

IN THE COUNTY COURT OF THE SEVENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR VOLUSIA COUNTY
CRIMINAL DIVISION

THE STATE OF FLORIDA,

vs.

Case No.: 2021-303222-CFDB

NICOLE MARIE JACKSON-MALDONADO
Defendant.

Division: "40"

MOTION FOR POSTCONVICTION RELIEF

COMES NOW, Defendant, NICOLE MARIE JACKSON-MALDONADO, by and through undersigned counsel, and hereby files this Motion for Postconviction Relief pursuant to Fla. R. Crim. P. 3.850, for this Court's Order to Set Aside the Judgment and Sentence in the above styled cause and, in support, states as follows:

RULE 3.850 PROCEDURAL HISTORY

1. On June 1, 2021, the fourteen (14) year old Defendant and (12) year old Co-Defendant were arrested by Volusia County Sherriff's Deputies following a shoot-out in and around a residence in Enterprise, Florida. None of the Deputies were injured while Defendant suffered multiple gunshot wounds and had to be airlifted from the scene.
2. On June 17, 2021, following the transfer of her case from Juvenile Court to Adult Court, Defendant was charged by Information as follows: Count I, Attempted First Degree Murder of a Law Enforcement Officer with a Firearm; Count II, Burglary of a Dwelling while Armed with a Firearm; and Count III, Criminal Mischief (\$1,000.00 or more). See (Exhibit 1 – Information).
3. On June 22, 2021, Larry Avallone of the Seventh Judicial Circuit Office of the Public Defender entered his Notice of Appearance on behalf of the Defendant. See (Exhibit 2 – Notice of Appearance).
4. On January 27, 2023, following an ex-parte Nelson Hearing, Defendant accepted a negotiated Plea with the Volusia County Office of the State Attorney.
5. As part of the plea, the State Amended the Information to reflect: Count I, Attempted First Degree Murder with a Firearm; Count II, Burglary of a Dwelling while Armed with a Firearm; Count III,

- Criminal Mischief (\$1,000.00 or more). See (Exhibit 3 – Amended Information).
6. Defendant entered a Plea Nolo Contendere to Counts I, II, and III of the Amended Information. See (Exhibit 4 – Plea Agreement).
 7. Judge Elizabeth A. Blackburn accepted the Plea, adjudicating Defendant guilty, and sentencing her in Count I, Attempted First Degree Murder with a Firearm, to twenty (20) years in the Florida Department of Corrections; in Count II, Burglary of a Dwelling while Armed with a Firearm, to thirty (30) years of probation to run consecutive to Count I; and in Count III, Criminal Mischief (\$1,000.00 or more), to five (5) years of probation to run consecutive to Counts I and II.
 8. Defendant did not appeal the Judgement and Sentence.
 9. To the undersigned counsel's knowledge, no other postconviction motions have been filed in this case and no other collateral appeals are pending.
 10. Defendant, NICOLE MARIE JACKSON-MALDONADO, now files this timely Rule 3.850 Motion for Postconviction Relief seeking this Court to Set Aside the Judgment and Sentence in the above stated matter based on ineffective assistance of trial counsel.
 11. Undersigned counsel certifies that Defendant can read, write, and understand English.
 12. Pursuant to Fla. R. Crim. P. 3.850, a statement of facts in this matter is as follows:

STATEMENT OF FACTS

1. On June 1, 2021, the 14-year-old Defendant ran away from the Florida United Methodist Children's Home (FUMCH) in Enterprise, FL with a 12-year-old male Co-Defendant. The Defendant and Co-Defendant burglarized an unoccupied residence that contained firearms. The Volusia County Sheriff's arrived at the residence where shots were fired upon the Deputies. The Deputies returned fire, and Defendant was shot several times. None of the Deputies sustained any injuries. See (Exhibit 5 – Charging Affidavit).
2. On June 17, 2021, the Office of the State Attorney, for the Seventh Judicial Circuit, filed an Information charging the Defendant with Count I, Attempted First Degree Murder of a Law Enforcement Officer (Firearm), Count II, Burglary of a Dwelling While Armed with a Firearm, and Count III, Criminal Mischief (\$1000.00 or More).

3. On June 21, 2021, Larry Avallone, Esq. of the Office of the Public Defender, for the Seventh Judicial Circuit, entered his Notice of Appearance on behalf of the Defendant.
4. On January 5, 2023, at a Case Management Conference, Defendant requested a Nelson Hearing and made an oral Motion to Remove Counsel. This Motion was denied by the Court. Trial was then set for February 21, 2023, with a deadline of January 27, 2023, for all pre-trial Motions, and a Motion hearing date of February 6, 2023. See (Exhibit 6 – Court Action Form).
5. On the same date, in open court, Defendant filed a Motion entitled “What to Say” where she requested a Trial be set, asked that she be able to dismiss her public defenders, and listed specific complaints as to the representation she was receiving. See (Exhibit 7 – Letter filed in Open Court).
6. On January 20, 2023, Defendant filed a twenty-three (23) page sworn pro se Motion entitled “Motion for Reconsideration to Dismiss Defense Counsel and Request Full Nelson Hearing”. See (Exhibit 8 – Motion for Nelson Hearing).
7. On January 23, 2025, the Court set the Motion for an evidentiary hearing on January 27, 2023. See (Exhibit 9 - Notice of Hearing).
8. On January 24, 2023, prior to the hearing, the Court filed a Sua Sponte Order Determining Confidentiality of Court Records in Accordance with Rule of Judicial Administration 2.420(c)(9) finding documents attached to “Defendant’s Motion for Reconsideration to Dismiss Defense Counsel and Request Full Nelson Hearing” confidential, specifically identifying Exhibit “A” as “Medical Records” and Exhibits “D and “E” as “attorney-client privilege”. See (Exhibit 10 – Sua Sponte Determination).
9. On January 27, 2023, the evidentiary hearing on the pro se “Motion for Reconsideration to Dismiss Defense Counsel and Request Full Nelson Hearing” proceeded. At the beginning of the hearing, the Court closed the hearing to the public making the finding “that the instant proceeding has garnered “extraordinary media interest” and world-wide attention. The Court finds that closure of the Nelson hearing proceeding and the record pertaining thereto, is necessary to protect the due process rights of the Defendant to a fair trial”. At some point, representatives of the State Attorney’s Office for the Seventh Judicial Circuit left the proceeding converting it to be an ex-parte evidentiary hearing. See

(Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing).

10. Following the ex-parte hearing, Defendant accepted the State's offer to a reduced charge in Count I, Attempted First Degree Murder (Firearm), and a plea as charged in Count II, Burglary of a Dwelling While Armed with a Firearm, and Count III, Criminal Mischief (\$1000.00 or More). The Defendant was adjudicated guilty and sentenced to twenty (20) years of Imprisonment in the Florida Department of Corrections to be followed by a total of forty-five (45) years of probation.
11. It should be noted that this plea had been available to Defendant since at least June 1, 2022, however she only agreed to accept it after the ex-parte Nelson Hearing.
12. On the same day, the Court entered an Order to Seal Records finding "Closure of the record, related to the Nelson hearing, together with closure of the proceedings on the Nelson hearing only, would be effective in protecting the rights of the Defendant without being overly broad". The Court then ordered that the "Clerk is hereby directed that the Ex-Parte Nelson hearing proceeding, including, but not limited to, the transcript and record of said proceeding, is to be kept under seal and shall not be opened unless authorized by court order."
13. On June 18, 2024, undersigned counsel, entered his Notice of Limited Appearance.
14. Following the filing of a Motion to Obtain Confidential Court Records, the Court entered an Order on July 26, 2024, granting Counsel access to the confidential records.

MEMORANDUM OF LAW ON INEFFECTIVE ASSISTANCE OF COUNSEL

The appropriate method to seek postconviction relief due to ineffective assistance of counsel is that such matter, generally, should be raised in a Fla. R. Crim. P. 3.850 Motion for Postconviction Relief. *Kelley v. State*, 486 So.2d 578, 585 (Fla. 1986). When ineffective assistance is alleged, the burden is on the person seeking collateral relief to allege the grounds for relief specifically, and to establish whether the grounds resulted in prejudice. Pursuant to Fla. R. Crim. P. 3.850, a Motion for Post-Conviction Relief alleging ineffective assistance of counsel must be filed within two years of the judgment and sentence becoming final. The Courts have found that absent an appeal, a Defendant's judgment and sentence becomes final after thirty days has elapsed from the date the judgement and sentence was entered. See *Mingo v. State*, 790

So. 2d 1164 (Fla. 2d DCA 2001) (stating that a judgment and sentence becomes final for purposes of the two-year period for filing a rule 3.850 motion for postconviction relief when the thirty-day period for filing an appeal expires).

In *Strickland v. Washington*, the U.S. Supreme Court provided the following standard for determining ineffective assistance of counsel after a defendant has been found guilty at trial:

The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction... has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense... [T]he proper standard for attorney performance is of reasonably effective assistance. *Strickland v. Washington*, 466 U.S. 668, 686-687 (1984).

In *Alcorn v. State*, 121 So. 3d 419, 425 (Fla. 2013) the Court explained that claims of ineffective assistance of counsel are governed by *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) as follows: To prove a claim under *Strickland*, a defendant must show (1) that counsel's performance was deficient and (2) that the deficient performance prejudiced the defense. *Id.* at 687, 104 S.Ct. 2052. The deficiency prong requires the defendant to establish conduct on the part of counsel that is outside the broad range of reasonableness under prevailing professional standards. *Id.* at 688, 104 S.Ct. 2052. The *Strickland* prejudice prong requires the defendant to establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694, 104 S.Ct. 2052. "That standard does not 'require a defendant to show that counsel's deficient conduct more likely than not altered the outcome of his penalty proceeding, but rather that he establish a probability sufficient to undermine confidence in [that] outcome.'" *Parker v. State*, 89 So.3d 844, 855 (Fla.2011) (quoting *Porter v. McCollum*, 558 U.S. 30, 130 S.Ct. 447, 455-56, 175 L.Ed.2d 398 (2009)). *Alcorn*, 121 So. 3d at 425.

"[W]hen a defendant presents competent substantial evidence in support of his ineffective assistance claim[s], the burden shifts to the State to present contradictory evidence." *Williams*, 974 So.2d at 407 (citing *Green v. State*, 857 So.2d 304, 305 (Fla. 2d DCA 2003)); accord *Thomas v. State*, 117 So.3d 1191, 1194 (Fla. 2d DCA 2013) ("Generally, a defendant has the burden to present evidence at a post-conviction

evidentiary hearing, and once he does so, even if only through the presentation of his own testimony, the State must present contradictory evidence.”). While trial counsel's strategic decisions are “virtually unchallengeable,” those decisions which are “patently unreasonable” will not withstand scrutiny. *Light*, 796 So.2d at 616 (first quoting *Downs v. State*, 453 So.2d 1102, 1108 (Fla. 1984); and then quoting *Roesch v. State*, 627 So.2d 57, 58 n.3 (Fla. 2d DCA 1993)). Where there is “no conflicting testimony that required the [postconviction] court to assess the relative credibility of different witnesses,” the issue is not one of witness credibility. *Feldpausch v. State*, 826 So.2d 354, 356 (Fla. 2d DCA 2002); see also *Yarbrough v. State*, 871 So.2d 1026, 1029 (Fla. 1st DCA 2004) (“[T]he evidentiary hearing raised virtually no disputed issues.... Thus, the [postconviction] court needed only to apply these established facts to the law regarding ineffective assistance of counsel.”). “[I]f a defendant's testimony is unrefuted and the postconviction court has not articulated a reason to disbelieve the defendant, the court cannot choose to disregard the defendant's testimony.” *Thomas*, 117 So.3d at 1194.

“A rule 3.850 movant is entitled to an evidentiary hearing on an ineffective assistance of counsel claim if he specifies facts, not conclusively rebutted by the record, demonstrating counsel's deficiency in performance that prejudiced him.” *Jackson v. State*, 711 So.2d 1371, 1372 (Fla. 4th DCA 1998) See *Rose v. State*, 617 So.2d 291, 296 (Fla.), cert. denied, 510 U.S. 903 (1993). Specifically, a defendant is entitled to an evidentiary hearing on a post-conviction relief motion unless (1) the motion, files, and records in the case conclusively show that the defendant is entitled to no relief, or (2) the motion or a particular claim is legally insufficient. The defendant bears the burden of establishing a prima facie case based upon a legally valid claim. Absent an evidentiary hearing, factual allegations made by the defendant must be accepted as true to the extent that they are not refuted by the record. *Freeman v. State*, 761 So.2d 1055, 1061 (Fla. 2000).

CLAIM ONE

DEFENDANT, NICOLE MARIE JACKSON-MALDONADO, WAS DENIED EFFECTIVE REPRESENTATION OF COUNSEL WHEN HER ATTORNEY FAILED TO ENSURE THAT SHE WAS COMPETENT AND ABLE TO KNOWINGLY AND INTELLIGENTLY ACCEPT A PLEA OFFER BASED ON HER LENGTHY MENTAL HEALTH HISTORY AND THE EFFECTS OF THE EX-PARTE NELSON HEARING

Defendant was denied effective representation of counsel when her attorneys failed to ensure that she

was able to make a knowing and intelligent decision to forgo her right to a trial and accept a negotiated disposition immediately following the January 27, 2023, ex-parte Nelson Hearing. At the time of this plea, Defendant was fifteen (15) years old and suffered from a lengthy, well documented mental health history. She was being held in isolation within the county jail leading to a deteriorated mental state as well as feelings of depression and desperation. Defendant went as far as filing a pro se Petition for Writ of Habeas Corpus to remove herself from solitary confinement claiming she was only allowed out of her cell for showers. See (Exhibit 12 – Petition for Writ of Habeas Corpus). Prior to the Plea, Defendant went through an ex-parte Nelson Hearing where her attorney, as well as the Court, challenged her assertions and questioned her understanding of the case, as well as the people who had been advising her. At the end of this emotional hearing, Defendant stated that she wanted to accept the State's plea offer, requesting that she be immediately sentenced. After a short recess, Defendant entered her plea. It should be noted that this same plea offer had been available to Defendant since at least June of 2022, and she had always rejected this offer, preferring a trial. Defendant would assert that based on her mental health issues, the toll of being isolated in the jail, and the pressure she faced during the ex-parte hearing, she felt she had no option but to accept a deal to get out of the situation and out of the Jail. Defense counsel was aware of Defendant's mental health issues, difficulty understanding legal concepts, and inability to appropriately deal with emotionally challenging situations. Counsel had a duty to continue the case and meet with Defendant, along with a forensic psychologist, to ensure that Defendant was competent and understood what she was doing in entering a plea. While Defendant had previously been seen by two (2) forensic psychologists, ultimately being found competent, the most recent finding was made on October 12, 2021, almost seventeen (17) months before the plea. These findings also did not take into account the pressures of the ex-parte hearing, her lengthy isolation in the jail, and the stresses she was under with the Trial date approaching. There was no reason to rush immediately into a plea after the ex-parte hearing, as the Trial date was still a month out with intervening court dates already set. Defendant was prejudiced by her attorney's failure to ensure that she was competent and could knowingly and intelligently enter a plea following the hearing. Had she been taken from the Courtroom, given an opportunity to consider the information outside of the stress of the hearing, and met with a mental health professional, Defendant would not have entered a plea and would

have proceeded to trial as she had previously requested. Defendant would assert that she was not competent at the time she entered her plea on January 27, 2023, as she was unable to understand the consequences of what she was doing based on her serious mental health issues, the emotional state she was in following the ex-parte hearing, and her desperation to get out of isolation at the county jail.

In *Saunders v. State*, 148 So. 3d 843 (Fla. 5th DCA 2014), the Court found that a Defendant raised a facially sufficient claim of ineffective assistance of counsel when he "asserted that his trial counsel was ineffective for permitting him to enter an involuntary plea due to his mental illness and use of medication." 148 So. 3d at 844. See also *Jackson v. State*, 29 So. 3d 1161, 1162 (Fla. 1st DCA 2010) (concluding defendant's claim was facially sufficient where the defendant "allege[d] that he was incompetent and did not understand the consequences of his plea, that he had a history of mental illness, had not taken his schizophrenia medication, was suffering from delusions and hearing voices at the time of the plea and that he informed counsel of his condition"). Similarly, in *Hird v. State*, 204 So. 3d 483, (Fla 5th DCA 2016), Defendant alleged that his trial attorney allowed him to enter a plea despite knowing that he was under the influence of antipsychotic medication. Defendant asserted that he informed defense counsel and provided medical documents that confirmed that the medications were negatively affecting him to the extent that he did not understand what was occurring. The Court found that Defendant's motion essentially claimed that counsel misadvised him to enter a plea while he was substantively incompetent and but for the ineffective assistance of counsel, he would have insisted on a trial instead of pleading nolo contendere.

Under Fla. R. Crim. P. 3.210 (a) Proceedings Barred during Incompetency. A person accused of an offense or a violation of probation or community control who is mentally incompetent to proceed at any material stage of a criminal proceeding shall not be proceeded against while incompetent. It is a well-established principle of law that "a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial." *Drope v. Missouri*, 420 U.S. 162, 171, 95 S.Ct. 896, 903, 43 L.Ed.2d 103 (1975); see also *Dusky v. United States*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960); *Scott v. State*, 420 So. 2d 595 (Fla. 1982); *Lane v. State*, 388 So. 2d 1022 (Fla. 1980); § 916.12, Fla. Stat. (1995). This principle of law, while rooted in the common law, ensures a defendant's due process

right to a fair trial. *Drope*, 420 U.S. at 171–72, 95 S.Ct. at 903– 04. Florida Rule of Criminal Procedure 3.211(a)(1) codifies what is known as the *Dusky* standard of competency, that is, “whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings.” The rule 3.211 standard applies to “any material stage of a criminal proceeding.” Fla. R. Crim. P. 3.210.

In *Nelson v. State*, 43 So. 3d 20, 33 (Fla. 2010) the Florida Supreme Court held that Florida courts “continue to recognize a “narrow” claim of ineffective assistance of counsel for failure to raise a defendant's alleged incompetency”, see *Jackson v. State*, 29 So. 3d 1161, 1162 (Fla. 1st DCA 2010). “In order to demonstrate prejudice from counsel's failure to investigate his competency, a petitioner has to show that there exists ‘at least a reasonable probability that a psychological evaluation would have revealed that he was incompetent to stand trial’ ”. *Id.* at 1487. (emphasis supplied) (quoting *Alexander v. Dugger*, 841 F. 2d 371, 375 (11th Cir. 1988)); see also *Johnston v. State*, 63 So.3d 730, 741 (Fla. 2011). To satisfy the deficiency prong based on counsel's handling of a competency issue, the postconviction movant must allege specific facts showing that a reasonably competent attorney would have questioned competence to proceed. The standard for competency to proceed is set out in *Dusky v. United States*, 362 U.S. 402, 80 S.Ct. 788, 4 L.Ed.2d 824 (1960), and codified in Florida Rule of Criminal Procedure 3.211. The question is “whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings.” Fla. R. Crim. P. 3.211(a)(1). The focus of the prejudice inquiry is on actual prejudice, whether, because of counsel's deficient performance, the defendant's substantive due process right not to be tried while incompetent was violated. In order to establish prejudice in a properly raised ineffective assistance of counsel claim, the postconviction movant must, as with a substantive incompetency claim, set forth clear and convincing circumstances that create a real, substantial and legitimate doubt as to the movant's competency. *Thompson v. State*, 88 So. 3d 312, 320 (Fla 4th DCA 2012).

DEFENDANT’S MENTAL HEALTH HISTORY PRIOR TO HER ARREST

Defendant has an extensive and well documented history of mental health issues, prescribed psychotropic medication, and childhood trauma. Defendant was born on February 8, 2007, in Puerto Rico.

The first available Department of Children and Family (DCF) report concerning Defendant comes from March 15, 2011, when an investigation was opened regarding her being underweight and malnourished. The first information concerning Defendant's mental health, comes from a May 2, 2016, DCF Report, when Defendant was nine (9), finding that "Nicole is a poor student because of the ghosts that won't leave her alone. [She] has been backer-acted because she tried to strangle herself with a belt and stabbed herself repeatedly with a pencil. Nicole also sees ghost[s] and they affect her school performance." See (Exhibit 13 – DCF Confidential Investigative Summary, dated March 16, 2011, and May 2, 2016). This Report stated that she was taking Abilify 5 mg, Clonidine 0.1 mg, Depakote 150 mg, and Strattera 10 mg. On December 12, 2016, a DCF special conditions assessment summary (7 months later), indicated that Defendant has been diagnosed with ADHD, ODD, and Bi-Polar Disorder with an unnamed medication that was previously at a dose of 10 mg per day, but was then taking a dose of 7.5 mg twice a day. The assessment specifically found this "dosage [wa]s not sufficient". See (Exhibit 14 – DCF Special Conditions Assessment Summary, dated December 12, 2016).

The next available DCF report comes from September 9, 2018, where the Florida Abuse Hotline received a report that the children in Defendants mother's care were looking for food, missing school, not at the appropriate level for their ages, and unkept. There were twenty-one (21) prior events involving Defendant and her mother, with the first verified report dating back to 2011. It is reported in the DCF investigation summary that "Nicole has bipolar disorder" and was Baker Acted at school on October 12, 2018, due to her grandfather not administering her psychotropic medications. The same report described Defendant as "very violent" without her medication and that all the children "struggle with mental health issues and are on medications." On December 9, 2018, a follow up DCF report states "the mother has approximately 20 prior incidents since September 2018 involving her and her children" which would be in a four (4) month timespan. See (Exhibit 15 – DCF Confidential Investigative Summary, dated September 19, 2018, to December 12, 2018). On April 30, 2019, Defendant and her siblings were removed from their mother's care and placed in the custody of the State of Florida. See (Exhibit 16 – Lorio Forensics, dated October 7, 2022). Following the removal, Defendant was in fourteen (14) different foster homes from April 30, 2019, to June 1, 2021, with a total of nineteen (19) different placements. In addition, Defendant had

five (5) Backer Act events in the five (5) months preceding the offense in the case. See (Exhibit 17 – Initial Suitability Assessment, dated May 20, 2021, Page 5).

A breakdown of Defendant's psychotropic prescription medication history ascertained through mental health evaluations and medical records is as follows: Defendant was prescribed Abilify at the age of five (5). See (Exhibit 18 – Valerie R. McClain Forensic Psychological Evaluation, dated July 13, 2022, and September 1, 2022). The following is a short list of Defendant's psychotropic medication history between the ages of twelve (12) and fourteen (14). On May 25, 2019, the Florida United Methodist Children's Home (FUMCH) discharge report indicated that Defendant was taking Risperdal and Intuniv. On June 17, 2019, it was reported that Defendant was taking 15 mg of Abilify once a day at night and 0.1 mg of Clonidine was added twice a day. See (Exhibit 17 – Initial Suitability Assessment, dated May 20, 2021, Page 29 – Families First Comprehensive Behavioral Health Assessment July 31, 2019). On September 13, 2019, records indicate that Defendant was being treated by psychiatrist, Dr. Bruce Henry, MD. It is unclear if the Intuniv and Risperdal were discontinued at this time, or just not reported that it was continued, due to the poor record keeping from the multiple placements. On October 29, 2019, Defendant was taking 15 mg of Abilify daily, 0.1 mg of Clonidine three times a day, 0.5 mg of Risperdal twice a day, and 1.0 mg of Intuniv per day. See (Exhibit 17 – Initial Suitability Assessment, dated May 20, 2021, Page 48 – Erik Levy Psychologist Report). On April 9, 2021, the medical report from Dr. Maria Masferrer indicated that there was a dosage change in the Risperdal to 0.5 mg three times a day, a continuance of the Intuniv at 2 mg at night, and the addition of Vitamin D 50,000 IU once weekly. See (Exhibit 17 – Initial Suitability Assessment, dated May 20, 2021, Page 63 Florida Department of Children and Families). Records do not indicate if the Clonidine and Abilify were discontinued at this time. On April 19, 2021, the Initial Suitability Assessment states that "no additional changes to medications were made as she had a recent change the visit before." See (Exhibit 17 – Initial Suitability Assessment, dated May 20, 2021, Page 2 - Magellan of Florida). On May 1, 2021, all antipsychotic medications were discontinued, and Defendant was placed on 50 mg of Seroquel at night, however, the order to administer Seroquel entered on May 20, 2021, was at a dose of 100 mg daily. See (Exhibit 19 – North Florida Psychological Services, Inc, dated June 15, 2021, and Exhibit 17 - Initial Suitability Assessment dated May 20, 2021, Page 59 - Order

Authorizing Administration of Psychotropic Medication). The FDA has issued a boxed warning for children that are administered Seroquel, including “increased risk of suicidal thoughts and behavior in children, adolescents and young adults taking antidepressants” and to “monitor for worsening and emergence of suicidal thoughts and behaviors.” “Boxed warnings are the highest level of safety-related warnings that a medication can have assigned by the FDA.” Seroquel also has a list of adverse reactions in children including, “somnolence, dizziness, fatigue, increased appetite, nausea, vomiting, dry mouth, tachycardia, [and] weight increased.” Defendant had all psychotropic medications stopped abruptly and according to the report and monitoring plan by Dr. Mariam Rahmani, Intuniv should not be “stopped abruptly and [to] taper off...” See (Exhibit 17 – Initial Suitability Assessment, dated May 20, 2021, Page 70, Psychotropic Medication Treatment Plan Review from DCF). On May 18, 2021, an Order for Authorization for Administer Psychotropic Medication was entered for the medications Seroquel 100 mg and Risperdal 0.5 mg three times per day reflecting the prescriptions written on May 17, 2021, by Dr. Maria Masferrer. However, all psychotropic medications were stopped on May 1, 2021, with the exception of Seroquel. On May 19, 2021, it was reported that Defendant was still taking 0.5 mg of Risperdal three times a day and Seroquel was started at 100 mg once a day. On May 20, 2021, the Initial Suitability Assessment reflected that Defendants medication list at that time was Risperdal 1.0 mg three times per day and Intuniv 2 mg at night, which was a contradiction to the prescription that was written on May 17, 2021, by Dr. Maria Masferrer. See (Exhibit 17 – Initial Suitability Assessment, dated May 20, 2021, Page 4 - Magellan of Florida). On May 30, 2021, Defendant was admitted to FUMCH, and the admission records indicated that Defendant did not have any medication on the property at the time. See (Exhibit 20 – FUMCH Daily Logs, dated May 30, 2021, Page 3). The medication history was further outlined on June 15, 2021, in Dr. Louis Legum’s report, that Defendant was taking 50 mg of Seroquel, and at the end of May 2021, five mg of Zyprexa was added, and the Risperdal was discontinued. At this time, the Seroquel dose did not change and was continued at 100 mg once daily. See (Exhibit 19 – North Florida Psychological Services, Inc, dated June 15, 2021). Zyprexa causes elevated blood sugar and should be monitored closely when on this drug. Dr. Maria Masferrer noted in her records that Defendant should have her blood sugar monitored while taking this drug, however, the records that were available do not indicate that this recommended diagnostic

was actually performed. Different reports allude to different drug dosages and different prescription psychotropic medications.

There are numerous documented side effects when ceasing psychotropic medications without tapering off them. When Seroquel is abruptly stopped, as was the case three (3) days prior to the offense, side effects can include restlessness, irritability, anxiety, dysphoria, sleep disturbance, insomnia, tachycardia, hypertension, and dizziness. In another peer reviewed journal article, it is reported that it took 23% of the participants at least one (1) year to successfully withdraw completely from Seroquel and 18% of the participants reported psychosis after ceasing. Compounding the withdrawal side effects from the Seroquel, the multiple foster home placements, the multiple Baker Acts, and the “borderline intellectual functioning” as described in subsequent evaluations, were all factors that contributed to the stress preceding the offense. See (Exhibit 19 – North Florida Psychological Services, Inc, dated June 15, 2021). One report even stated under the summary of findings that “the child appears to have emotional disturbances serious enough to require residential treatment and is reasonably likely to benefit from the treatment”, however, in the conclusion of the same report it stated that “residential services for mental health treatment is not recommended for Nicole at this time”. See (Exhibit 17 – Initial Suitability Assessment, dated May 20, 2021, Page 7).

COMPETENCY EVALUATIONS FOLLOWING ARREST

Following her arrest on June 1, 2021, Defendant was evaluated on June 15, 2021, to determine competency by Dr. Louis Legum of North Florida Psychological Services, Inc. This evaluation outlined that Defendant’s “Full-Scale IQ of 74, a result which is consistent with the 04-percentile rank when compared to others of Nicole’s age reference group, and which is indicative of **Borderline intellectual functioning**...With one exception, all of Nicole’s subtest scores are below normative standards.” It is important to note that testing revealed:

Nicole earned Low Average scores on six of the subtests administered her from the standard WISC-V battery. These results are revealed on three assessments of visual-analytic skills, as well as on a test of auditory working memory on which she was required to repeat numbers forwards, backwards and in sequence. A Low Average score is also revealed on a test of visual working memory. Nicole earned a Borderline score on an assessment of abstract reasoning and concept formation on which she was asked to assign similarities to pairs of words. A Borderline score is also revealed on an assessment of word knowledge and usage...the

WRAT-5 indicates that Nicole is reading at approximately a fourth-grade level, or well below age and grade norms... Nicole was administered the Beck Depression Inventory–II (BDI-II) to assess her present psychological state. The BDI-II is a multiple-choice instrument which consists of 21 multiple choice items and assesses the presence of symptoms of a clinical depression among adolescents and adults. Nicole obtained a total score on the BDI-II which is consistent with a Severe depression... Nicole obtained a Very Low score on the Total Scale of the Piers-Harris 3 that is the best single measure of a young person's level of self-regard.

The Trauma Symptom Checklist for Children (TSCC) is a self-report instrument which measures posttraumatic distress and related psychological symptomatology. The TSCC is used in the evaluation of children and adolescents who have a history of traumatic events, including physical or sexual victimization, major losses, being exposed to violence and natural disasters. The structure of the TSCC includes two validity scales: Underresponse and Hyperresponse. There are six clinical scales: Anxiety; Depression; Anger; Posttraumatic Stress; Dissociation; and Sexual Concerns. Nicole obtained scores within the Average range on both the Underreporting and Hyper reporting scales of the TSCC, indicating that her profile is a valid one. **Nicole's TSCC revealed elevated score on the Depression, Anger, Posttraumatic Stress and Dissociation scales. A High score on the Depression scale is found among children who see themselves as being bad and unworthy and who tends to harbor feelings of self-loathing. Elevated scores on the Depression scale are also associated with suicidal and self-injurious behavior. Children who score high on the Anger scale are often perceived by others as irritable, hostile, and aggressive. Frequently these children get into trouble at school or at home for fighting, having temper tantrums, talking back and the like. Children with elevated Posttraumatic Stress scores are often focused on traumatic events or experiences in their lives. These children often report being subject to intrusive, persisting recollections and a sense of re-experiencing these events. Symptoms include anxious distractibility and irritability, as well as posttraumatic rumination. An elevated score is also revealed on the Dissociation scale. This scale measures the extent to which the child experiences mild to moderate dissociative symptomatology, e.g., such as derealization, emotional numbing, daydreaming, memory problems and dissociative avoidance. Children with clinically significant scores on the Dissociation scale often experience reduced responsivity to their environments, emotional detachment, and a tendency to cognitively avoid negative affect. It is often the case that these children are seen by others as immersed in a fantasy life to the exclusion of the real world and its demands.**

The results of adjunctive psychological testing reinforce the impression that Nicole is a very troubled adolescent. **There are indications of a teenager who is clinically depressed and anxious, her façade of implacability to the contrary.** There are also indications that Nicole feels fundamentally, and perhaps existentially, as if she is an unworthy person who feels compellingly dissatisfied with herself. Consistent with her poor academic history and psychoeducational testing, the testing indicates that Nicole feels inferior in terms of her cognitive/academic capabilities. Testing also suggest that Nicole is experiencing many classical symptoms of a Posttraumatic Stress Disorder. A follow-up assessment may be useful in determining to what extent her PTSD symptoms are the manifestation of her recent traumatic event which has resulted in her arrest, detention, and incarceration versus to what extent her symptom derive in part from her previous life experiences. Also of note, and which also warrants additional clinical exploration, is the disparity and incongruence of Nicole's self-report information and her self-presentation within the context of her diagnostic interview and the results of her psychological testing. Therein, **Nicole essentially denied feeling depressed, anxious, or traumatized when asked about such, which is in stark contrast with her**

indication on testing that she is experiencing many of the symptoms and signs of these disorders.

This evaluation reported that Defendant was admitted to Halifax Behavioral on May 12, 2021, reporting an overdose of the antipsychotic drug Risperdal. At that time, it was also reported that Defendant “was experiencing both auditory and visual hallucinations” resulting in a diagnosis of:

Disruptive Mood Dysregulation Disorder and Bipolar Disorder... The Suitability Assessment indicated that Nicole had established a pattern of sabotaging her placements and that she had not been doing well academically in spite of being provided with services through her IEP. Nicole had been seeing a licensed therapist from March 2020 through mid-April 2021. **The therapist wrote a letter indicating that Nicole had done well with therapy until December 2020 when she began decompensating, as reflected by episodes of elopement, anger outbursts, irrational thinking, and aggression.** The therapist suggested that Nicole’s deterioration could be linked to the onset of her menses which began in late November 2020. It was recommended that Nicole be admitted to a “higher mental health placement” that could closely monitor her medication management and provide a higher level of counseling.

When evaluating Defendant’s competency to stand trial, Defendant had a “questionable” rate of “appreciation of the range and nature of possible penalties”, an “unacceptable” rate of “understanding the adversarial nature of the legal process”, an “unacceptable” rate of “capacity to disclose to attorney pertinent facts surrounding the alleged offense”, and an “unacceptable” rate of capacity to testify relevantly”. Dr. Legum concluded that “Nicole is not considered to have the maturity, reasoning, or judgement to confer productively with her attorney or to assist in the preparation of a defense on her behalf. In a similar vein, Nicole is not deemed as having the capacity to testify in an informed and self-protective manner. In sum, **Nicole is deemed as incompetent to proceed on the basis of mental illness**”. See (Exhibit 19 – North Florida Psychological Services, Inc, dated June 15, 2021).

On August 23, 2021, Dr. William R. Meadows, a forensic psychologist for the State, evaluated Defendant for competency.

At the onset of the evaluation, Nicole was informed that the evaluation was not confidential insofar as the information she shared could be included in a written report that would be submitted to her attorney, the Court, and the State Attorney’s Office. Nicole exhibited a limited understanding of this notification but agreed to participate in an interview.

This statement supports Doctor Legum’s conclusion that Defendant did not have the mental capacity at the time to grasp the concepts surrounding the legal proceedings of her case. During Dr. Meadows’s evaluation, Defendant stated that she had attempted suicide just a few months prior to the incident and was admitted for a Baker Act. It was also reported that “her vocabulary and fund of knowledge were consistent with low

average intelligence”. Dr. Meadows concluded that Defendant was competent to proceed. Under “treatment recommendations”, Dr. Meadows explicitly states Defendant “should remain compliant with her psychotropic medications to maintain her current stability.” See (Exhibit 21 – William R. Meadows Forensic Psychological Evaluation, dated August 23, 2021). This finding infers that for Defendant to remain competent, she must maintain her current stability, which was achieved by taking her psychotropic medications that she was not taking the day of the offense.

One issue of note in the reliability of Dr. Meadows’ opinion, contained in that August 23, 2021, evaluation, is that Defendant stated that “she was compliant with Seroquel (antipsychotic) and Guanfacine (for ADHD) at the group home in the time leading up to offense.” See (Exhibit 21 – William R. Meadows Forensic Psychological Evaluation, dated August 23, 2021, Page 5). This is directly contradicted in the report from FUMCH, where Defendant was residing at the time of the offense, stating that “Defendant did not have any medication on property on May 30, 2021.” See (Exhibit 20 – FUMCH Daily Logs, dated May 30, 2021, Page 3). Dr. Meadows clearly did not read the FUMCH files stating that Defendant was not medicated with her psychotropic medications at the time of the offense. See (Exhibit 21 – William R. Meadows Forensic Psychological Evaluation, dated August 23, 2021 and Exhibit 22 – Suggestion of Mental Incompetence to Proceed).

On October 12, 2021, Defendant was evaluated a second time by Dr. Louis Legum of North Florida Psychological Services, Inc which included the following assessments:

The General Ability Index (GAI) score was consistent with a Low Average range of cognitive abilities. The GAI is computed from the composite indices absent the Working Memory and Processing Speed domains. Nicole’s skills of literacy were evaluated with the Wide Range Achievement Test-5 (WRAT-5). Nicole obtained a Reading composite score of 76, consistent with her inherent cognitive abilities as measured by the WISC-IV. Psychological testing indicated that Nicole is a disturbed adolescent. There were indications of symptomatic manifestations of a Posttraumatic Stress Disorder.

A structured assessment of Nicole’s competency with the Florida Juvenile Competency Assessment Procedure (FJCAP) indicated that Nicole was informed as to the substance and severity of the charges against her, although there were **reservations about her appreciation of the possible punitive sanctions and the range of consequences that might be imposed if adjudicated.** Nicole was also deemed to have an **unacceptable grasp of the adversarial nature of the legal process and its participants.** Specifically, Nicole did not report any knowledge about the plea-bargaining process. See (Exhibit 23 – North Florida Psychological Services, Inc, dated October 12, 2021)

Dr. Legum concluded in his second report that “at present, Nicole has a satisfactory understanding of the substance and the seriousness of the charges against her, as well as their possible consequential nature...Nicole has the ability to testify in an informed and self-protective manner if called to the witness stand.” Dr. Legum offered the following diagnostic impressions:

- Borderline Intellectual Functioning by testing;
- Disruptive Mood Dysregulation Disorder;
- Attention Deficit Disorder/Hyperactivity Disorder, by history;
- Posttraumatic Stress Disorder, by history;
- Unspecified Disruptive, Impulse-Control and Conduct Disorder.

See (Exhibit 23 – North Florida Psychological Services, Inc, dated October 12, 2021).

This was the last competency evaluation that was completed prior to the Nelson Hearing and Sentencing Hearing on January 27, 2023, almost **17 months later**.

In *Reilly v. State (In re Reilly)*, 970 So. 2d 453, 455-456 (Fla 2d DCA 2007), the Court found “[w]hen considering whether a defendant is competent to proceed, the question for the trial court is ‘whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him.’” *Dusky v. United States*, 362 U.S. 402, 402, 80 S. Ct. 788, 4 L. Ed. 2d 824 (1960) (emphasis added); see also *Peede v. State*, 955 So. 2d 480, 488 (Fla. 2007); *Mora v. State*, 814 So. 2d 322, 327 (Fla. 2002); *Brockman v. State*, 852 So. 2d 330, 333 (Fla. 2d DCA 2003). Thus, the trial court's focus must be on the defendant's mental state at the time of the proceeding in question, not at some time in the past, and stale mental health reports will not support an adjudication of incompetency.

For example, in *Brockman*, the trial court based its competency determination on reports from two mental health experts who had examined Brockman four months and eleven months previously. 852 So. 2d at 333. This court held that the reports were stale and could not support the trial court's finding of incompetence because they did not speak to Brockman's present competence to proceed. *Id.* Similarly, in *LeWinter v. Guardianship of LeWinter*, 606 So. 2d 387, 388 (Fla. 3d DCA 1992), the court held that an examining committee's report that was filed six weeks before the competency proceeding was not competent evidence of LeWinter's present mental state and ability to care for himself.”

In *Reilly*, the Court ultimately found that the “six-month-old report did not, and could not, speak to Reilly's present ability to consult with his lawyer with a reasonable degree of rational understanding or his present rational and factual understanding of the proceedings against him” and that “[w]hile we recognize that section 916.12(2) permits the trial court to adjudicate a defendant incompetent based on the stipulation

of the parties to one mental health expert's findings, we do not believe that section 916.12(2) permits the court to rely on a stipulation to an expert's report that is so stale that it no longer speaks to the defendant's present competence.” *Id.*, at 456.

Clearly the conclusions within Dr. Meadows’ August 23, 2021, evaluation and Dr. Legum’s second evaluation from October 12, 2021, were “stale” as to Defendant’s present mental state at the time of the ex-parte Nelson Hearing and Plea. These reports could not form a basis for the Court to find Defendant had a “present rationale and factual understanding of the proceedings against [her].” In addition, the Courts have found, “[a] defendant's competency is not static and may change over even a short period of time.” See *Lyons v. Luebbers*, 403 F.3d 585, 593 (8th Cir. 2005) (noting that a district court must remain alert to changing circumstances that may indicate that a defendant who was competent at the commencement of trial has become incompetent). Thus, it is incumbent on the district court to base its competency determination on the defendant's current state of mind to the extent it is ascertainable from the information available. See *United States v. Jimenez-Villasenor*, 270 F.3d 554, 559 (8th Cir. 2001) (defining the test as "whether the defendant had 'a sufficient present ability to consult his lawyer'" (quoting *Vogt*, 88 F.3d at 591)).

While Defendant may have been competent during Dr. Meadows’ evaluation and Dr. Legum’s second evaluation, the Defendant’s ongoing competency, based on her mental health history and particular susceptibilities due to her age and circumstances around the case, needed to be monitored carefully. Where these reports could not speak to her competency at the time of the proceedings, they do give insight into her mental condition and the factors that would affect her continued competency. Specifically, Dr. Legum found Defendant to have “Borderline intellectual functioning” based on the testing that was conducted. Dr. Legum found the Defendant would put on an “air of implacability” hiding her depression, nervousness, and other expressions of her mental health disorder. Dr. Meadows found Defendant needed to remain stable to maintain her mental state. And finally, even in finding Defendant competent in her October 12, 2021, evaluations, Dr. Legum opined there were “reservations about her appreciation of the possible punitive sanctions and the range of consequences that might be imposed if adjudicated. Nicole was also deemed to have an unacceptable grasp of the adversarial nature of the legal process and its participants”.

ADDITIONAL MENTAL HEALTH EVALUATIONS

Following the finding of competency, Defendant was evaluated by Valarie McClain PsyD. on two (2) separate occasions, July 13, 2022, and September 1, 2022, at the Volusia County Jail. Per her report, Defendant was not taking her psychotropic medications three (3) months prior to the incident and on the day of the incident (This further challenges Dr. Meadows' finding in his evaluation). Defendant had a history of being prescribed Abilify (since age five (5)) and at the time of the evaluation had been taking Lamictal and Risperdal for three (3) months. Dr. McClain stated that Defendant was Baker Acted "several times." Defendants prior educational background eluded that she "failed the 4th and 5th grade" and she has a history of "Bipolar Disorder, Disruptive Mood Disorder, Oppositional Defiant Disorder, Schizophrenia, Attention- Deficit/Hyperactivity Disorder, and Emotional Behavioral Disorder." During the interview, it was noted that Defendant was **"noteworthy for distractibility and she required frequent re-direction. Her speech and language were mildly pressured...Based on observations during this interview and her academic and vocational background, her estimated intelligence level is likely in the borderline range."** Defendants test results from this psychological evaluation were as follows:

Results from the WAIS-IV indicate her overall intellectual functioning is in the borderline range (FSIQ = 79;8th percentile). Her Verbal Comprehension is in the borderline range (VCI = 76; 5th percentile). Her Working Memory was in the borderline range (WMI = 71;3rd percentile). Her Perceptual Reasoning was in the average range (PRI = 102;55th percentile). Her Processing Speed was in the borderline range (PSI = 76;5th percentile). It is noteworthy that at the time of the evaluation the results from her testing "place her overall intellectual function in the borderline range. Overall, her intellectual capacity is at the 8th percentile and 92% of her peers function at a higher level as compared with her functioning. Neuropsychological testing places her immediate memory and basic language skills in the extremely low range. Her basic attention is in the borderline range. Her delayed memory is in the low average range. Her visuospatial/constructional skills are in the average range.

Dr. McClain went on to find:

Ms. Maldonado was an adolescent at the time of the offense in question. As noted in the literature relevant to adolescence, brain development and legal culpability, there are clearly issues in Ms. Maldonado's case with regard to youth and associated immaturity. The frontal lobe area known as the prefrontal cortex which controls the brain's most advanced functions changes significantly during adolescence. The necessary pruning of the gray matter to allow for increased myelination and expansion of the brain's operation occurs well into the early 20's in young adults. **Prior to and during this process, those brain areas which govern impulsivity, judgment, planning for the future, foresight of consequences and other characteristics that are associated with culpability are**

significantly less developed. Research suggests that the ages of 21 and later are more likely targeted ages in which the necessary brain development has occurred. See (Exhibit 18 – Valerie R. McClain Forensic Psychological Evaluation, dated July 13, 2022, and September 1, 2022)

Defendant had her final psychological evaluation on October 7, 2022, by Dr. Sarah Vinson of Lorio Forensics, four (4) months prior to the ex-parte Nelson Hearing. The developmental factors that impacted Defendant's thought process and function are outlined in the psychological evaluation as follows:

The adolescent brain, particularly the frontal lobe, is underdeveloped and does not achieve full maturity until a person is well into their 20s. Longstanding neuroscience, and specifically, neuroimaging has illustrated the immaturity of the adolescent frontal lobe, a region of the brain that is central to cognitive functions such as judgment, problem-solving and planning, attention, emotional control, and behavioral reactions vs responses. **These decision-making deficits are most pronounced during emotionally overwhelming situations.** On the day of the incident, Nicole reported that she had no plan to leave her foster placement and, even after she did, had not thought through or planned the days with any specific intent. Effectively, Nicole's actions on the day of the instant case were likely an impulsive response to her emotional state and developmental inability to appreciate the magnitude of her actions and the potential consequences. In addition to the developmental immaturity conferred by her age, Nicole was also behind because she did not have a cognitively enriching or stable environment during critical developmental periods.

Nicole's early experiences of neglect, physical and sexual abuse, dysfunctional family dynamics, and instability adversely impacted her emotionally, mentally and behaviorally. These factors took their toll in the absence of needed professional mental health interventions or reparative periods of stability, safety and positive reinforcements. **As a result, her ability to effectively regulate her own emotions and lean socially acceptable behaviors, which was already impacted by her developmental immaturity, was greatly impaired. Nicole experienced difficulty navigating many aspects of life, especially during emotionally charged situations.** Her developmental immaturity and the psychological and behavioral sequelae of her unresolved trauma contributed to the poor decision-making during the events leading to the instant case. See (Exhibit 16 – Lorio Forensics, dated October 7, 2022).

ARGUMENT

Under Florida Rule of Criminal Procedure 3.211(a)(1), which codifies the *Dusky* standard of competency, the Court must determine “whether the defendant has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the defendant has a rational, as well as factual, understanding of the pending proceedings.” In a postconviction claim, the movant must allege specific facts showing that a reasonably competent attorney would have questioned competence to proceed. In making a determination about whether the movant has met this burden, a court may consider the totality of the circumstances, including: (1) the nature of the mental illness or defect which forms the

basis for the alleged incompetency; (2) whether the movant has a history of mental illness or documentation to support the allegations; (3) whether the movant was receiving treatment for the condition during the relevant period; (4) whether experts have previously or subsequently opined that defendant was incompetent; and (5) whether there is record evidence suggesting that the movant did not meet the *Dusky* standard during the relevant time period. *Thompson v. State*, 88 So. 3d 312, 320 (Fla 4th DCA 2012).

Defendant has clearly established factual support for enumerated factors one (1) through four (4) of the “totality of the circumstances” inquiry laid out by the *Thompson* Court. Specifically, Defendant has a well-documented history of serious mental health illnesses that were being treated during the relevant times of the proceedings. Defendant had been diagnosed with ADHD, ODD, Bi-Polar Disorder going back to the age of nine (9). See (Exhibit 14 – DCF Special Conditions Assessment Summary, Page 9, dated December 12, 2016). Through multiple evaluations, Dr. Louis Legum diagnosed Defendant with “Borderline Intellectual Functioning by testing, Disruptive Mood Dysregulation Disorder; Attention Deficit Disorder/Hyperactivity Disorder by history; Post-traumatic Stress Disorder; Unspecified Disruptive, Impulse-Control and Conduct Disorder.” See (Exhibit 23 – North Florida Psychological Services, Inc, dated October 12, 2021). Dr. Valeria McClain provided Defendant’s diagnosis history of “Bipolar Disorder, Disruptive Mood Disorder, Oppositional Defiant Disorder, Schizophrenia, Attention- Deficit/Hyperactivity Disorder, and Emotional Behavioral Disorder.” See (Exhibit 18 – Valerie R. McClain Forensic Psychological Evaluation, dated July 13, 2022, and September 1, 2022). Finally, Dr. Sarah Vinson described a diagnosis of “Disruptive Mood Dysregulation Disorder, Attention Deficit Disorder, Posttraumatic Stress Disorder, Generalized Anxiety Disorder, Major Depressive Disorder, Oppositional Defiant Disorder, Borderline Intellectual Functioning Disorder, and Psychosis.” See (Exhibit 16 – Lorio Forensics, dated October 7, 2022).

Defendant had been on psychotropic medications since the age of five (5) and had been prescribed and taken off numerous different medications attempting to treat her mental health issues as described in detail above. She continued to receive psych medications during her incarceration in the county jail up until the time of the ex-parte Nelson Hearing.

Defendant has previously been found incompetent to proceed based on her mental illness by Dr.

Louis Legum of North Florida Psychological Services, Inc. See (Exhibit 19 – North Florida Psychological Services, Inc, dated June 15, 2021). While Dr. Legum would later find Defendant was competent to proceed, he would maintain that he had “**reservations about her appreciation of the possible punitive sanctions and the range of consequences that might be imposed if adjudicated. Nicole was also deemed to have an unacceptable grasp of the adversarial nature of the legal process and its participants.** Specifically, Nicole did not report any knowledge about the plea-bargaining process.” See (Exhibit 23 – North Florida Psychological Services, Inc, dated October 12, 2021).

Defendant would now show that there is specific record evidence that she did not have a rational understanding of the proceedings both during and after the ex-parte Nelson Hearing, to make a knowing and intelligent decision to enter a plea.

TESTIMONY FROM EX-PARTE NELSON HEARING, PLEA, AND SENTENCING:

ISOLATION AND THERAPIST

In her forensic evaluation report, Dr. Sarah Vinson reported that “Nicole categorizes herself as “a social person” and feels some relief when she can deviate from her daily isolated environment.” See (Exhibit 16 – Lorio Forensics, dated October 7, 2022). One of the issues addressed by the Court during the ex-parte hearing was that in the weeks preceding that hearing, Defendant was completely isolated at the jail as she was the only juvenile female in the facility at the time and had been placed on a suicide watch. Florida Statute 916.107(4)(b) states that “Forensic clients shall be free from the unnecessary use of restraint or seclusion.”

During the ex-parte Nelson Hearing, Defendant pled for the Court’s help with her isolation at the jail:

THE COURT: ... You had something else you wanted to address?

MS. JACKSON: Yes. The solitary.

THE COURT: Yes, ma’am.

MS. JACKSON: So I’ve been in solitary confinement. They said that I’m in there for the better – to protect me or something, something. I don’t see that happening. I feel like it’s wrong, and they’re not letting the jail know that me being in solitary is not good. I go less outside. I take my showers -- I still -- I’m in the cell 24/7, basically, seven days a week. I only get to go outside three hours a week. But I was in solitary confinement without going outside for eight months. My attorney has not said a word about it. He said he didn’t -- there’s nothing he could do...

MR. AVALLONE: Well, yeah, Judge...But the overall issue on the solitary – because we’ve considered it – is, first, she’s not being held in solitary, you know, ... She’s being held, though, alone... Also, she sees her therapist – at least since that order has been in place... But we’ve considered this solitary issue...She has been outside. She does have access to phones, tablets, and other ways to contact people. But those are the reasons why we took no action.

MS. JACKSON: They deny a lot of that for me. That’s why I’ve been – I’m on suicide –

THE COURT: Who is “they”?

MS. JACKSON: The officers. **I’ve been on suicide watch for a very long time because they hate me.** They put me –

THE COURT: Are you on suicide watch now?

MS. JACKSON: Yes. They put me in there, and **they want to torture me**, basically. They said that I threatened to kill them. Like, I – Why would I threaten to kill somebody? It just doesn’t make any sense.

So They have to – They put me in the chair, and they said they were going to beat my ass. The – one of the officers said that. She grabbed my hair, while they were putting the handcuffs on me, and threatened they were going to tase me. So I’m –

THE COURT: When did that occur?

MS. JACKSON: -- in an 8 x 5 cell, and they always –

THE COURT: Okay. Hold on. Take a breath... When did that occur?

MS. JACKSON: **This whole -- these two weeks has been hell for me...**

So you are currently on suicide watch?

MS. JACKSON: Yes. Because of me banging on the door. Because they always deny my phone time and my tablet. **So, no, I don’t have access to the phone 24/7. There’s other people in the rotundas, what they call it, in the segs. And I can’t sleep in there. I get three hours of sleep in there. I get three hours of sleep because there’s always movement.** So, no, Mr. Avallone, I do not have 24 hours for the phones, and they shut off periods of times.

MR. AVALLONE: **Her handling has been changed in the last two weeks, Judge....**

MS. JACKSON: And I haven’t been outside...

(Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 53 lines 22-25, Page 54 lines 1-12, 15, 18-22, Page 55 lines 17-18, 20-25, Page 56 lines 1-23, Page 57 lines 7-19, 23, Page 59 lines 3-9, 19-25, Page 60 lines 1-6, 10-14, 17-19, Page 61 lines 17-19)

Defendant would assert that she had been in isolation for weeks prior to the ex-parte Nelson Hearing where she was not able to speak to anyone but her attorneys. Aside from the ability to periodically shower, she was in her cell unable to sleep, causing her mental state to significantly deteriorate. Prior to this, she had been housed with another juvenile female, giving her the social interaction that she required to express herself, feel normal, and get relief from the stress of her criminal case. Once her cellmate left, she was left completely alone 24 hours a day with only minor breaks to meet with her counsel and discuss her impending trial date. Following the suicide watch, she was denied even access to the phones and tablets. This led to depression, anxiety, and a desperation to be out of the isolated environment. She repeatedly informed her

counsel about the toll this was taking on her and asked for their assistance in moving her to a place with other juveniles she could interact with. Following this plea for help, the Court inquired:

THE COURT: Okay. So are you still able to see your therapist?

MS. JACKSON: yes. But now, for some reason, she has to do – has to go home with a badge. She comes to the jail, and they have to clarify something. She has to go home, and then she has to wait 45 minutes, and they call for me.

THE COURT: ...How long have you – **Are you seeing your therapist on a weekly basis?**

MS. JACKSON: **No. She's always on vacation.**

THE COURT: **Okay. How often do you typically see her?**

MS. JACKSON: **Every other week. It really depends.**

THE COURT: And do you have a good – I don't need to hear what you-all talk about. Do you have a good relationship with this therapist?

MS. JACKSON: **Um, well, she mostly talks about herself. But, yeah, I just sit there and listen, kind of.**

THE COURT:...I did enter an order to allow her to see a therapist. Is there – Can we, perhaps, address to see if **we can get someone out there more regularly?** That might help, kind of, **put a damper on this high anxiety that's causing issues...**

MR. AVALLONE...her perspective is that things are going well. And they meet regularly. But I will address that with her and see if she can go more often.

THE COURT: If you can do that. Especially, in light of Ms. Jackson being on suicide watch. That's concerning, obviously, to the Court.

See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 53 lines 22-25, Page 54 lines 1-12, 15, 18-22, Page 55 lines 17-18, 20-25, Page 56 lines 1-23, Page 57 lines 7-19, 23, Page 59 lines 3-9, 19-25, Page 60 lines 1-6, 10-14, 17-19, Page 61 lines 17-19)

In responding to the Court's inquiry, Defendant explained she was not seeing the therapist, that the public defender's office had retained, on a regular basis and that even when they were seeing each other, she did not feel the therapist was addressing her mental health issues. The Court went so far as to request that the therapist see Defendant "more regularly" in hopes this would address the "high anxiety that's causing these issues". As Dr. Meadow's found, one of the most important things to maintaining Defendant's mental health was going to be "stability". It is very clear from Defendant's testimony and the Court's inquiry, that her situation in the jail was anything but stable. This testimony should have indicated to the Court and Defense Counsel, that Defendant needed to be stabilized, needed to be allowed to socialize, and needed to regularly see a therapist before she made any serious decisions about the outcome of her case.

CONFUSION

In addition to the direct testimony about her mental state, it is evident that during both the Nelson Hearing and the Sentencing Hearing, Defendant was having difficulty comprehending the questions asked and/or many of the statements made to her. This would be expected based on her well documented mental health issues, as well as the results of her forensic psychological testing and evaluations. Despite the fact that Counsel was aware of these limitations ascertained from the forensic reports and his own interactions with her, he failed to ensure that the appropriate measures were taken to ensure concepts were explained to Defendant in such a way that she would understand and that she was given the time to consider them to ensure she understood the significance of her decisions.

In Dr. Louis Legum's initial evaluation, he found:

Nicole identified her attorney by her lawyer's last name, although she could not reference her professional affiliation. When asked how she would like her case resolved, Nicole indicated that she wanted to get released from detention. Nicole was unable to identify what the role of the prosecutor/state attorney is in the legal process. **Nicole acknowledged that she does not know what a jury is, its purpose, or its function in the adjudicatory process. Nicole similarly acknowledged that she knows nothing about the plea-bargaining dialogue and its function in the resolution of cases or the parties who participate in that process.**

****However, the combination of Nicole's immaturity and her impaired judgement and reasoning, as well as her deficits in knowledge about the legal process, are considered to limit Nicole's capacity to establish a meaningful and productive alliance with her attorney. Specifically, it is not believed at this juncture that Nicole has the knowledge or reasoning to appreciate her range of plea options and to select a plea that would be in her best interest. Relatedly, Nicole is not regarded as having the present ability to assist her attorney in the preparation of a defense on her behalf.**

It is submitted that **Nicole is capable of answering questions in court, as long as they are framed in a clear, straightforward manner, devoid of subjunctive clauses, double negatives, and the like. Nicole's below average intelligence, her lack of significant exposure to the legal system, as well as her impulsivity and impaired reasoning and judgement, are considered as factors which make it likely that Nicole will not shape her testimony self-protectively.** Not unexpectedly, Nicole admitted that she knows nothing about what perjury is or its consequence. Nicole is of the opinion that she can be compelled to testify in her case, acknowledging that she knows nothing about her Fifth Amendment constitutional rights that protect against self-incrimination. See (Exhibit 19 – North Florida Psychological Services, Inc, dated June 15, 2021).

While Dr. Legum, would later find the Defendant competent to proceed, nothing in that subsequent report changed his opinion as to how Defendant needed to be questioned by the Court to ensure she was able to understand what was being explained to her.