

TIME ON FLORIDA'S DEATH ROW: A THEORY OF "BENIGN NEGLECT"

by

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ABSTRACT

This thesis attempts to identify and explain what influences the length of time an inmate spends on Florida's death row. A systematic random sample of 33 Florida death row inmates was drawn from the Florida Department of Corrections death row roster and the Florida Commission on Capital Cases inmate roster. Documented for each death row inmate was how long he spent on Florida's death row navigating the various stages and steps in Florida's post-conviction capital punishment process. The data show that petitions to the state trial courts and appeals to the Florida Supreme Court take the longest time in Florida's post-conviction capital punishment process. It also shows a considerable amount of "dead time," which refers to any additional time that an inmate spends on death row with no legal actions pending. A theory of "benign neglect" is proposed as the most likely explanation for the excessive delays.

This thesis is dedicated to my parents, Al and Margaret Willis

for their constant support and love throughout my life.

Also, to Michael Scullion who without his support of my endeavors none of my achievements, within academia and beyond would have been possible.

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CHAPTER ONE: INTRODUCTION

The purpose of this thesis is to identify and explain what influences the length of time an inmate spends on death row in the state of Florida. As of October 31, 2006, the average length of time on death row in Florida was 12.89 years, according to the Florida Department of Corrections (DOC) website. However, there are offenders who have been on death row longer. Gary E. Alvord, for example, has been on death row longer than any other inmate. He was sentenced to death on April 11, 1974, and has been on Florida's death row for 34 years (Florida DOC website).

After a review of literature that examines death row cases and the length of time inmates spend on death row, it is apparent that a study that examines the length of time on death row is needed. This thesis is important for several reasons. Most importantly, if the reasons for long stays on death row can be determined, then perhaps ways can be found to shorten them.

Long stays on death row have adverse effects on taxpayers, on the courts, and on the death row inmates themselves. Death row confinement, including the legal actions that defendants pursue while on death row, is expensive. According to a January 4, 2000 article in the *Palm Beach Post*, Florida spends \$51 million each year to administer the death penalty, or about \$24 million per execution, based on the 44 Florida executions between 1979 and 2000. This cost is much higher than the cost of punishing all first-degree murderers with life in prison without parole (Date, 2000). As of 2005, the annual cost of housing an inmate on Florida's death row was \$26,422 -- \$8,300 more than the average cost to house a general population prisoner (Bohm, 2007, p. 232). Thus, if the average stay on Florida's death row is 12.89 years, then Florida, on average, spends more

than \$340,000 dollars to confine each death row inmate. Sentencing offenders to death diverts scarce tax dollars from more beneficial programs, such as education and health care.

Capital punishment places an inordinate strain on the courts' resources. It requires:

- More pre-trial motions
- More questioning concerning individual jurors' views on capital punishment and more preemptory challenges to jurors at jury selection
- The appointment of two defense attorneys
- A longer and more complex trial
- A separate penalty phase conducted in front of a jury
- A more thorough review of the case on direct appeal
- More post-trial motions
- Greater likelihood that counsel will be appointed for a federal habeas corpus petition
- Greater likelihood that there will be full briefing and argument on federal review
- More preparation for, and a longer clemency proceeding (Dieter, 1994)

Capital punishment is especially burdensome on the United States Supreme Court: "Whereas the Supreme Court of the United States had only rarely reviewed state death sentences in the century before the *Furman* decision in 1972, the substantive law and procedure in state death cases became the most frequent business of that court in the two decades after 1976" (Zimring, 2003, p. 9). During a ten-month period in the early

1980s, for example, more than 90 certiorari petitions in capital cases were filed with the Court. To which Justice Stevens remarked, “If we were to hear even a substantial percentage of these cases on the merits, they would consume over half of this Court’s argument calendar” (*Coleman v. Balkcom* 451 U.S 949, 1981 at 950).

Long indeterminate sentences on death row may be seen as cruel and unusual. Spending all day, alone, in a 6 x 9 x 9.5 foot high cell (Florida DOC website) is a punishment in itself. An added punishment is waiting for the day when the state executes. So far, the Supreme Court has refused to hear appeals challenging long stays on death row. In *Knight v. Florida* (528 U.S. 990, 1999), a denial of a petition for a writ of certiorari, Justice Clarence Thomas opined that “those who accept our death penalty jurisprudence as a given also accept the lengthy delay between sentencing and execution as a necessary consequence” (p. 992). He added, “It is incongruous to arm capital defendants with an arsenal of ‘constitutional’ claims with which they may delay their executions, and simultaneously to complain when executions are inevitably delayed” (p. 992). On the other hand, Justice Stephen Breyer, who dissented from the denial of certiorari in *Knight*, observed that the “astonishingly long delays” of “nearly 20 years or more on death row” are “in significant part” the result of “constitutionally defective death penalty procedures” (p. 993). He maintained, “Where a delay, measured in decades, reflects the State’s own failure to comply with the Constitution’s demands, the claim that time has rendered the execution inhuman is a particularly strong one” (p. 993).

Death row inmates also face another problem. Long waits on death row can have severe psychological effects on inmates. David Elliot, spokesman for the National Coalition to Abolish the Death Penalty, claims, “The desolate conditions of death row

lend themselves to both mental illness and a sense of hopelessness and despair” (Christofferson, 2005). Some inmates, such as Michael Ross, see life on death row as insufferable. Currently on death row in Connecticut, Ross has tried to commit suicide three times in the 16 years he has been on death row (Christoffersen, 2005). To end his suffering, Ross has “volunteered” to be executed by relinquishing his appeals (Christoffersen, 2005).

CHAPTER TWO: LITERATURE REVIEW

Considering the importance of the problem, it is surprising how little literature addresses long stays on death row. The literature that is available only examines part of the post-conviction process and mostly prescribes improvements in the trial or appellate stages. However, from those prescriptions problems may be inferred.

At the trial level, the following causes of delays in capital case processing have been identified:

- County in which murder occurred (counties with larger case loads likely take longer to process cases)
- Facts of particular cases (some cases are simply more complicated than others and take longer to adjudicate)
- Quality of evidence presented at trial (weaker evidence probably increases the length of trials and the likelihood of post-conviction challenges)
- Developments in the law (changes in death penalty law provide opportunity for mistakes in administering the law)
- Changes in judicial personnel on Supreme Court (different justices interpret the Constitution differently, which may cause a change in procedure and increase the likelihood of mistakes and challenges)
- Lack of experience and training of trial-court judges (less experienced trial-court judges are more likely to make mistakes and be reversed on appeal)

- Lack of status reports on death penalty cases (without accurate knowledge of where a case is in the process, trial dockets may not be able to expeditiously accommodate retrials and re-sentencing hearings)
- Procedural problems (trials may be delayed, for example, by the inability to find competent defense counsel) (Eaton, 2005)

Eaton (2004) has noted that since 1997, the Florida Supreme Court has required trial judges to attend continuing-judicial-education programs “involving the trial of capital cases and to have at least minimal criminal-trial experience before being assigned to a capital case” (Eaton, 2005, p 4.). Two additional efforts to expedite the death-penalty process are requiring chief judges of the circuit courts to provide status reports on death-penalty cases, and “forming the Criminal Court Steering Committee to address procedural problems in death cases” (Eaton, 2005, p. 4). Recently, the Florida Supreme Court also has provided a rule governing procedures after a death warrant is issued that allows the trial judge to hold hearings throughout the state to expedite last-minute motions (Eaton, 2005, p.4).

Delays at the appellate level have received more attention. One of the major reasons for delays at the appellate level is the court’s failure to adhere to deadlines and guidelines (Latzer and Cauthen, 2007; Hanson, 2001). For example, in Florida between January 1, 1992 and December 31, 2002, Latzer and Cauthen (2007) found that direct appeals in capital cases averaged 966 days with the longest appeals taking an average of 1,309 days. In another study, Hanson (2001) discovered that in Florida direct review of death penalty cases in 1996 and 1997 took an average of 955 days with the longest appeals averaging 1,492 days. Unfortunately, neither study provided an official standard

by which to judge whether 966 or 955 days for a direct appeal is excessive; but it seems excessive. The 966 or 955 days would account for about 20 percent of the current average time in Florida to get from conviction to execution.

Another reason for delays at the appellate level is a court's lack of resources, for example, too few law clerks assigned to each judge (Hanson, 1998). Chapp and Hanson (1990) suggested that a good use of staff for research and drafting opinions would help improve processing time by allowing judges and clerks to spend more time on actual appeals and less time on necessary paperwork. A related problem is poor management of appellate court systems, including lack of leadership by appellate court managers, poor organizational skills on their part, and lack of commitment by court managers to faster case processing, especially the failure to expedite last-minute motions after a death warrant is signed (Chapp and Hanson, 1990; Eaton, 2005).

Legal representation, until relatively recently, was another resource lacking at the appellate stage. During the 1980s, for example, the number of death warrants in Florida increased dramatically, while the pool of available volunteer counsel decreased. Frequently, inmates were unrepresented when the governor signed death warrants, setting an execution date. Even when inmates had lawyers during the appellate process, appellate counsel frequently failed to file post-conviction motions in a timely manner (Aarons, 1998; Eaton, 2005). Prompted by legal actions challenging the operation of the system, and "stays of two executions because of the inability to locate volunteer counsel," in 1985, the Florida legislature established the Office of the Capital Collateral Representative (CCR) to provide legal counsel to Florida's death row inmates (Aarons, 1998, p. 19). CCR's office opened in October 1985, with a staff of one capital

representative and nine attorneys. The nine lawyers were quickly overwhelmed by large caseloads, but Aarons (1998) claims that the Capital Collateral Representative office was successful in reducing the frequencies of executions (p. 19). Aarons provides no data to support his claim and at least one member of the CCR staff disagreed with his statement. Michael Mello, who worked for the CCR during its infancy, maintains “that death row inmates who were represented by the Center were worse off than those who did not have legal representation” (Aarons, 1998, p. 19). This may have been because the CCR dramatically helped reduce the time between appeals and execution.

In addition to the CCR, the Florida Supreme Court now provides for the appointment of counsel for death row inmates (Eaton, 2005). Two additional reforms created by the Florida Supreme Court that were intended to streamline Florida’s death penalty process are (1) a special post conviction-relief rule that requires post-conviction motions to be filed within one year from the date the death sentence becomes final, and (2) a rule governing procedures after a death warrant is issued that allows the trial judge to hold hearings throughout the state to expedite last-minute motions (Eaton, 2005).

One last reason for delays in capital case processing involves case characteristics. According to Hanson (1998) some cases take more time to decide on and need more resources. While he does not give an in-depth explanation, Hanson writes that some cases are simply more difficult to resolve than others (Hanson, 1998).

Most of the research on delays in post-conviction capital case processing is nonsystematic and speculative, based largely on anecdotal evidence. Some of the evidence must be inferred from prescriptions for reform. This is the first study to systematically examine the process using the records of death row inmates.

CHAPTER THREE: METHODOLOGY

This study used data collected from two primary sources: Florida's Department of Corrections (DOC) and Florida's Commission on Capital Cases. Both sources offered current death row rosters and the Commission on Capital Cases also provided case histories for a majority of the death row inmates.

To start the data collection each roster was put into separate Excel spreadsheets and checked against each other for any inconsistencies. At the time of the data collection (October 2007), there were 386 inmates on Florida's death row (Florida Department of Corrections). Since there was a need for full case histories for this particular study, any inmates without case histories were excluded bringing the number to 333. A systematic random sampling method was used to select a 10 percent sample of 33 inmates. A 10 percent sample was considered sufficient to be representative of the entire population in this exploratory research. There were no volunteers (a person that voluntarily gives up his or her right to appeals) (<http://www.AmenstyUSA.org>) or females in this sample. The earliest convicted inmate in the sample was sentenced to death row in 1976, while the last inmate in this sample was sentenced to death row in 2004.

Next, a figure was created to outline the ten major steps in an inmate's case history starting with trial and sentence in state court (see Stage One in Figure 1). The figure has three main stages with 10 different legal actions that every inmate on death row has a right to file. Direct appeal to the Florida Supreme Court is the subject of Stage One; post-conviction review in state courts is addressed in Stage Two; and collateral review in the federal courts is the purpose of Stage Three. Each stage may culminate

with the filing of a petition for writ of certiorari to the U.S Supreme Court. Stage Three has the additional step of a request for a stay of execution and clemency.

Figure 1: Stages in a Capital Case

Stage One:

- Step 1:** Trial and Sentence in State Court
- Step 2:** Direct Appeal to Florida Supreme Court
- Step 3:** U.S Supreme Court for Writ of Certiorari

Stage Two:

- Step 1:** State Post-Conviction for petition to State Trial Court
- Step 2:** Appeal and/or Petition for Writ of Habeas to the Florida Supreme Court
- Step 3:** U.S Supreme Court for Writ of Certiorari

Stage Three:

- Step 1:** Appeal to the Federal District Court for a Writ of Habeas Corpus
- Step 2:** Appeal to the Federal Court of Appeals
- Step 3:** U.S Supreme Court for Writ of Certiorari
- Step 4:** Request for Stay of Execution and Clemency

Based on Figure 1, an individual flow chart listing all-applicable steps was created for each inmate in the sample, listing when he started and completed each step of the appeals process (see Appendix: Inmate Flowcharts). The flowcharts show the actual amount of time Florida death row inmates were actively filing appeals and awaiting decisions, as well as experiencing “dead time.” “Dead time” refers to any additional time that an inmate spends on death row with no legal actions pending or accounted for by the statutes listed in Table 1. Some steps were completed multiple times, such as an appeal to the trial court. The only time an inmate could have more than one direct appeal, however, was when that inmate was awarded a re-sentencing hearing. A spreadsheet was then used to organize each step of the individual flowchart with the corresponding lengths of time each step took for each inmate. Once the data were put into the spreadsheet the mean, mode and range of each step were calculated.

Table 1. Timeframes in Florida’s capital punishment process

Event	TIME FRAME EXPLANATION & REFERENCE
Appointment of collateral counsel	(By FSC) At the time of the mandate. 3.851(b)(1)
Notice of appearance in trial court	30 days from appointment by FSC. 3.851(b)(2)
Motion to withdraw as counsel	30 days from appointment by FSC. 3.851(b)(2)
Order on motion to withdraw	15 days from motion to withdraw. 3.851 (b)(3)
Appointment of substitute counsel	15 days from motion to withdraw. 3.851(b)(3)
Assignment of trial judge	30 days from issuance of mandate. 3.851(c)(1)
Initial status conference	Not later than 90 days after judicial assignment. 3.851(c)(2)
Subsequent status conferences	Subsequent status conferences must be done at least every 90 days until an evidentiary hearing has been completed or the motion has been ruled upon without a hearing by a judge. 3.851(c)(2)
Filing of initial post-conviction motion; contents of initial motion: 3.851(e)(1)(A)-(E).	One year from final decision on direct appeal. 3.851(d)(1)(A)-(C)
Filing for an extension of time.	Under this rule any filings for extension of time for the initial post conviction motion and initial response must be brought before the Florida Supreme Court. 3.851(d)(2)(C)(5)
Filing of answer to initial motion	Within 60 days of the filing of initial motion. 3.851(f)(3)(A)
Filing of successive motion	3.851(e)(2);also has specific pleading requirements, 3.851 (e)(2)(A)-(C)
Filing of answer to successive motion	Within 20 days of filing of successive motion. 3.851(f)(3)(B)
Filing of amendment to the 3.851 motion	Up to 30 days before evidentiary hearing, upon motion and good cause shown. 3.851(f)(4)
Filing of amended answer to amended motion	If amendment allowed, within 20 days after amended motion is filed. 3.851(f)(4)
Case management conference - initial motion	90 days after filing of the answer. 3.851 (f)(5)(A)
Case management conference - successive motion	30 days after filing of the answer. 3.851(f)(5)(B)
Evidentiary hearing - initial motion	90 days after the case management conference. 3.851(f)(5)(A)(i)
Evidentiary hearing - successive motion	60 days after the case management conference. 3.851(f)(5)(B)
Motion to extend time for hearing	Up to 90 additional days for good cause. 3.851(f)(5)(C)
Time for ordering transcript	Immediately after evidentiary hearing. 3.851 (f)(5)(D)
Time for production of transcript	30 days from hearing. 3.851(f)(5)(D)
Time for rendition of final order	30 days from receipt of transcript. 3.851 (f)(5)(D)
Motion for rehearing	15 days from rendition of final order. 3.851(f)(7)
Response to motion for rehearing	10 days from filing of motion for rehearing. 3.851(f)(7)

CHAPTER FOUR: ANALYSIS AND RESULTS

The following analysis follows the stages and steps depicted in Figure 1. Table 2 shows the study sample’s mean, mode, and range for each step in Figure 1.

Table 2. Mean, Mode, and Range for Each Step of Florida’s Post-Conviction Death Penalty Process			
	<u>Mean</u>	<u>Mode</u>	<u>Range</u>
Direct Appeal (35 cases)	2.35 years	2 years	1 to 4 years
Petition to the State Trial Court (50 cases)	2.77 years	1 year	1 month to 10 years
Appeal to the F.S.C (43 cases)	2.05 years	1 year	1 month to 6 years
Petition to the U.S.S.C for a Writ of Certiorari (57 cases)	0.54 years	2 months	2 months to 3 years
Petition to the F.S.C for Writ of Habeas Corpus (32 cases)	1.16 years	1 year	2 months to 3 years
Appeal to the F.D.C for Writ of Habeas Corpus (10 cases)	1.07 years	1 year	1 month to 2 years
Appeal to a F.C.A (7 cases)	2.42 years	1 year	1 to 5 years

F.S.C= Florida Supreme Court
 U.S.S.C= United States Supreme Court
 F.D.C= Federal District Court
 F.C.A= Federal Court of Appeals

Stage One

- 1) Trial and sentence in the state court.
- 2) Direct Appeal

Following sentencing in a capital case, there is a direct appeal to the Florida Supreme Court (<http://deathpenaltycurriculum.org>). Not all states require an automatic direct appeal. For example, South Carolina allows defendants to waive sentence review

by the state supreme court if they are deemed competent to do so (Snell, 2006). During the direct appeal, the Florida Supreme Court will determine if the death row inmate was convicted and sentenced legally and that there was no error in the way he was convicted (<http://deathpenaltycurriculum.org>). In Florida, the only issue addressed on direct appeal is whether the trial judge made any errors. Not considered at direct appeal to the Florida Supreme Court are issues of prosecutorial misconduct, attorney ineffectiveness, claims of innocence, etc. (O.H. Eaton, personal communication, 2008). For the sample in this study time elapsed between sentencing and direct appeal ranged from 1 to 4 years, with a mean of 2.35 years and a mode of 2 years (see Table 1). If the claims in the direct appeal are denied, the death row inmate may petition the U.S Supreme Court as described in step three.

3) Petition to the U.S Supreme Court for a Writ of Certiorari

If the Florida Supreme Court rejects the death row inmate's claims, then the inmate may continue to try and delay his death sentence by asking the U.S. Supreme Court to review his claims (<http://deathpenaltycurriculum.org>). At this stage, the inmate may include claims such as those that could not be made at direct appeal. The U.S Supreme Court, however, is under no obligation to hear the inmate's claims. Also, an inmate does not have a right to an attorney at this stage. The right to an attorney is limited to the trial and direct appeal (O.H. Eaton, personal communication, 2008). For the sample in this study, the time between filing the petition for a writ of certiorari to the U.S Supreme Court's and the Court's final decision on the writ ranged from 2 months to 3 years, with a mean of .54 years and a mode of 2 months (see Table 1).

Stage Two

1) Petition to the State Trial Court

If the U.S Supreme Court refuses to hear the inmate's claim or claims, or denies his request for a writ of certiorari, the inmate may then seek post-conviction review. Many of the death row inmates in this study petitioned the state trial court by way of a 3.850, 3.851, or 3.853 motion. The 3.850 and 3.851 motions are motions for post conviction relief and are similar to writs of habeas corpus (O.H. Eaton, personal communication, 2008). According to the Florida Rules of Criminal Procedure (FRCP), the 3.850 motion is typically filed when the inmate is trying to prove one of the following conditions:

The judgment was entered or sentence was imposed in violation of the Constitution or laws of the United States or the State of Florida. The court did not have jurisdiction to enter judgment. The court did not have jurisdiction to impose the sentence. The sentence exceeded the maximum authorized by law. The plea was involuntary. The judgment or sentence is otherwise subject to collateral attack. These motions can raise many issues; the most common are ineffective assistance of counsel, prosecutorial misconduct, juror misconduct, or newly discovered evidence.

A 3.851 motion can be used for similar reasons as the 3.850 motion but also can be used if the death row inmate is incompetent to proceed to a capital trial or needs new post-conviction counsel (FRCP, 2008). A 3.853 motion is for post-conviction DNA testing (<http://floridacapitalcases.state.fl.us>). The 3.852 motion is for determination of mental retardation (<http://www.floridacapitalcases.state.fl.us>), but was not used much by the

sample in this study. For the sample in this study, the time between the filing of a motion in the state trial court and decision ranged from 1 month to 10 years, with a mean of 2.77 years and a mode of 1 year (see Table 1). A death row inmate may appeal to the Florida Supreme Court as described in step three if any of these motions are denied.

2) Appeal to the Florida Supreme Court or Petition for Writ of Habeas Corpus to the Florida Supreme Court

If the trial court does not affirm the motion or motions that were filed, then a discretionary appeal to the Florida Supreme Court may be made. Nearly all inmates in this sample filed this discretionary appeal. The time from filing an appeal with the Florida Supreme Court to decision for the sample in this study ranged from 1 month to 6 years, with a mean of 2.05 years and a mode of 1 year (see Table 1).

A convicted inmate may also petition the Florida Supreme Court for a writ of habeas corpus with the hope that the state will agree with him that he is being held in violation of the Florida Constitution and his rights. For the sample in this study the time between petitioning the Florida Supreme Court for a writ of habeas corpus and a decision ranged from 2 months to 3 years, with a mean of 1.16 years and a mode of 1 year (see Table 1).

3) Petition to the U.S Supreme Court for a Writ of Certiorari

If the Florida Supreme Court denies the discretionary appeal or the petition for a writ of habeas corpus, then a death row inmate may continue to try and delay his death sentence by again petitioning the U.S Supreme Court for a Writ of Certiorari (<http://deathpenaltycurriculum.org/student/c/about/stages/stages.PDF>). For the sample in this study, the time between filing the petition for a writ of certiorari to the U.S Supreme

Court and the Court's final decision on the writ ranged from 2 months to 3 years, with a mean of .54 years and a mode of 2 months (see Table 1). If this petition is denied, the death row inmate may continue the process at the federal level with a petition for a writ of habeas corpus to the U.S District Court for the 11th Circuit.

Stage Three

1) Appeal to the Federal District Court for a Writ of Habeas Corpus

Similar to the filing process used at the state level a federal district court may entertain a habeas petition if it alleges that state corrections officials are holding the applicant in custody in violation of the U.S Constitution (<http://deathpenaltycurriculum.org/student/c/about/stages/stages.PDF>). A death row inmate may only file a writ of habeas corpus in federal district court after the previous methods of appeal have been exhausted (Walphin, 2008). For the sample in this study, the time between filing a writ in the federal district court and decision ranged from 1 month to 2 years, with a mean of 1.07 years and a mode of 1 year (see Table 1). If this petition is denied, then the inmate can appeal that decision to the U.S Court of Appeals for the 11th Circuit.

2) Appeal to the Federal Court of Appeals

The inmate or prosecution may appeal the District Court's ruling to the U.S. Court of Appeals. The habeas corpus appeal is decided by a panel of three judges (<http://deathpenaltycurriculum.org/student/c/about/stages/stages.PDF>). There are times when an inmate may be granted an en banc review, where the appeal is heard by the full circuit court (<http://www.abolitionnow.de/stages.htm>). Typically, en banc review is "reserved for rare situations—to resolve intra-circuit conflicts or cases of exceptional

importance” (*Harvard Law Review*, 1989, p. 864). However, none of the death row inmates in this sample were granted an en banc review. For the sample in this study the time between filing the appeal and decision ranged from 1 to 5 years, with a mean of 2.42 years and a mode of 1 year (see Table 1). If this appeal is denied, the inmate may file new trial court motions or petition the U.S Supreme Court for a writ of certiorari.

3) Petition to the U.S Supreme Court for a Writ of Certiorari

If the U.S Court of Appeals denies the appeal, then an inmate may continue to try and delay his death sentence by asking the U.S Supreme Court to review the denial of previous motions and the appeal to the U.S Court of Appeals.

(<http://deathpenaltycurriculum.org>). For the sample in this study, as noted previously, the time between filing the petition for a writ of certiorari to the U.S Supreme Court to the Court’s final decision on the writ ranged from 2 months to 3 years, with a mean of .54 years and a mode of 2 months (see Table 1). Again, the U.S Supreme Court is under no obligation to hear this appeal.

5) Request for a Stay of Execution and Clemency

After all appeals are exhausted and the governor of Florida signs the death warrant, a death row inmate may seek a stay of execution to pursue executive clemency. The stay of execution may be filed in the Florida Supreme Court, the U.S District Court, or the U.S Supreme Court. Then the inmate may ask the members of the executive clemency board to recommend a sentence commutation to life in prison or a pardon in the case of actual innocence (<https://fpc.state.fl.us/FAQClemency.htm>). The governor has full control over clemency in the State of Florida but “the Office of Executive Clemency was created to assist in the orderly and expeditious exercise of this executive power”

(Florida Parole Commission, 2008). However, the governor has discretion to deny clemency at any time and must have the approval of at least two members of the clemency board to grant any form of clemency (Florida Parole Commission, 2008). Nine of the thirty-three inmates in the current study have asked for clemency and have been denied. There is no data that shows how long it took to deny these petitions.

A Note on “Dead Time”

Florida death row inmates experienced a considerable amount of “dead time,” when they were not filing motions or petitions or awaiting court decisions. The average amount of dead time for the sample was 10.85 months. The range of the sample’s dead time was one month to four years. “Dead time” could occur in any of the stages and between any of the steps depicted in Figure 1.

CHAPTER FIVE: DISCUSSION AND CONCLUSION

The results of this thesis revealed that many of the inmates on Florida's death row experienced multiple delays between direct appeal and current filings, ranging from 2 years and 8 months to as many as 34 years. The average amount of time it took the sample to complete the ten steps in Figure One was 12.31 years, not including "dead time." As noted previously, the average amount of "dead time" was 10.85 months, with a range between one month and four years. Thus, the total average (mean) time on death row for the sample between direct appeal and current filings, including "dead time," was 16.63 years (mode = 12.41 years). The mode for the sample compares favorably with the Florida Department of Corrections average of 12.89 years for the entire population.¹

The importance of "dead time" in accounting for delays on death row is illustrated by the case of Robert Ira Peede, whose experience with "dead time" is not unusual for the sample. Robert Ira Peede has had long delays on death row, some due to legal actions and others with no explanation. The Commission on Capital Cases included the Florida Supreme Court's statement on Mr. Peede in his case file for public access:

The main delay in this case was that the 3.850 motion was pending in the circuit court for eight years. The Florida Supreme Court stated the following in reference to this delay: "At the onset we feel obliged to comment on the inexplicable delay in this case. As previously mentioned, on 07/05/88, the trial court stayed Peede's execution and on 10/07/88, it scheduled an evidentiary hearing for 11/28/88. At this point, the State and

¹ All dates current as of October 2007.

Peede filed several motions for continuance. The trial court granted the motion on 09/15/89, and continued the case indefinitely until a future date to be determined by the court. On 10/06/89, Peede filed a notice of supplemental authority [a notice of supplemental authority calls the court's attention, not only to decisions, rules, or statutes, but also to other authorities that have been discovered since the last brief was served (Florida Rules of Appellate Procedures, 2008)] This was the last action on the case until Peede filed his amended motion on 02/21/95, some six years later. There is no explanation for this time lapse in the record. However, we stress that the State is the party especially charged with the burden to see that these cases are disposed of in a timely matter, especially in cases where the State has received the final continuance” (Commission on Capital Cases, 2007, p. 4).

This example shows how easily inmates can extend the amount of time they are on death row. Mr. Peede was able to remain on death row with no legal actions being made on his behalf for more than six years. The Florida Supreme Court considered this a mistake for which they accepted blame. There is no reason for this delay, and as shown in the statement from the Florida Supreme Court, no excuse. The most time that a Florida inmate should have between legal filings under normal circumstances is one year (see Table 2). That length of time is only allowed after a denial has been made on direct appeal and the inmate wishes to file a trial court petition. For other petitions and motions a Florida inmate has between 10 and 90 days to file (<http://www.floridacapitalcases.state.fl.us/c-timeframes.cfm>). See Table 2.

The data in this thesis show that petitions to the state trial courts and appeals to the Florida Supreme Court take the longest time in Florida's capital case process. An obvious explanation for why some petitions take only one month and others take years is not readily apparent. Perhaps it is because some cases are simply more complex than other cases. However, if the average time for a state trial court to decide on a petition is about two and a half years, then ten years seems excessively long. Likewise, if the average time for the Florida Supreme Court to decide an appeal is about two years, then six years also seems excessively long.

While there are studies that suggest resources are the problem and the cause of delays (see Hanson, 1998; Chapp and Hanson, 1990), in the State of Florida that does not seem to be the case. According to state trial court judge O.H. Eaton—an expert on Florida's capital punishment process--Florida's court resources are fine (O.H. Eaton, personal communication, 2007). He was at a loss, however, to explain why some trial courts take such a long time to make a decision on a petition.

In this thesis, another theory is proposed to explain the lengthy delays in Florida's capital punishment process. This is the theory of "benign neglect." According to the theory of "benign neglect," the reason for lengthy delays in Florida's post-conviction process is that none of the relevant actors in the process have an incentive to resolve cases more expeditiously. For death row inmates, delays keep them alive. For both trial and appellate attorneys, delays keep their clients alive and allow them to expend their time and resources on other, frequently more lucrative cases. Prosecutors do not mind delays because it allows them to move on to other cases, while the capital offender poses no threat to the community because he remains incarcerated on death row. Judges have

little incentive to move capital cases along because other cases on their generally full dockets are always awaiting their attention. Finally, even most community members, their representatives, and the media lose interest in the case once the capital offender has been convicted and sentenced to death. They are ready to move on to the next newsworthy event. Given these realities, it is unlikely that much effort will be made by legislators or court officials to expedite the process, and what efforts are made, such as those discussed in the literature review, are likely to meet with resistance. One possible exception to the theory of benign neglect is wrongfully convicted death row inmates pursuing exoneration. However, such inmates face a dilemma. On one hand, if they pursue exoneration and are successful, then they win their freedom. On the other hand, if they pursue exoneration and fail at the effort, they will die. So a wrongfully convicted inmate must decide whether to take a chance at exoneration or simply to delay his execution through benign neglect.

Clearly, there is a need for more research on this subject. Similar studies should be conducted in other states to determine if the Florida experience is representative or merely a statistical outlier. Future research should also examine Florida's different state trial courts, perhaps by circuit, to determine whether they differ in the time it takes to process capital cases and, if so, why? Finally, future research is needed in other states to corroborate the theory of "benign neglect" or to suggest other theories that may explain time delays in the post-conviction processing of capital cases.

APPENDIX: INMATE FLOWCHARTS

SIRECI, Henry P., Jr.

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
11/15/1976	Sentenced to death	
01/14/77-04/09/81	FSC affirmed conviction and sentence.	4 years
05/1981-09/1981	Dead time	4 months
09/08/81-05/17/82	USSC denied Petition for Writ of Cert.	8 months
3/11/1982	Clemency hearing held (denied).	
08/25/82-09/17/82	Gov Graham signed death warrant. TC gave stay of exec.	
09/07/82-09/16/82	USDC dismissed Petition for Habeas	2 weeks
09/08/82-11/03/83	Trial Court denied 3.850 Motion.	1 year
01/06/84-03/21/85	FSC affirmed denial of 3.850 Motion.	1 year
06/12/85-06/30/86	USSC denied Petition for Writ of Cert.	1 year
07/28/86-08/21/87	Trial court granted 3.850 Motion	1 year
09/10/86-9/26/86	Gov Graham signed death warrant. TC gave stay of exec	
09/25/86-01/05/87	FSC denied Petition for Habeas.	4 months
09/26/86-01/05/87	FSC affirmed trial court order.	4 months
02/1987-07/1987	Dead time	5 months
07/24/87-12/22/88	FSC affirmed 3.850 Motion and the vacating of sentence.	1 year
01/1989-05/1990	Dead time	1 year 4 months
5/4/1990	Resentenced	
05/16/90-09/19/91	Direct Appeal after resentencing FSC affirmed sentence.	1 year
10/1991-01/1992	Time allowed by Florida statutes	3 months
01/24/92-03/23/92	USSC denied petition for Writ of Cert.	2 months
04/1992-06/1993	Dead time	1 year 2 months
06/21/93-02/09/99	Trial Court denied 3.850 Motion.	6 years
05/09/97-03/01/99	USDC denied Petition for habeas.	2 years
03/19/99-09/07/00	FSC affirmed denial of 3.850 Motion.	1 year
12/06/00-10/10/01	Trial Court denied 3.850 Motion.	1 year
06/25/01-02/28/02	FSC denied the petition for Habeas.	1 year
03/2002-10/2002	Dead time	7 months
10/03/02-08/12/03	USDC Petition for Habeas filed.	1 year
10/08/02-01/10/03	Trial Court denied 3.850 Motion.	3 months
03/18/03-07/15/03	Trial Court 3.853 Motion denied.	4 months
09/02/03-04/28/05	FSC affirmed the denial of 3.853 Motion.	2 years
05/2005-10/2005	Dead time	5 months
10/12/05-12/12/05	USSC Petition for Writ of Cert denied.	2 months
01/2006-04/2008	Dead time currently no legal actions filed	2 years 3 mths
Total time:		33 years

BREEDLOVE, Arthur

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
03/05/79	Sentenced to death	
05/10/79-05/19/82	Direct Appeal denied	3 years
08/07/82-10/04/82	USSC Petition for Writ of Cert denied	2 months
11/09/82	Clemency hearing held and denied	
11/30/82-01/04/90	Trial Court denies 3.850 motion	8 years
08/24/83-08/31/83	Death warrant signed—Trial Court granted a stay of execution	7 days
02/27/90-06/25-91	FSC 3.850 Appeal denied	1 year
12/18/91-01/23/92	FSC Petition for Writ of Habeas denied	2 months
12/18/91-01/09/92	2 nd Trial Courts 3.850 Motion denied	2 months
11/18/91-01/15/92	Death Warrant—FSC granted stay	2 months
01/14/92-01/23/92	FSC 3.850 Appeal remanded case to Circuit Court for hearing on ineffective counsel during penalty phase.	2 weeks
05/5-7/92—05/26/92	Evidentiary hearing held from second 3.850 Motion. Circuit Court issued an order denying all relief.	1 months
03/12/93-10/22/93	Third Circuit Court 3.850 Motion granted for new sentencing hearing	7 months
11/12/93-04/06/95	FSC 3.850 Appeal filed by the State and reversed the State Circuit Court's decision to grant Breedlove's 3.850 Motion.	2 years
10/16/95—12/11/95	USSC Petition for Writ of Cert denied.	2 months
07/13/92—04/28/97	FSC Appeal 3.850 denied	5 years
04/28/98--09/07/99	USDC Petition for Habeas denied	1 year 5 months
09/30/99--01/17/02	USCA affirmed the denial of Petition for Writ of Habeas Corpus.	3 years
12/10/02--02/24/03	USSC Petition for Writ of Cert denied.	2 months
06/19/03--10/30/03	FSC Petition for Habeas denied.	4 months
11/2003-04/2004	Dead time	5 months
04/22/04--10/06/05	FSC Petition for Habeas denied.	1 years 6 months
05/04/04--10/04/04	USSC Petition for Writ of Cert denied.	5 months
11/2004-05/2006	Dead time	1 years 6 months
05/08/06--10/02/06	USSC Petition for Writ of Cert denied.	5 months
Total Time:		29 years 7 mths

JOHNSON, Paul B.

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
09/22/81	Sentenced to death	
10/29/81-10/26/83	Direct Appeal affirmed conviction and sentence.	2 years
12/15/83--02/21/84	USSC Petition for Writ of Cert denied.	3 months
03/1984-11/1985	Dead time + times allowed by statutes	1 year 8 months
11/20/85	Clemency Hearing held (denied).	

01/16/86-02/17/86	Warrant signed (Bob Graham) Stay granted (FSC).	1 month
02/17/86-12/11/86	FSC Petition for Habeas granted and case remanded for a new trial.	10 months
02/26/87-04/20/87	USSC Petition for Writ of Cert denied.	2 months
05/1987-04/1988	Dead time	11 months
04/28/88	Sentenced to Death (2 nd time)	
07/11/88-10/01/92	2 nd Direct Appeal Conviction and sentence affirmed.	4 months
03/12/93-05/17/93	USSC Petition for Writ of Cert denied.	2 months
08/01/94-12/12/94	Trial Court 3.850 Motion denied.	4 months
02/02/95-08/29/95	FSC 3.850 Appeal dismissed.	6 months
05/17/95-03/20/97	Trial Court 3.850 Motion denied.	2 years
06/09/97- 07/13/00	FSC affirmed the circuit court's denial of the 3.850 Motion.	3 years
08/2000-10/2001	Dead time	1 years 2 months
10/10/01-09/26/02	FSC Petition for Habeas denied	1 year
10/2002-02/2003	Dead time	4 months
02/07/03- 03/11/05	Trial Court denied 3.851 Motion.	2 years
04/20/05- 03/17/06	FSC affirmed the denial of the 3.851 motion	1 year
04/2006-04/2007	Dead time	1 year
04/27/07	Trial Court 3.851 Motion filed	Pending
Total time:		18 years 9 mths + pending 1 year

CAVE, Alphonso

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
12/10/82	Sentenced to Death	
01/07/83-10/21/85	Direct Appeal Denied	2 years
12/19/85-06/09/86	USSC denied Writ of Cert	7 months
07/1986-12/1987	Dead time	1 year 5 months
12/07/87	Clemency Denied	
01/1988-04/1988	Dead time	3 months
04/27/88-07/05/88	Death Warrant Signed-USDC granted stay	3 months
05/27/88-06/21/88	Trial Court denied 3.850 motion	1 month

07/05/88-08/03/90	USDC vacated and remanded sentence	1 year
06/21/88--07/01/88	FSC affirmed denial of 3.850 motion	1 months
09/25/90--08/26/92	USCA affirmed District Court's order to vacate and remand sentence.	2 years
6/25/93	Sentenced to Death	
09/10/93--09/21/95	Direct Appeal—vacated sentence and remanded for new sentence	2 years
10/1995-02/1997	New Trial	2 years
2/21/97	Sentenced to Death	
3/24/97-3/2/99	Direct Appeal denied	2 years
04/1999-06/1999	Dead time	2 months
6/1/99-10/04/99	USSC denied Writ of Cert	4 months
11/1999-09/2000	Dead time	10 months
09/27/00-11/18/02	3.851 Motion denied	2 years
01/21/03-04/07/05	FSC 3.851 Appeal denied	2 years
4/29/05	USDC Petition for Habeas	Pending
Total Time:		19 years 3 years pending

PEEDE, Robert Ira

<u>Date</u>	<u>Description</u>	<u>Length of Time</u>
03/05/84	Sentenced to death	
04/05/84--09/04/85	Direct Appeal affirmed conviction and sentence	1 year
12/05/85--06/23/86	USSC Petition for Writ of Cert denied	7 months
07/1986-12/1987	Dead time	1 years 5 months
12/07/87	Clemency hearing held (denied)	
01/1988-05/1988	Dead time	4 months
05/06/88-06/24/88	Death Warrant signed by Gov Martinez stay granted by Circuit Court	1 month

06/06/88--06/21/96	Trial Court 3.850 Motion denied	8 years
07/1996-03/1997	Dead time	8 months
03/03/97--08/19/99	FSC affirmed the trial's court denial of the 3.850 in part, and reserved and remanded for evidentiary hearing to Circuit Court	2 years
08/19/99-08/12/04	Circuit Court 3.850 motion on remand from Florida Supreme Court.	5 years
09/2004-10/2004	Dead time	1 months
10/29/04-05/09/07	FSC 3.850 Motion for Rehearing denied	3 years
10/07/05--01/26/07	FSC Petition for Habeas denied	2 years
Total time:		24 years 2 mths

MAREK, John Richard

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
7/3/1984	Sentenced to Death	
09/04/84--09/08/86	FSC Direct Appeal denied	2 years
10/1986-02/1988	Time allowed by Florida statutes + dead time	1 year 4 months
2/10/1988	Clemency hearing held (denied)	
09/12/88—11/08/88	Death Warrant signed by Gov Martinez FSC granted stay	2 months
10/10/88--11/07/88	Trial Court 3.850 Motion denied	1 month
10/12/88--08/29/89	FSC Petition for Writ of Habeas denied	1 year

09/07/89—10/10/89	Death Warrant signed by Gov Martinez USDC granted stay	1 month
11/07/88--08/29/89	FSC 3.850 Appeal denied	1 year
10/10/89--10/01/90	USDC Petition for Habeas denied	1 year
12/28/90--08/14/95	USCA affirmed the USDC's denial of the Habeas Petition	5 years
08/18/92--11/17/93	FSC Petition for Habeas denied	1 year
07/26/93-09/05/03	Trial Court 3.850 Motion denied	10 years
02/15/94--05/16/94	USSC Petition for Writ of Cert denied	3 months
05/28/96--10/07/96	USSC Petition for Writ of Cert denied	5 months
10/2003-02/2004	Dead time	4 months
02/16/04--09/21/06	FSC 3.850 Motion Appeal for Rehearing denied	2 years
08/22/05-06/16/06	FSC Petition for Writ of Habeas denied	1 year
12/20/06--04/23/07	USSS Petition for Writ of Cert denied	5 months
5/11/2007	Trial Court 3.851 Motion filed	Pending
	Total time	27 1 month + pending 1 year

ROBERTS, Rickey

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
12/31/85	Sentenced to death	
02/10/86--09/03/87	Direct Appeal denied.	1 year
11/23/87--03/07/88	USSC denied the Petition for Writ of Cert.	4 months
12/7/1988	Clemency hearing held (denied).	
08/29/89-10/26/89	Death warrant signed by Gov Martinez. FSC granted stay	2 months
09/28/89--09/06/90	Petition for Habeas denied	1 year

09/28/89--10/25/89	Circuit Court 3.850 Motion denied.	1 month
10/25/89--11/27/90	FSC denied 3.850 appeal.	1 month
12/1990-03/1991	Dead time	3 months
03/22/91--06/05/92	USDC Petition for Habeas denied.	1 year
08/14/92--08/10/94	USCA affirmed the denial of petition for habeas.	2 years
01/21/93--09/16/93	FSC Petition for Habeas denied.	8 months
10/1993-02/1995	No legal filings	2 years
03/27/95--08/11/95	USSC petition for writ of cert denied.	5 months
09/1995-01/1996	Dead time	4 months
01/25/96-2/22/96	Warrant signed by Gov Chiles. FSC granted stay	1 month
02/20/96--02/22/96	Trial Court 3.850 Motion denied.	2 days
2/22/1996-09/04/1996	FSC 3.850 Appeal filed and remanded	7 months
09/1996-07/1997	Dead time	10 months
07/16/97--10/01/97	Trial Court 3.850 Motion denied.	3 months
11/1997-03/1998	Dead time	4 months
03/04/98-03/19/03	FSC 3.850 Appeal denied.	5 years
05/03/00-01/12/01	Trial Court 3.850 Motion granted, resentencing ordered.	1 year
04/2003-10/2004	Dead time	1 year 6 months
10/22/04-09/02/05	Trial Court 3.850 Motion and hearing held and denied.	1 year
10/10/2005	FSC 3.850 Appeal filed.	Pending
Total time:		19 years 11 mths + Pending 2 years 7 mths

REED, Grover

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
01/09/87	Sentenced to death	
02/04/87-05/29/90	Direct Appeal affirmed conviction and sentence	3 years
09/21/87	Trial Court appointed new counsel	
07/23/90--10/01/90	USSC Petition for Writ of Cert denied	3 months
06/1990-02/1992	Dead time (1 year allowed + overtime)	8 months
02/28/92--08/25/92	Motion 3.850 denied.	6 months
09/25/92--08/15/94	FSC Appeal denied	2 years

09/1994-02/1996	Dead time	1 year 5 months
02/12/96--08/28/02	Trial Court 3.850 Motion denied.	6 years
10/04/99--12/20/99	FSC Petition for Habeas denied	2 months
10/11/02—07/06/04	FSC 3.850 Appeal denied.	2 years
03/31/03--04/15/04	FSC Petition for Habeas denied.	1 year
08/30/04--11/08/04	USSC Petition for Writ of Cert denied	3 months
12/2004-07/2005	Dead time	7 months
07/05/05	USDC Petition for Writ of Habeas filed	Pending 2 years
Total Time:		17 years 10 months Pending 2 years

CHERRY, Roger Lee

<u>Date</u>	<u>Description</u>	<u>Length of Time</u>
09/26/87	Sentence to Death	
10/23/87-04/27/89	FSC affirmed the conviction and sentences.	2 years
08/31/89-04/16/90	USSC denied petition for writ of certiorari.	1 year
06/19/90	Clemency Hearing held (denied).	
07/1990-04/1992	1 Year allowed + over time	9 months
04/16/92-03/12/93	Trial Court 3.850 motion denied.	1 year
04/1993-05/1994	Dead time	1 year 1 month
05/31/94-08/31/95	FSC affirmed in part, reversed in part and remanded	1 year

	for an evidentiary hearing.	
08/31/95-01/27/97	Trial Court 3.850 on remand from FSC denied	2 years
05/12/97-09/28/00	FSC affirmed trial court's denial of 3.850 Motion.	3 years
08/07/97-08/12/02	Trial Court 3.850 Motion denied.	5 years
06/22/01-10/01/01	USSC Petition for Writ of Cert denied.	4 months
12/28/01-10/03/02	FSC Petition for Habeas denied.	1 year
09/12/02-04/12/07	FSC affirmed denial of 3.850 motion.	5 years
11/30/04-10/14/05	Trial Court 3.850 Motion denied.	1 year
04/19/02	Trial Court 3.850 Motion	Pending
07/19/07-10/29/07	USSC Petition for Writ of Cert denied.	3 months
Total Time:		28 years 5 mths Pending 6 years

DUCKETT, James

<u>Date</u>	<u>Description</u>	<u>Length of Time</u>
06/30/88	Sentenced to Death	
07/05/88-11/14/90	Direct Appeal denied	2 years
12/1990-05/1992	Dead Time	2 years
05/01/92-08/10/01	Trial Court denied 3.850 Motion	9 years
09/28/01-10/06/05	FSC affirmed denial of 3.850 motion	4 years
06/07/02--10/06/05	FSC denied petition for Habeas	3 years
11/2005-05/2006	Dead Time	6 months
05/22/06-10/02/06	USSC Petition for Writ of Cert denied	5 months

Total Time:	20 years 11 months
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VAN POYCK, William

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
12/21/1988	Sentenced to death	
02/06/89-07/05/90	Direct Appeal affirmed conviction and sentence	1 year
08/1990-01/1991	Dead time	5 months
01/15/91-03/18/91	USSC denied petition for Writ of Cert.	2 months
04/1991-12/1991	Dead time	8 months
12/3/1991	Clemency hearing held (denied).	
01/1992-12/1992	Dead time	11 months

12/01/92-07/08/94	Trial Court 3.850 motion denied	2 years
09/07/94-03/27/97	FSC affirmed denial of motion.	3 years
05/27/97-10/06/97	USSC denied petition for Writ of Cert.	5 months
02/10/97-05/14/98	FSC denied petition for Habeas.	1 year
08/25/97-12/01/97	USSC denied petition for Writ of Cert	4 months
06/1998-10/1998	Dead time	4 months
10/28/98-12/01/98	FSC denied petition for Habeas.	2 months
01/13/99-03/22/99	USSC denied petition for Writ of Cert.	3 months
02/12/99-09/20/99	USDC denied petition for Habeas.	7 months
12/27/99-05/09/02	USCA affirmed denial of habeas petition.	3 years
02/07/01-10/07/02	USSC denied petition for Writ of Cert.	1 year
09/19/02-01/13/03	USSC denied petition for Writ of Cert.	4 months
12/20/02-08/20/03	FSC denied petition for Habeas.	1 year
09/30/03-02/24/04	Trial Court 3.853 Motion denied.	5 months
01/29/04- 04/05/04	USSC Petition for Writ of Cert denied.	3 months
04/26/04-05/19/05	FSC affirmed the denial of the Trial Court 3.853 motion.	1 year
04/26/05-06/23/05	Trial Court 3.850 Motion denied.	2 months
08/15/05-05/03/07	FSC affirmed denial of 3.850 motion.	2 years
12/05/05-03/20/06	USSC Petition for Writ of Cert denied.	4 months
01/11/07-03/14/07	Petition denied for Habeas.	2 months
04/2007-04/2008	Dead time presently no legal actions	1 year
	Total time:	21 years 11 mths

COLEMAN, Michael

<u>Date</u>	<u>Description</u>	<u>Length of Time</u>
09/29/89	Sentenced to Death	
10/30/89--12/24/92	Direct Appeal denied	3 years
08/17/93--10/12/93	USSC Petition for Writ of Cert denied.	2 months
11/1993-03/1997	Dead time	4 years
03/24/97-07/16/04	Trial Court 3.850 motion denied	7 years
08/02/04	FSC 3.850 Appeal filed and pending.	pending
04/21/05--08/02/07	Trial Court 3.851 Motion denied.	2 years

Total Time:	16 years Pending 4 years
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PARKER, Dwayne Irvin

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
06/14/90	Sentenced to death	
06/14/90-06/16/94	Direct appeal affirmed conviction and sentence	4 years
11/25/94-01/23/95	USSC Petition for Writ of Cert denied	2 months
03/24/97-02/08/03	Trial Court 3.850 Motion denied	6 years
07/24/02- 03/24/05	FSC affirmed in part and reversed in part	3 years
06/12/03-03/24/05	FSC Petition for Habeas denied	2 years

06/05/00--09/22/06	3.850 on remand from FSC: denied	6 years
11/03/06	FSC 3.850 Appeal filed	Pending
Total Time:		21 years 2 mths Pending 2 years

TREPAL, George

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
03/06/91	Sentenced to death	
04/02/91-06/10/93	Direct Appeal affirmed conviction and sentence.	2 years
11/22/93-01/18/94	USSC Petition for Writ of Cert denied.	3 months
02/1994-06/1995	Time allowed by statutes + dead time	2 years 4 mths
06/16/95- 11/06/96	Trial Court 3.850 Motion denied.	1 year
01/15/97-03/06/03	FSC 3.850 Appeal affirmed.	6 years
10/10/97-11/17/98	Trial Court 3.850 Motion denied	1 year

10/15/01-03/06/03	FSC Petition for Habeas denied.	2 years
06/23/03-11/14/03	FSC Petition for Habeas denied.	5 months
08/13/03-10/14/03	USSC Petition for Writ of Cert denied.	2 months
10/20/04-12/06/04	FSC Petition for Habeas denied	2 months
08/17/05	USDC Petition for Habeas Appeal filed	Pending
	Total Time	15 years 4 mths Pending 3 years

JOHNSON, Emanuel

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
06/28/91	Sentenced to death	
07/29/91--07/13/95	Direct appeal affirmed conviction and sentence	4 years
08/1995-02/1996	Time allowed by Florida statutes	6 months
02/21/96-04/22/96	USSC Petition for Writ of Cert denied	2 months
05/1996-03/1997	Dead time	10 months
03/24/97	Trial Court 3.850 motion	Pending 11 years

	Total Time: 5 years 6 mths +pending 11 yrs
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TAYLOR, Steven

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
12/09/91	Sentenced to death	
12/16/91--12/16/93	Direct Appeal affirmed the conviction and sentence.	2 years
01/1993-05/1994	Time allowed by the Florida statutes	4 months
05/11/94--10/03/94	USSC denied the petition for Writ of Cert.	5 months
11/01/95	CC 3.850 Motion filed and pending	Pending 13 years
Total Time:		2 years 5 mths

	+pending 13 years
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WHITTON, Gary Richard

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
09/10/92	Sentenced to death	
09/28/92-12/01/94	Direct Appeal affirmed conviction and sentence	2 years
01/1994-05/1995	Dead time	1 year 4 months
05/15/95--10/02/95	USSC Petition for Writ of Cert denied.	5 months
11/1995-03/1997	Dead time	2 years
03/24/97	CC 3.850 Motion filed	Pending

	Total Time: 5 years 9 months + pending 11 years
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BOGLE, Brett

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
02/15/93	Sentenced to Death	
03/01/93-02/16/95	Direct Appeal Confirmed	2 years
09/13/93-11/13/95	USSC Petition for Writ of Cert denied	2 years
12/1995-03/1997	1 year allowed + over dead time	1 year
03/18/97-04/02/07	Trial Court 3.850 Motion in part granted and in part denied	10 years

04/16/07	FSC Petition for Habeas filed	Pending
		Total Time: 15 years Pending 1 year

GAMBLE, Guy

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
08/10/93	Sentenced to death	
09/10/93-05/25/95	Direct Appeal affirmed convictions and sentences	2 years
11/29/95-02/20/96	USSC denied petition for Writ of Cert	3 months
03/1996-09/1999	1 year allowed + overtime	2 years 6 months
09/20/99- 01/08/02	Trial Court denied 3.850 Motion	3 years

01/30/02-05/06/04	FSC affirmed denial of 3.850 Motion	2 years
08/29/02-05/06/04	FSC denied Petition for Habeas	2 years
09/08/04-07/06/05	USDC denied petition for Habeas	1 year
08/03/05-05/31/06	USCA affirmed denial of petition of Habeas	1 year
08/28/06-10/30/06	USSC denied petition for Writ of Cert	2 months
10/31/2006	Dead time	2 years
Total Time:		15 years 11 mths

SIMS, Merit A.

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
03/18/94	Sentenced to death	
04/27/94-07/18/96	Direct Appeal denied	2 years
01/28/97-04/28/97	USSC denied petition for Writ of Cert	3 months
05/1997-04/1998	Time allowed + dead time	11 months
04/07/98-07/30/04	Trial Court 3.850 motion	6 years

09/20/04-07/12/07	FSC denied 3.850 appeal and remanded for new trial	3 years
08/2007-present	Dead Time	1 years
Total Time:		13 years 2 mths

FRANQUI, Leonardo

<u>Date</u>	<u>Description</u>	<u>Length of Time</u>
10/11/94	Sentenced to death	
11/14/94-10/07/97	Direct Appeal denied but death sentenced vacated	3 years
11/1997-01/1998	Dead time	2 months
01/05/98-04/27/98	USSC denied Petition for Writ of Cert	3 months

01/16/98-03/23/98	USSC denied Petition for Writ of Cert (filed by state)	2 months
04/1998-11/1998	Dead time	7 months
11/09/98-10/18/01	2 nd Direct Appeal	3 years
11/2001-01/2008	Dead time (1 year allowed—over time)	2 months
01/08/03-11/09/04	Trial Court denied 3.851 motion	1 year
12/21/04-05/03/07	FSC affirmed denied of trial court motion	3 years
01/05/06-05/03/07	FSC denied petition for Habeas Corpus	1 year
Total Time:		12 years 4 months

BELL, Michael

<u>Date</u>	<u>Description of legal action</u>	<u>Length of time</u>
06/02/95	Sentenced to death	
07/19/95-07/17/97	Direct Appeal was confirmed	2 years
12/08/97-02/23/98	USSC Petition for Writ of Cert denied.	3 months
06/01/99-01/13/00	Trial Court 3.850 Motion denied.	7 months

01/28/00--04/26/01	3.850 appeal FSC remanded to the State Circuit Court to allow the filing of an amended motion	1 year
10/03/01-05/31/02	Trial Court 3.850 Amended motion denied	7 months
08/02/02- 06/07/07	3.850 Appeal FSC affirmed the denial of the motion.	5 years
04/08/05-06/07/07	FSC denied the petition for Habeas	2 years
08/28/07	USSC Petition for Writ of Cert filed	Pending
09/10/07	USDC Petition for Habeas filed.	Pending
Total Time:		11 years 5 months Pending 1 year

SHELLITO, Michael

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
10/20/95	Sentenced to death	
12/01/95-09/11/97	Direct Appeal affirmed sentence and conviction	2 years
10/1997-02/1998	Time allowed by statutes	4 months

02/23/98-04/20/98	USSC Petition for Writ of Cert denied	2 months
05/1998-04/1999	Dead time	11 months
04/20/99	Trial Court 3.850 motion	Pending 9 years
Total Time:		12 years 5 months

BOWLES, Gary Ray

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
09/06/96	Sentenced to death	
11/04/96-08/27/98	Direct Appeal—new penalty trial	2 years
09/07/99	Sentenced to death 2 nd time	

10/13/99-01/10/02	Direct appeal confirmed	3 years
04/09/02-06/17/02	USSC Petition for Writ of Cert denied	2 months
12/09/02-08/15/05	Trial Court 3.850 motion denied	3 years
12/14/05	3.851 Motion Appeal filed in FSC	Pending
08/17/06	FSC Petition for Habeas	Pending
Total Time:		8 years 2 months Pending 3 years

ZACK, Michael Duane

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
11/24/97	Sentenced to death	
12/29/97-01/06/00	Direct appeal affirmed conviction and sentence	3 years
06/19/00-10/02/00	USSC Petition for Writ of Cert denied.	4 months
11/2000-05/2002	Dead time	1 years 6 months

05/10/02-07/15/03	Trial Court 3.850 Motion denied	1 year
08/08/03-07/07/05	FSC affirmed the denial 3.850 Motion.	2 years
02/12/04-07/07/05	FSC Petition for Habeas denied.	1 year
12/01/04-01/18/05	Trial Court 3.851 (Mental Retardation) Motion dismissed.	1 month
03/04/05-10/06/05	FSC Petition for Habeas denied.	7 months
03/18/05	FSC 3.203 Appeal filed	Pending
09/28/06	USDC Petition for Habeas Proceedings stayed.	Pending
Total Time:		9 years 6 months + two actions pending

LEBRON, Jermaine Robert

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
07/10/98	Sentenced to death	
09/18/98--08/30/01	Direct Appeal FSC affirmed convictions but remanded for resentencing	3 years
09/2001-02/2002	Dead time	5 months

02/01/02--04/29/02	USSC Petition for writ of Cert denied	2 months
08/15/02	Date of Resentence (I)	
08/30/02--01/13/05	Direct Appeal (resentencing) FSC vacated death sentence and remanded for resentencing	3 years
12/28/05	Date of Resentence (II)	
01/27/06	FSC Direct Appeal (retrial) filed and pending	Pending
Total Time:		6 years 7 months 2 years pending

SMITH, Sean

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
12/18/98	Sentenced to death	
01/14/99—02/12/02	Direct Appeal affirmed conviction and sentence	3 years
05/13/02—10/07/02	USSC Petition for Writ of Cert denied	5 months

11/2002-09/2003	1 year allowed + over dead time	7 months
09/24/03—11/02/04	Trial Court 3.850 Motion denied.	1 year
12/17/04—07/12/07	FSC 3.850 Appeal denied	3 years
11/02/05—07/12/07	FSC Petition for Writ of Habeas Corpus denied.	2 years
Total time:		10 years

ISRAEL, Connie

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
05/28/99	Sentenced to death	
06/28/99-12/19/02	Direct Appeal affirmed conviction and sentence	2 years
01/2003-03/2003	Time allowed by statutes to file	3 months

03/19/03-06/16/03	USSC denied Petition for Writ of Cert	3 months
07/2003-12/2003	Time allowed by statutes to file	5 months
12/01/03-08/19/05	Trial Court denied 3.851 Motion	2 years
09/16/05	FSC 3.851 Appeal filed	Pending
04/06/06	FSC Petition for Habeas filed	Pending
Total Time:		5 years, 1 month. 3 years with pending files

BARNHILL, Arthur

<u>Date</u>	<u>Description</u>	<u>Length of Time</u>
02/11/00	Sentenced to Death	
03/15/00--12/27/02	Direct Appeal denied	2 years
03/27/03--06/09/03	USSC denied the petition for writ of cert.	3 months

07/2008-12/2003	Dead time	5 months
12/01/03-12/30/05	Trial Court denied the 3.850 motion.	2 years
02/13/06--10/25/07	FSC 3.850 Appeal denied.	1 year
09/11/06--10/25/07	FSC Petition for Writ of Habeas denied.	1 year
Total Time:		6 years 8 months

LAWRENCE, Jonathan Huey

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
08/15/00	Sentenced to death	
03/27/00-03/20/03	Direct appeal affirmed conviction and sentence	3 years
04/2003-07/2003	Dead time	3 months

07/15/03-10/14/03	USSC Petition for Writ of Cert denied	3 months
11/2003-07/2004	Dead time	8 months
07/09/04-01/26/06	3.850 Motion denied	2 years
02/22/06	FSC 3.850 Appeal filed	Pending
06/14/06	FSC Petition for Habeas filed	Pending
Total time:		6 years 2 months + pending 2 years

SMITH, Lawrence

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
08/17/01	Sentenced to death	
09/19/01-03/01/04	Direct Appeal affirmed all but death sentence	3 years

04/2004-01/2007	Dead time	3 years
01/2007	New trial set	Pending 1 year 5 months
Total time:		6 years + pending

EVERETT, Paul

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
01/09/03	Sentenced to death	
01/15/03-11/24/04	Direct appeal denied	1 year

12/2004-02/2005	Allowed time by statutes	3 months
02/22/05-04/18/05	USSC denied petition for Writ of Cert	2 months
05/2005-03/2006	Dead Time	10 months
03/30/06	Trial Court 3.851 motion filed	Pending
Total Time:		2 years 3 months Pending 2 years

RODGERS, Theodore

<u>Date</u>	<u>Description</u>	<u>Length of time</u>
06/16/04	Sentenced to death	
07/19/04-10/26/06	Direct appeal affirmed conviction and sentence	2 years

11/2006-04/2007	One year is allowed if counsel files a post conviction motion.	5 months
04/24/07	USSC petition for Writ of Cert	Pending
Total Time:		2 years 5 months Pending 1 year

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