors

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<sup>3</sup> The Lafayette County Circuit Court instructed the jury: "If one or more of the above aggravating circumstances is found to exist beyond a reasonable doubt, then you must consider whether there are mitigating circumstances, which outweighs the aggravating circumstances. . . . If you find from the evidence that one or more of the preceding elements of mitigation exist then you must consider whether it outweigh or overcome the aggravating circumstances you previously found. In the event that you find that the mitigating circumstances do not outweigh or overcome the aggravating circumstances you may impose the death sentence. Should you find that the mitigating circumstances outweigh or overcome the aggravating circumstances you shall not impose the death sentence." Lafayette County Circuit Court, Sentencing Instructions S-1 and S-2.

<sup>4</sup> The verdict form provided jurors with three sentencing options: (1) unanimously find that sufficient aggravating circumstance(s) exist beyond a reasonable doubt and is/are sufficient to impose the death penalty and that are insufficient mitigating circumstances to outweigh aggravating circumstance(s), and that the defendant should suffer death; (2) find that defendant be sentenced to life imprisonment without parole; (3) inability to unanimously agree on punishment. Lafayette County Circuit Court, Sentencing Instructions S-1 and S-2.

could give effect to mitigating evidence should they find that aggravating evidence outweighed mitigating evidence.<sup>5</sup> Tr. 243.

The prosecutor's closing argument provided a lack of clarity when the jurors should consider mitigating evidence, and provided additional opportunity for trial counsel to ensure the jurors' duties were clear when considering mitigating factors. The prosecutor told the jurors the following: "I submit when you analyze this situation that the mitigating factors that the defense counsel brought before you were not really mitigation. It can only be mitigating if there is some accepting of responsibility of your action. There has been none. Responsibility has had to be placed on this defendant who still refuses to accept responsibility." Tr. 871. The prosecution made these comments during closing arguments, and defense counsel failed to object before jurors began deliberations, thereby failing to clarify for jurors that they could consider mitigating evidence regardless of whether Caleb accepted responsibility for the actions when considering mitigation evidence.

These confusing circumstances triggered trial counsel's duty to intervene. The Constitution requires that the trial court issue clear instruction which guide and focus the jury's objective consideration of mitigating evidence. *Spivey v. Zant*, 661 F.2d 464, 471 (5th Cir. 1981). The combined effect of jury instructions, the verdict form, voir dire, and the prosecutor's argument left jurors reasonably confused about the extent of their obligations to consider mitigating evidence and

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<sup>5</sup> During voir dire examination the judge said: "After all of this evidence has been produced, I will again give you detailed instructions of law on how to consider [mitigating] evidence and how to conduct the weighing of aggravating and mitigating circumstances that is required. . . . You must remember that the death penalty cannot be automatically imposed for this crime." Tr. 243.



corresponding options to choose not to impose the death penalty, even after finding that aggravating circumstances outweighed mitigating circumstances. Trial counsel's failure to clarify this obligation and ensure jurors were properly instructed, particularly after the prosecutor's misleading closing argument, was unreasonable and undermines confidence in the jurors' sentencing decisions. In assessing ineffective assistance of counsel claims, "prevailing norms of practice as reflected in American Bar Association standards . . . are guides to determining what is reasonable." *Wiggins v. Smith*, 539 U.S. 510, 522 (2003) (citing *Strickland v. Washington*, 466 U.S. 688-89 (1984)). Trial counsel had a duty to request jury instructions and verdict forms that ensure jurors will be able to give effect to all relevant mitigating evidence, to object to instructions or verdict forms that are unconstitutional or do not properly instruct jurors on the law, and to offer alternative instructions. *See Bigner v. State*, 822 So. 2d 342, 353 (Miss. Ct. App. 2002) (citing *Yarbrough v. State*, 529 So. 2d 659 (Miss. 1988)) (noting Mississippi Supreme Court has found failure to submit jury instructions to be evidence of ineffective assistance of counsel); *see also* Am. Bar Assoc., *The Defense Case Concerning Penalty*, ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (Feb. 2003). There is a reasonable likelihood that jurors in Caleb's trial did not understand that they were constitutionally required to consider mitigating evidence even if they found evidence in aggravation outweighed evidence in mitigation. Trial counsel's failure to address this confusion was objectively unreasonable and created a reasonable likelihood

that jurors misapplied the instructions, thus preventing their full consideration of constitutionally relevant evidence. *Cf. Boyde v. California*, 494 U.S. 370 (1990). Trial counsel's ineffective assistance undermined confidence in the jurors' sentencing decisions. Therefore, Caleb is entitled a remand for a new sentencing hearing.

**VII. In Violation of the Sixth and Fourteenth Amendments, Trial Counsel Was Ineffective in Failing to Object to the Prosecution's Improper Arguments During the Capital Sentencing Closing Arguments, Such That Petitioner Was Denied Due Process, a Fair Trial, and Sentencing Free From Any Arbitrary Factors as Required by the Eighth Amendment.**

It is undisputed that due process is violated when a "prosecuting attorney overstep[s] the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal offense." *Berger v. United States*, 295 U.S. 78, 84 (1935). A prosecutor's expression of personal opinion improperly "carries with it the imprimatur of the Government and may induce the jury to trust the Government's judgment rather than its own view of the evidence." *United States v. Young*, 470 U.S. 1, 18-19 (1985) ( *Berger v. United States*, 295 U.S. 78, 88-89 (1935)). When the prosecutor crosses the line and makes such "indecorous and improper" arguments, "mild judicial action" will not remove "the evil influence upon the jury of these acts of misconduct." *Berger*, 295 U.S. at 85. "Prejudice to the cause of the accused is so highly probable that we are not justified in assuming its nonexistence." *Id.* at 89.

This Court has generally held that "absent impermissible factors such as commenting on the failure of the defendant to testify, a prosecuting attorney is

entitled to great latitude in closing argument.” *Walker v. State*, 913 So. 2d 198, 239 (Miss. 2005). However, “counsel is clearly limited to arguing facts introduced in evidence, deductions and conclusions he or she may reasonably draw therefrom, and the application of the law to the facts.” *Taylor v. State*, 672 So. 2d 1246, 1266 (Miss. 1996). A prosecutor may not exceed these bounds. For example, “a prosecutor should refrain from argument that distracts the jury from its duty to decide the case on the evidence by instilling issues broader than the guilt or innocence of the accused.” *Walker*, 913 So. 2d at 239.

“The line separating acceptable from improper advocacy is not easily drawn; there is often a gray zone.” *United States v. Young*, 470 U.S. 1, 7 (1985). Nonetheless, the Supreme Court recognized that rules of professional conduct and the American Bar Association’s Standards for Criminal Justice are “useful guidelines.” Specifically, the Court noted the ABA Model Code of Professional Responsibility DR 7-106 (C) (1980), which provides in pertinent part:

In appearing in his professional capacity before a tribunal, a lawyer shall not: . . . .

(3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but he may argue, on his analysis of the evidence, for any position or conclusion with respect to matters stated herein.

*Id.* at 7 n.3. The Court also noted ABA Standards for Criminal Justice 3-5.8 (2d ed. 1980), which provides:

(a) The prosecutor may argue all reasonable inferences from evidence in the record. It is unprofessional conduct for the prosecutor intentionally to misstate the evidence or mislead the jury as to the inferences it may draw.

(b) It is unprofessional conduct for the prosecutor to express his or her personal belief or opinion as to the truth or falsity of any testimony or evidence or the guilt of the defendant.

(c) The prosecutor should not use arguments calculated to inflame the passions or prejudices of the jury.

(d) The prosecutor should refrain from argument which would divert the jury from its duty to decide the case on the evidence, by injecting issues broader than the guilt or innocence of the accused under the controlling law, or by making predictions of the consequences of the jury's verdict.

*Id.* at 8 n.5.

After reviewing the transcript and the interrogation tape presented to the jury during trial regarding the fingerprints, it was obvious that the prosecution misled the jury to believe that Caleb's fingerprints were inside of Taylor Clark's car. During Scott Mills's testimony, he testified that there were no fingerprints on any of the guns, bullets, bullet casings, house or car presented as evidence by the state. Tr. 550 lines 19-27. However, during the State's closing, the prosecutor stated: "And in his interview he had to explain how his finger prints could be in the car. And if you listen to the interview at that point probably an hour into the interview, may be more he starts talking about how he was in a white car that night, trying to legitimately explain why his finger prints would be in Taylor Clark's car because he didn't know." Tr. 757, lines 21-27. This argument misled the jury to believe that Caleb's fingerprints could be in the car.

During the interrogation, Caleb tried to explain how his fingerprints could be on the gun, not in the car. Exhibit 50, *State v. Corrothers*, Edited Interview of Caleb Corrothers. In response to a question suggesting that his fingerprints had been found on the gun, he said that it could have happened when he grabbed the gun of someone he was fighting with. Caleb did not make any statements about fingerprints being in the car. He said his finger prints would not be in the house. The jury listened to the edited version of the interrogation tape during trial. In addition, on the interview tape, Caleb stated he did not know what type of car Taylor drove.

The government is constrained by ethical and legal duties not to use summation arguments at trial to inflame jurors, mislead them, inject personal opinions, divert jurors from the issue of guilt or innocence, or otherwise employ “improper methods calculated to produce a wrongful conviction.” *United States v. Young*, 470 U.S. 1, 7 (1985) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)). These arguments violated the due process clause and the Eighth Amendment, which prohibits sentencing on the basis of arbitrary, irrelevant factors. Defense counsel’s failure to object was deficient and prejudicial. The prosecution’s arguments violated Caleb’s rights to a fundamentally fair trial and sentencing and injected arbitrary, improper factors into the sentencing determination in violation of the Eighth and Fourteenth Amendments. Therefore, Caleb’s conviction and sentence should be vacated and remanded for a new trial, or, in the alternative, remanded for a new sentencing hearing.

VIII.           Petitioner's Constitutional Right to an Impartial Jury was Violated  
When a Juror Had Improper Communication with the Victims' Family  
Member and Witness, Tonya Clark.

The Sixth Amendment of the United States Constitution guarantees a fair trial before an impartial jury of his peers. The constitutional right to a jury trial is the requirement of fairness and impartiality. *See* U.S. Const. Amend XI. Trial judges have the responsibility of protecting this right to ensure that the defendant receives a fair trial, and their findings regarding juror impartiality are entitled to great deference. *See Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 555 (1976).

The United States Supreme Court noted in *Turner v. Louisiana*, that “[i]n the Constitutional sense, trial by jury in a criminal case necessarily implies at the very least that the “evidence developed” against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant’s right of confrontation, of cross-examination, and of counsel.” *Turner v. Louisiana*, 379 U.S. 466, 472–73 (1965) (citing *Rideau v. State of Louisiana*, 373 U.S. 723 (1963)).

The United States Supreme Court, in *Irvin v. Dowd*, defined the impartial jury standard stating “[i]t is not required that jurors be totally ignorant of the facts and issues involved. . . . [I]t is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.” *Irvin v. Dowd*, 366 U.S. 717, 722-23 (1961). “[T]he criminal trial has one well-defined purpose to provide a fair and reliable determination of guilt.” *Estes v. Texas*, 381 U.S. 532, 565 (1965) (Warren, C.J., with whom Douglas and Goldberg, JJ., joined,

concurring). However, if the jury's deliberations are tainted by bias or prejudice, that purpose cannot be achieved. *Id.* Fairness and reliability are guaranteed if the verdict is focused on calm, reasoned evaluation of the evidence offered at trial. *Smith v. Phillips*, 455 U.S. 209, 225 (1982) (Justice Marshall, with whom Justice Brennan and Justice Stevens join, dissenting).

The claims of juror bias or prejudice and misconduct are subject to harmless error analysis. *See Smith v. Phillips*, 455 U.S. 209, 227 (1982). The United States Supreme Court has long recognized the dangers to impartiality posed by unauthorized communications between third parties and members of the jury. *Mattox v. United States*, 146 U.S. 140, 150 (1892). The United States Supreme Court declared that “[p]rivate communications, possibly prejudicial, between jurors and third persons, or witnesses, or the officer in charge, are absolutely forbidden, and invalidate the verdict, at least unless their harmlessness is made to appear.” *Id.* In addition, the Supreme Court stated that “in a criminal case, any private communications, contact or tampering, directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial, if not made in pursuance of known rules of court and instructions and directions of the court made during trial, with full knowledge of the parties.” *Remmer v. United States*, 347 U.S. 227, 229 (1954) (Court instructed the trial court to “hold a hearing to determine whether the incident complained of was harmful to the petitioner.”).

The “burden rests heavily upon Government to establish, after notice to and hearing of defendant, that such contact was harmless to defendant.” *See Smith*, 455 U.S. at 227; *See also Stockton v. Com. Of Va*, 852 F.2d 740, 743 (1988) (Defendant bears initial burden of establishing that unauthorized contact between third party and members of jury was made and such contact reasonably draws into question integrity of verdict. When such contact has been established, Government bears burden of demonstrating absence of prejudice.)

In this case, a juror had improper communication with the victim’s family member and witness, Tonya Clark. *See Ex. 24*, [Makyia Sanders]; *See also Ex. 5*, [Vonda]. As attested in Ms. Sanders’ affidavit, she witnessed “a juror smile and wink her eye at Taylor’s mother [Tonya Clark] during the trial.” *See Ex. 24*, [Makyia Sanders]. This type of indirect private communication prejudiced Caleb during his trial. In addition, as indicated in Mrs. Agulanna’s affidavit, she witnessed a white heavy-set female juror “communicating a lot of information to Tonya Clark” and saying to Tonya Clark, during the time of the verdict, “We got him.” *See Ex. 5* [Vonda]. The jury verdict must be set aside where even one juror in effect admits prejudice, because “a defendant is entitled to twelve fair and impartial jurors.” *United States v. Rattenni*, 480 F.2d 195, 198 (2d Cir.1973). Accordingly, if only one juror was prejudiced, then such prejudicial effect tainted all the jurors. *Id.*

The unauthorized communication between a juror and Mrs. Clark denied Caleb’s right to a fair and impartial jury during sentencing deliberations, and warrants vacation of his death sentence. *See e.g. Stockton*, 852 F.2d at 743. The



juror's improper direct and indirect communication to Mrs. Clark created more than a reasonable probability that Caleb was prejudiced during his trial. This improper communication proves that Caleb's rights were substantially prejudiced; thus, he is entitled to a new trial.

**IX. In Violation of the Sixth and Fourteenth Amendments of the United States Constitution, Trial Counsel's Cumulative Errors Deprived Petitioner of His Constitutional Right to Effective Assistance of Counsel, a Fundamentally Fair Trial, and Due Process of Law.**

Caleb raised several arguments on direct appeal but such arguments were procedurally barred due to his trial counsel's failure to object at trial. These failures include the following:

- Attorney failed to raise a Batson challenge until direct appeal. *Corrothers v. State*, 148 So. 3d 278 (Miss. 2014).
- Attorney failed to object to Tonya Clark's in court identification. *Id.* at 291, 300.
- Attorney failed to challenge hearsay-confrontation clause statements in Tiffani Hutchins' testimony. *Id.* at 313.
- Attorney failed to object to playing the entire interrogation recording. *Id.* 313-314
- Attorney failed to object to the victim-impact testimony. *Id.* at 316, 317.
- Attorney failed to object to the jury instruction where the trial court instructed to the jury that the Mississippi sentencing statute

permitted it to impose a death sentence if mitigation did not outweigh aggravation. *Id.* at 318-19.

- Attorney failed to investigate Dr. Neuschatz's background before using him as an expert. *Id.* at 326.
- Attorney failed to object to the prosecution's improper closing argument during the capital sentencing.

Further, this petition demonstrates that trial counsel provided ineffective assistance of counsel for the following reasons:

- Trial counsel failed to request an assessment of executive functioning or other neuropsychological domains. *See supra*, at IB.
- Trial counsel failed to request a psychiatric exam, despite indications that such an exam was appropriate and necessary to determine the extent of Caleb's psychological issues. *See supra*, at IC.
- Trial counsel failed to thoroughly investigate and present relevant and available mitigating evidence about Caleb's family history and turbulent upbringing. *See supra*, at ID.
- Trial counsel failed to perform an adequate pretrial investigation and present that petitioner was institutionalized most of his adolescent and adult life. *See supra*, at IV.
- Trial counsel failed to object to the prosecution's improper arguments during the capital sentencing closing arguments. *See supra*, at VI.

The cumulative effect of these errors on the part of trial counsel entitles Caleb to relief. Rather than evaluating each error in isolation, the pattern of counsel's deficiencies must be considered in their totality. *Washington v. Smith*, 219 F.3d 620, 634-35 (7th Cir. 2000) (citing *Williams v. Taylor*, 529 U.S. 362 (2000); *Strickland v. Washington*, 466 U.S. 668, 695 (1984)). The overriding interest is whether counsel's errors were so serious that it "render[ed] the result of the trial unreliable or the proceeding fundamentally unfair." *Williams v. Taylor*, 529 U.S. 362 (2000); see also *Lockhart v. Fretwell*, 506 U.S. 364, 372 (1993); *Green v. State*, 899 S.W.2d 245, 247-48 (Tex. App. 1995) (The cumulative effect of enough of these errors can simply undermine the concept of a fair trial. . .); *Garcia v. State*, 308 S.W.3d 62 (Tex. App. 2009) (Counsel's conduct "[i]n its totality" required reversal).

In *Washington, supra*, the Court found the cumulative effect of trial counsel's errors amounted to ineffective assistance of counsel:

"Engle did not just botch up one witness or one argument or one issue—he repeatedly demonstrated a lack of diligence required for a vigorous defense. Engle's performance "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result."

*Washington*, 219 F.3d at 635 (quoting *Strickland*, 466 U.S. at 686).

The Court in *Robinson v. United States* also found trial counsel's cumulative errors amounted to ineffective assistance of counsel: "The Court believes that Barnett's failure to investigate the validity of his client's version of the facts, especially when coupled with his unfulfilled promise to the jury, amounts to a reasonable probability that is a sufficient ground to undermine confidence in the

outcome of the case.” *Robinson v. United States*, 744 F. Supp. 2d 684, 695 (E.D. Mich. 2010).

This Court has stated “relevant factors to consider in evaluating a claim of cumulative error include whether the issue of innocence or guilt is close, the quantity and character of the error, and the gravity of the crime charged.” *Ross v. State*, 954 So. 2d 968, 1018 (Miss. 2007). This Court has further held “[i]n death penalty cases, all genuine doubts about the harmlessness of error must be resolved in favor of the accused because of the severity of the punishment.” *Id.* (citing *Walker v. State*, 913 So.2d 198, 216 (Miss. 2005)). Here, trial counsel’s errors require that Caleb be granted relief because their cumulative effect deprived Caleb of a fundamentally fair trial and are sufficient to undermine the confidence in the outcome of his case. *See Byrom v. State*, 863 So. 2d 836, 847 (Miss. 2003); *see also Sussman v. Jenkins*, 636 F.3d 329 (7th Cir. 2011); *White v. Thaler*, 610 F.3d 890, 912 (5th Cir. 2010).

Because “[t]he fundamental respect for humanity underlying the Eighth Amendment’s prohibition against cruel and unusual punishment gives rise to a special ‘need for reliability in the determination that death is the appropriate punishment’ in any capital case,” the impact of many errors will have greater effect in a capital case. *See Johnson v. Mississippi*, 486 U.S. 578, 584 (1988) (quoting *Gardner v. Florida*, 430 U.S. 349, 363-64 (1977)). The Mississippi Supreme Court’s review of death-penalty cases has consisted of a review of the aggregate effect of the variety of errors often appearing in a capital trial. *See, e.g., Jenkins v. State*, 607

So. 2d 1171 (Miss. 1992); *Hansen v. State*, 592 So. 2d 114 (1991); *White v. State*, 532 So. 2d 1207 (Miss. 1988); *Stringer v. State*, 500 So. 2d 928 (Miss. 1986).

Cumulative error analysis must be conducted in post-conviction proceedings. *See, e.g., Nixon v. State*, 641 So. 2d 751, 755-56 (Miss. 1994) (The Court specifically considered “the cumulative effect of any discovered errors or ‘near errors.’”). The cumulative effect of the errors in Caleb’s case is not harmless. Although Caleb is entitled to relief on all of the errors argued in this motion, when this Court looks at those errors in aggregate, “[t]he combined prejudicial effect requires reversal.” *Williams v. State*, 445 So. 2d 798, 810 (Miss. 1984). *See also Randall v. State*, 806 So. 2d 185, 234 (2001) (“[T]he cumulative effect of the errors require a reversal when they deny the defendant the right to a fair trial.”). Furthermore, the reviewing court must also consider the cumulative effect of counsel’s deficient performance. *See Williams v. Taylor*, 529 U.S. 362 (2000); *Moore v. Johnson*, 194 F.2d 586 (5th Cir. 1999); *Henry v. Scully*, 78 F.3d 51 (2d Cir. 1996); *Harris ex rel. Ramseyer v. Wood*, 64 F.3d 1432 (9th Cir. 1995); *cf. Kyles v. Whitley*, 514 U.S. 419 (1995).

Punishing Caleb for the deficient and prejudicial mistakes of his appointed counsel would deprive him of his constitutional rights to counsel, due process, and a fundamentally fair trial. Therefore, Caleb is entitled to a new trial, or, in the alternative, remanded for a new sentencing hearing.

**X. Petitioner’s Sentence is Disproportionate and in Violation of the Eighth and Fourteenth Amendments to the United States Constitution and the Corresponding Portions of the Mississippi Constitution.**

Proportionality review is a function under the capital sentencing in Mississippi, and such function is reserved to the Supreme Court. *Walker v. State*, 863 So. 2d 1 (Miss. 2003). Caleb's sentence is disproportionate to that received by cases in similar situations, considering both the crime and defendant, and thereby violates the Eighth Amendment Due Process. *See* Miss. Code Ann. § 99-19-105(3)(c). The Court held that the killing of Frank and Taylor Clark in the commission of a robbery resulted in Caleb's capital murder conviction and the imposition of a sentence of death. However, the sentence of death was unconstitutionally applied in violation of Caleb's guarantees under the Eighth and Fourteenth Amendments to the United States Constitution and the corresponding portions of the Mississippi Constitution. Mississippi's statutory scheme relating to felony murder cases fails to adequately narrow the class of persons who are death eligible as a result of the commission of felony murder. *Furman v. Georgia*, 408 U.S. 238 (1972); *Gregg v. Georgia*, 428 U.S. 153 (1976).

Caleb's death sentence is excessive in relation to the crime for which it was imposed. In cases involving capital murder with the underlying felony of robbery, the actions in those cases were disproportionate as compared to Caleb's actions. *See, e.g., Goff v. State*, 14 So. 3d 625, 650 (Miss. 2009) (Evidence was sufficient to support jury's finding that defendant murdered victim in the course of a robbery, so as to support capital murder conviction; evidence indicated that defendant returned to motel where he had left victim to retrieve money, victim telephoned husband saying she feared defendant would return, defendant attempted to get keys to motel

room from front desk clerk, and victim's wallet was found in defendant's car.); *Turner v. State*, 732 So. 2d 937, 950 (Miss. 1999) (Defendants went into the store wearing masks and carrying high-powered rifles, and killed victim. It is clear that these two innocent men died during the commission of armed robberies perpetrated by Defendants.); *Leatherwood v. State*, 435 So. 2d 645 (Miss. 1983) (Defendant pled guilty to capital murder, participated in planning of robbery-murder, was present and involved in its execution, attempted to strangle victim with rope, and told accomplice to "stab" victim.).

The proportionality of Caleb's acts causing the deaths of Frank and Taylor Clark as opposed to the actions of cases involving robbery and murder, and the differences in sentences accorded the defendants in those cases raises a question of significant importance in regards to the Eighth Amendment principles.

Caleb's conviction and sentence should be vacated and remanded for a new trial, or, in the alternative, remanded for a new sentencing hearing.

### CONCLUSION

Caleb Corrothers respectfully requests that this Court vacate the conviction and sentence of death, and dismiss the indictment with prejudice to the State based upon the claims apparent from the face of the petition, the accompanying affidavits, exhibits, trial records, and relevant principles of state and federal law. *See* Miss. Code Ann. § 99-37-27 (recognizing this Court's authority to grant post-conviction relief on the basis of the pleadings, exhibits and trial records); Rule 22, M.R.A.P.; or in the alternatively, grant Caleb Corrothers a new trial based upon his established

in the alternatively, grant Caleb Corrothers a new trial based upon his established meritorious claims as set forth in his petition; alternatively, grant Caleb Corrothers leave to file the Petition for Post-Conviction Relief in the Circuit Court of Lafayette County, Mississippi; and grant such other and further relief as the Court may deem just and appropriate.

Respectfully Submitted:  
CALEB CORROTHERS, Petitioner

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**CERTIFICATE OF SERVICE**

I, Louwlynn Vanzetta Williams, hereby certify that on this day I electronically filed the foregoing:

**MOTION FOR LEAVE TO PROCEED IN THE TRIAL  
COURT WITH A PETITION FOR POST-CONVICTION RELIEF**

with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Honorable Brad A. Smith  
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This the 30th day of October, 2015.

/s/ Louwlynn Vanzetta Williams  
Louwlynn Vanzetta Williams  
Certifying Attorney