

APPENDIX G

DIALOG FOR WAIVER OF JURY IN PENALTY PHASE

The Court: This is the case of State of Florida v. _____. I understand this is a defense motion to waive a jury for the penalty phase of this case. (Defense Attorney), is that what the defendant wants to do?

Defense Attorney: Yes, your honor.

The Court: Mr. (Defendant), raise your right hand and be placed under oath by the clerk.

The Court: You are (Defendant's name)?

Defendant: Yes.

The Court: You have heard your lawyer say you would like to waive a jury for the penalty phase of this case, is that what you want to do?

Defendant: Yes.

The Court: I need to advise you that you have the right to have a jury of 12 persons hear matters of aggravation limited by statute and any matters of mitigation you wish to present. You have the right to be represented by an attorney during the penalty phase hearing. You are entitled to testify before the jury at the hearing or to remain silent and your silence cannot be held against you. You have the right to the subpoena power of the court to compel the attendance of witnesses to testify at the hearing on your behalf.

If the jury recommends by a vote of at least six to six that you be given a life sentence, I will not override that recommendation and will sentence you to life in prison without the possibility of parole.

Assuming you received a full adversarial hearing before the jury with the presentation of evidence of aggravating and mitigating circumstances and the jury recommends that you be sentenced to death I must give that recommendation "great weight" although the final decision on the penalty to be imposed is my responsibility alone. Do you understand that?

Defendant: Yes.

The Court: Has anyone, your lawyer, your pastor, your relatives or anyone else given you any assurances that your decision to waive a jury for the penalty phase will result in any leniency whatsoever?

Defendant: No.

The Court: Do you understand that if I allow you to waive a jury for the penalty phase you will not be allowed to change your mind at a later date?

Defendant: Yes.

The Court: Are you sure that you want to waive a jury for the penalty phase?

Defendant: Yes, I am sure.

I have carefully considered your response to my questions and find that your

decision to waive a jury for the penalty phase of this case has been made freely and voluntarily and the case will proceed to the penalty phase without a jury.