

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC10-118

MARTIN GROSSMAN

**Death Warrant Signed:
Execution Scheduled
For February 16, 2010
6:00 pm**

Appellant,

v.

STATE OF FLORIDA

Appellee.

**ON APPEAL FROM THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT FOR PINELLAS COUNTY,
STATE OF FLORIDA**

REPLY BRIEF OF APPELLANT

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PRELIMINARY STATEMENT

This pleading addresses Issue I of the State's Answer Brief. As to all other arguments and claims, Mr. Grossman relies on his Initial Brief.

Argument I

On pages 10, 12, and 14 of the State's Answer Brief, they argue that our claim that Porter v. McCollum, 130 S. Ct. 447 (2009) provides newly discovered evidence, is without merit. The State is incorrect.

Prior to Porter, Florida Courts did not consider non-statutory mental mitigation *as* mitigation. Dr. Maher's anticipated testimony regarding non-statutory mental mitigation (and possibly statutory mental mitigation pending a clinical evaluation) would have swayed a penalty phase jury to vote for life. The evidence of non-statutory mitigation could not have been used prior to Porter.

If it were such a "clearly recognized" and "well-established" principal that evidence that fails to rise to the level of statutory mitigation, can still be considered by the Court as non-statutory mitigation, (State's Answer p. 12), there would have been no need for the landmark Porter decision. Porter does indeed provide, relevant, newly discovered evidence. Relief is proper.

CONCLUSION AND RELIEF SOUGHT

In light of the facts and arguments presented above, Mr. Grossman contends the trial court erred. Mr. Grossman moves this Honorable Court to:

1. Grant Mr. Grossman an opportunity for oral argument.
2. Stay Mr. Grossman's execution.
3. Remand the proceeding to circuit court for an evidentiary hearing.
4. Vacate the sentence of death, and sentence him to life imprisonment.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Reply Brief of Appellant has been furnished to all counsel of record this 28th day of January, 2010.

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I hereby certify that a true copy of the foregoing, Reply Brief of Appellant was generated in a Times New Roman 14 point font, pursuant to Fla. R. App. P. 9.210.

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