IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,	CASE NO.: 18-1958CF10A
Plaintiff,	JUDGE: SCHERER
v.	
NIKOLAS CRUZ,	
Defendant.	

ORDER DENYING DEFENDANT'S MOTION TO DISQUALIFY THE OFFICE OF THE STATE ATTORNEY FOR THE 17TH JUDICIAL CIRCUIT

THIS CAUSE comes before the Court upon Defendant's Motion to Disqualify the Office of the State Attorney for the 17th Judicial Circuit (D-98). Having considered Defendant's motion, the State's Amended Response to the motion (SF-62), Defendant's Reply to the State's Response and the first and second attachments/exhibits thereto (D-102), Defendant's Affidavits in Support of his motion, Defendant's Supplemental Argument in Support of his motion and the exhibit thereto (D-103), the State's Motion to Strike Attachment/Exhibit and Second Attachment/Exhibit to Defendant's Reply (SF-65), the State's Response to Supplemental Argument in Support of his motion (SF-66), applicable law, and being otherwise fully advised in the premises, this Court finds as follows:

On August 30, 2019, Defendant filed the instant motion seeking to disqualify the Office of the State Attorney for the Seventeenth Judicial Circuit from prosecuting this case. As a basis for such relief, Defendant alleges that the State Attorney for this circuit, Mr. Satz, refuses to consider mitigation evidence in the context of reconsidering his decision to seek the death penalty, as allegedly evidenced by a conversation he had

with the lead defense attorney in this matter, Ms. McNeill. Ms. McNeill claims that in February, 2019, she asked Mr. Satz what other mitigating evidence he would consider in order to revisit his decision to seek the death penalty. In response, she claims that he asserted that there is no such mitigating evidence he would consider and that he will not waive the death penalty in this case. She alleges that he stated that Defendant is "evil; worse than Ted Bundy." Defendant claims that Mr. Satz's refusal to consider other mitigation in the context of what sentence to seek violates his due process rights and his right to be free from cruel and unusual punishment.

To start, this Court notes that, "[T]o disqualify the State Attorney's Office, a defendant must show substantial misconduct or 'actual prejudice.'" *Downs v. Moore*, 801 So. 2d 906 (Fla. 2001). This is a high bar. For example, even in a case where a state attorney improperly asked the clerk's office to assign a case to a particular division, the Florida Supreme Court found that actual prejudice was not shown. *See, Farina v. State*, 679 So. 2d 1151 (Fla. 1996). Furthermore, "[D]isqualification of a state attorney is appropriate 'only to prevent the accused from suffering prejudice that he otherwise would not bear.'"

Additionally, this Court notes that at the time of the alleged exchange between Ms. McNeill and Mr. Satz, the records of Defendant's mental health and educational records had already been provided to and reviewed by the Office of the State Attorney. The State noted in its Response that it had received and reviewed for mitigation purposes these records as well as the statements of all witnesses in its consideration of the death penalty. The allegations made by Defendant in the instant motion do not allege that mitigation was *never* considered in the State Attorney's ongoing decision to

seek the death penalty in this matter. Rather, it is only alleged that Mr. Satz was asked what *other* mitigating evidence he would consider in order to *revisit* his decision. To be clear, this discussion involved only *other* potential mitigating evidence, which at this juncture is purely speculative. No other specific mitigating evidence is referred to by the defense, nor was any such other specific mitigating evidence alleged to have been presented to Mr. Satz which he in turn explicitly refused to consider.

Assuming *arguendo* that Ms. McNeill's allegations of what took place during the conversation are true, Defendant has nevertheless failed to show any substantial misconduct, actual prejudice, or that Defendant would suffer prejudice that he otherwise would not bear, and as such, he is not entitled to the relief sought. Defendant first analogizes the facts of this matter with the facts and holding in *Ayala v. Scott*, 224 So. 3d 755 (Fla. 2017). In *Ayala*, the State Attorney for the Ninth Judicial Circuit announced that she would not be seeking the death penalty for *any* cases handled by her office. The Florida Supreme Court found that such a decision was not an exercise of prosecutorial discretion, since by adopting a 'blanket policy' for all eligible cases, such action amounted to the exercise of no discretion at all. In the instant case, there is no doubt that Mr. Satz is exercising prosecutorial discretion. Based on the alleged exchange Mr. Satz had with Ms. McNeill, he is exercising his prosecutorial discretion by undoubtedly basing his decision on *the specific facts of this case*.

Defendant additionally cites to a number of United States Supreme Court cases for the proposition that a person's uniqueness necessitates an individualized decision to determine the correct punishment in a given case. These opinions, including those in *Lockett v. Ohio*, 438 U.S. 586 (1978) and *Gregg v. Georgia*, 428 U.S. 153 (1972), held

that *the sentencer* must be able to consider mitigating circumstances as a basis for a sentence less than death. Furthermore, the United States Supreme Court opinions in *Woodson v. North Carolina*, 428 U.S. 280 (1976) and *Roberts v. Louisiana*, 428 U.S. 325 (1976), also cited by Defendant, held that mandatory death sentencing schemes for certain offenses were unconstitutional. All such holdings enunciated in these cases *will apply* in this matter, will be followed, and remain unaffected by Mr. Satz's decision to seek the death penalty for the seventeen charged first-degree murders in this case. If this matter reaches that stage, the mitigating evidence and circumstances presented, as required by law, will of course be taken into consideration when Defendant is *sentenced*. Citing to *Lockett*, Defendant asserts in his motion that "[N]o type of crime, regardless of its nature, automatically dictates that the death penalty is the correct punishment for an individual." This is a correct statement of law, and it is the reason why the ultimate sentencing decision is only made after the careful consideration of all circumstances, including the mitigation evidence presented by the defense.

The Florida Supreme Court has previously held that "[U]nder Florida's constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has *complete discretion* in deciding whether *and how to prosecute*." (Emphasis added.) *State v. Bloom*, 497 So. 2d 2, 3 (Fla. 1986). The Court went on to state:

> [W]e conclude that the circuit judge has no authority to interfere with the prosecutor's discretion in proceeding with this cause as a death penalty case. If we allowed the circuit judge to make pre-trial determinations of the death penalty's applicability, we would be modifying the death penalty's statutory scheme.

Id. at 3. In a subsequent case, *State v. Donner*, 500 So. 2d 532 (Fla. 1987), the Florida Supreme Court noted:

> . . . the Florida Constitution prohibits the judiciary from interfering with the prosecutor's decision to seek the death penalty in a first-degree murder case [and that] . . . the judiciary has authority to curb pretrial prosecutorial discretion 'only in those instances where impermissible motives may be attributed to the prosecution, such as bad faith, race, religion, or a desire to prevent the exercise of the defendant's constitutional rights.'

Id. at 533. Finally, as asserted by the First District Court of Appeal in *Barber v. State*, 564 So. 2d 1169 (Fla. 1st DCA 1990):

> [T]he type of discretion afforded the prosecutor under this law is constitutionally permissible, for it is no different from that afforded a prosecutor in other areas of the law. For example, courts have recognized a prosecutor's broad discretion in selecting who to prosecute, who to charge with a capital offense and whether to accept a plea to a lesser offense...

Id. at 1172. Defendant's disagreement with the individual prosecutor's use of discretion in this case does not mean that discretion is not being used. Discretion is highly subjective and defense counsel cannot know, even after the noted exchange with the State Attorney, every factor that went into and will continue to go into his decision to seek the death penalty. However, if the case reaches that point, Defendant can rest assured for, as constitutionally guaranteed, he will be able to present all mitigating evidence, and all would be considered before any punishment is decided or imposed.

Defendant additionally claims that the Office of the State Attorney in this circuit should be disqualified from prosecuting this case because it has allegedly contracted with a staffing agency for the purpose of retaining employees to participate in the trial of this case who would otherwise be prevented from working for the office due to the terms of the state retirement policies. Assuming *arguendo* this allegation is true, it does not provide a basis for the relief sought. Defendant does not have any right to choose the

prosecutor of his choice, and which attorneys the State Attorney chooses to participate in the prosecution of this matter is a decision that is wholly within the State Attorney's province. As such, Defendant is unable to demonstrate any prejudice that would result from such action. Futhermore, if there was any issue regarding this arrangement, it would be a matter to be resolved between the Office of the State Attorney and the Florida agency in charge of the retirement program.

Mr. Satz's use of prosecutorial discretion in this matter in making a decision on what sentence to seek was legally proper and within his sole province. No impermissible motives were demonstrated based on the allegations raised, and as such, this Court cannot and will not interfere with this executive responsibility. For the reasons set forth herein, Defendant has failed to demonstrate a legal basis for disqualification of the Office of the State Attorney for this circuit.

Finally, this Court notes that it does not feel it necessary to address the State's motion to strike the first and second attachments/exhibits to Defendant's reply to the State's response other than to note that while some of the points raised in the motion are well taken, this Court reviewed all materials and was able to give each its due weight in the consideration of the Motion to Disqualify.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion is hereby **DENIED**.

DONE AND ORDERED on this 26 day of September, 2019, in Chambers, Fort Lauderdale, Broward County, Florida.

ELIZABETH A. SCHERER
CIRCUIT JUDGE

Copies furnished to:

Office of the State Attorney

Office of the Public Defender