

CASE NO. 88-7232

IN THE
SUPREME COURT OF THE UNITED STATES

70,093

TIMOTHY C. HUDSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

FILED
JUN 20 1988
CLERK OF COURT
BY _____

REPLY BRIEF ON
PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF FLORIDA

JAMES MARION MOORMAN
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Florida Bar No. #0143265

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(Member of the Bar of this Court)

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The constitutional argument made by petitioner in the petition for certiorari is the same one which was made on direct appeal in the Supreme Court of Florida. See Appendix F4, F5-6, F9-10. On the merits of Question I, the state has mischaracterized the issue. The state says "[petitioner's] claim that the trial court failed to consider non-statutory mitigating evidence is based on the fact that the court did not specifically outline this evidence in its sentencing order" (State's Brief in Opposition, p 4; see also p. 4-5, n.1). That is wrong. Petitioner's claim (as is patently obvious from the brief and the petition for certiorari) is based on the trial court's affirmative statement, in lieu of any findings whatsoever regarding the non-statutory mitigating evidence presented by the defense, that "The Court finds that there are no other aspects of the defendant's character or record, and no other circumstances of the offense, which could be used in mitigation of the Sentence to be pronounced by the Court" [Appendix D2, trial court's sentencing order]. This statement - constitutionally indistinguishable from the one made by the trial court in Lamb v. State, 532 So.2d 1051, 1054 (Fla. 1988) - strongly suggests that the trial court found as a matter of law that the (unrebutted) evidence of good character traits introduced by petitioner through the testimony of his parents, employer, teacher, and coach could not be considered in mitigation. The Florida Supreme Court

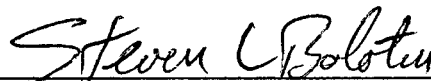
correctly applied the constitutional principle of Lockett v. Ohio, 438 U.S. 536 (1978) in Lamb. Unaccountably, it refused to apply the same principle in the instant case, even though this was an extremely close (4-3) decision on the issue of whether the death penalty was proportionally warranted.

CONCLUSION

Petitioner, TIMOTHY C. HUDSON, respectfully requests that this Court issue a writ of certiorari to the Supreme Court of Florida.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply Brief on Petition for Writ of Certiorari has been furnished by U.S. Mail to the Honorable Joseph E. Spaniol, Jr., Clerk of the Supreme Court of the United States, First and Maryland Avenue, Northeast, Washington, D.C., 20543; Timothy C. Hudson, Inmate No. 085756, Florida State Prison, P.O. Box 747, Starke, Florida 32091; The Honorable Sid. J. White, Clerk of the Supreme Court, State of Florida, Tallahassee, Florida 32301; and to the Attorney General's Office, Park Trammell Bldg., 8th Floor, 1313 Tampa Street, Tampa, FL 33602, by mail on this 21st day of June, 1989.


STEVEN L. BOLOTIN

SLB/AN