

BALANCING THE SIXTH AMENDMENT ON THE SCALES OF
JUSTICE: IS THE LAWYER OR THE CLIENT IN CONTROL OF
THE PROCEEDINGS?

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After declaring its independence from England on July 4, 1776, the United States began drafting a written expression of its desire to create a national government and ratified the Articles of Confederation on March 1, 1781. However, in order to create a stronger central government, the Articles of Confederation were replaced with the United States Constitution on March 4, 1789. Soon thereafter, the First United States Congress and the States ratified the first ten amendments to the United States Constitution on December 15, 1791.¹ These amendments are routinely referred to as the “Bill of Rights.”² Authored by James Madison, the Bill of Rights were created in an effort to guarantee individual freedoms, limit federal power, and reserve power to the States.³ The United

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¹ CONG. RESEARCH SERV., LIBRARY OF CONG., S. Doc. No. 103–6, THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION 25 n.2 (1996).

² *Miranda v. Arizona*, 384 U.S. 436, 459 (1966) (quoting *Boyd v. United States*, 116 U.S. 616, 635 (1886)) (“Those who framed our Constitution and the Bill of Rights were ever aware of subtle encroachments on individual liberty. They knew that ‘illegitimate and unconstitutional practices get their first footing . . . by silent approaches and slight deviations from legal modes of procedure.’”).

³ The Tenth Amendment to the U.S. Constitution provides: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S. CONST. amend. X; see *United States v. Darby*, 312 U.S. 100, 124 (1941) (“The [Tenth] [A]mendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers.”); *Kansas v. Colorado*, 206 U.S. 46, 90 (1907) (“[The Tenth Amendment’s] principal purpose was not the distribution of power between the United States and the States, but a reservation to the people of all powers not granted. The preamble of the

States Constitution has been the legal guidepost of every American citizen's rights for over two hundred years. Impressively, the plain language of the Constitution is as clear to the modern day practitioner as it was in the eighteenth century. However, the privileges granted by the Bill of Rights are routinely debated in state and federal courts.⁴ As seemingly novel issues are litigated in courtrooms throughout the fifty states, the judicial branch has been tasked with interpreting the Constitution's controlling text.

The Sixth Amendment of the United States Constitution provides that every citizen arrested for a criminal offense has the right to utilize a defense attorney, who may provide legal representation throughout the term of the proceedings.⁵ However, if a criminal defendant facing severe penalties chooses to accept the services of an attorney, the defendant forfeits his ability to make certain decisions that affect the course and nature of his criminal defense.⁶

In *Puglisi v. State*, the Florida Supreme Court recently interpreted the Sixth Amendment to the United States Constitution to hold that a criminal defendant cannot decide for himself the manner in which he will present his criminal defense.⁷ In fact, *Puglisi* establishes that every defendant who retains the services of an attorney must relinquish a great deal of decision-making authority in his criminal case.⁸

Vincent Puglisi was a criminal defendant who was charged with the brutal murder of Alan Shalleck.⁹ Shalleck was a seventy six

Constitution declares who framed it, 'we the people of the United States,' not the people of one State, but the people of all the States, and Article X reserves to the people of all the States the powers not delegated to the United States. The powers affecting the internal affairs of the States not granted to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, and all powers of a national character which are not delegated to the National Government by the Constitution are reserved to the people of the United States.").

⁴ See Joyce A. McCray Pearson, *The Federal and State Bills of Rights: A Historical Look at the Relationship Between America's Documents of Individual Freedom*, 36 HOW. L.J. 43, 69–70 (1993).

⁵ The Sixth Amendment to the U.S. Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence [sic]."

U.S. CONST. amend. VI.

⁶ See *Puglisi v. State*, 112 So. 3d 1196, 1206–07 (Fla. 2013).

⁷ *Id.*

⁸ *Id.* at 1206.

⁹ *Id.* at 1198.

year old man who had spent many years in show business and had show business friends.¹⁰ Jerry Stiller, who played Frank Costanza on the sitcom *Seinfeld* and is the father of the actor Ben Stiller, was a college friend of Shalleck and had spoken on the telephone with Shalleck on the evening of the murder.¹¹ Additionally, Shalleck's uncle presided over the wedding of Jerry Stiller.¹² However, Shalleck's real claim to fame was his collaboration with the author of *Curious George*, Margaret Rey, which resulted in the creation of an animated series for television in the 1980s.¹³ Additionally, Shalleck co-authored twenty eight *Curious George* books with Rey.¹⁴ Unfortunately, Shalleck mismanaged his income into personal bankruptcy and moved into a trailer in Boynton Beach, Florida.¹⁵

Puglisi and Rex Ditto answered a personal ad in a newspaper placed by Shalleck.¹⁶ Subsequently, Puglisi and Ditto were invited into Shalleck's residence and proceeded to beat, choke, and stab Shalleck.¹⁷ Shalleck "died from multiple stab wounds and blunt head trauma, having received eighty-three blunt force injuries and thirty-seven sharp force injuries."¹⁸ Puglisi and Ditto covered Shalleck in trash bags and left Shalleck's body on his driveway.¹⁹ Additionally, Puglisi and Ditto stole Shalleck's jewelry, coins, and checkbook.²⁰

Puglisi and Ditto were both charged with first degree murder and robbery, which made each defendant eligible for the death penalty.²¹ Ditto pled guilty to his criminal charges and received a life

¹⁰ See Amy Guthrie, *Cartoon Creator's Grisly Murder*, MIAMI NEW TIMES, Feb. 7, 2008, <http://www.miaminewtimes.com/2008-02-07/news/cartoon-creator-s-grisly-murder/>. Shalleck was involved in the production of long-running television programs, such as *Winky Dink and You*, *Pixanne*, and *Captain Kangaroo*.

¹¹ *Id.*

¹² *Id.*; see also JERRY STILLER, MARRIED TO LAUGHTER: A LOVE STORY FEATURING ANNE MEARA 301 (2000) (recounting that Shalleck was able to land Stiller a spot on the television show *The Price is Right*, which resulted in Stiller winning a turkey).

¹³ See Alan Shalleck; Brought Curious George to TV, WASH. POST, Feb. 9, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/08/AR2006020802402.html>.

¹⁴ See Guthrie, *supra* note 10.

¹⁵ *Id.*

¹⁶ Missy Diaz, *Defendant Narrates Knife Slaying*, SUN SENTINEL, June 19, 2007, http://articles.sun-sentinel.com/2007-06-19/news/0706190042_1_alan-shalleck-confession-knife.

¹⁷ *Id.*

¹⁸ Puglisi v. State, 112 So. 3d 1196, 1198 (Fla. 2013).

¹⁹ *Id.*

²⁰ Diaz, *supra* note 16; Guthrie, *supra* note 10.

²¹ Puglisi, 112 So. 3d at 1198.

sentence.²² Puglisi requested a jury trial and was found guilty.²³ He avoided the death penalty because the trial judge believed that Puglisi should receive the same life sentence that Ditto received.²⁴

Puglisi and Ditto were initially identified as suspects in Shalleck's murder when law enforcement officers discovered evidence of Puglisi's prior phone calls to Shalleck.²⁵ Police detectives met with Puglisi and informed him of his *Miranda* rights.²⁶ During Puglisi's initial interview, he claimed to have no knowledge of the Shalleck murder and inferred that Ditto may have been involved in Shalleck's demise.²⁷ However, during a second interview, Puglisi admitted to participating in the murder of Shalleck.²⁸

During Puglisi's murder trial, his defense attorneys wrestled with the decision of whether or not to have Ditto testify on behalf of Puglisi.²⁹ Puglisi's attorney represented to the court that "we learned that Mr. Ditto is prepared to testify that Mr. Puglisi did nothing, that he—Mr. Ditto is the sole one responsible for the death of Mr. Shalleck and that he lied in the past [and implicated Puglisi] because of [Ditto's] fear of the death penalty."³⁰ Puglisi's defense attorney and the prosecutor both represented to the court that Ditto had verbally vacillated, to attorneys and other witnesses, regarding whether Puglisi was guilty or innocent of Shalleck's murder.³¹ Due to Ditto's inconsistent statements and the probability of his extensive impeachment on the witness stand, Puglisi's defense attorneys represented to the court that they would not present Ditto's testimony to the jury.³² However, Puglisi insisted to the trial

²² Guthrie, *supra* note 10.

²³ *Puglisi*, 112 So. 3d at 1203.

²⁴ Nancy L. Oth, *Man Gets Life Sentence in Killing*, SUN SENTINEL, July 17, 2008, http://articles.sun-sentinel.com/2008-07-17/news/0807160472_1_alan-shalleck-sentence-curious-george.

²⁵ *Puglisi*, 112 So. 3d at 1198.

²⁶ *Id.*; see *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) ("As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently.")

²⁷ *Puglisi*, 112 So. 3d at 1198.

²⁸ *Id.* at 1198–99.

²⁹ *Id.* at 1199.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 1199–1200.

court that he wished to have Ditto testify as a defense witness.³³ Puglisi's defense attorneys argued that preventing Ditto's testimony was a "strategic decision" by the defense team.³⁴ The trial court chose to accept the strategy of Puglisi's defense attorneys and Ditto was not allowed to testify to the jury.³⁵

Puglisi appealed his criminal conviction to Florida's Fourth District Court of Appeal and argued that it was error for the trial court to refuse to allow Puglisi to "call Ditto as a witness despite defense counsel's determination that calling Ditto would not be of benefit to Puglisi's case."³⁶ The appellate court dismissed Puglisi's argument and affirmed his criminal conviction and prison sentence.³⁷ Further, the appellate court held that the decision regarding "which witnesses should be called by the defense is not a fundamental decision to be made by the defendant himself," explaining that "such a decision is better made by a professional advocate who is considering not just what the anticipated testimony might be, but issues of credibility and potential harm to the defendant as well."³⁸ Additionally, the appellate court relied upon the United States Eleventh Circuit Court of Appeals decision in *United States v. Burke*,³⁹ which held that "a defendant has the ultimate authority to make fundamental decisions for his case . . . [which are] whether to plead guilty, waive a jury, testify in his or her own behalf or to take an appeal."⁴⁰ Puglisi appealed the District Court of Appeal's decision to the Florida Supreme Court.⁴¹

In every appeal of a trial court decision in Florida, there is always a threshold question of whether an appellate court has jurisdiction. The State of Florida has twenty judicial circuits in which all trial

³³ *Id.* at 1201–03. Puglisi argued to the court "[a]s far as my attorneys are concerned, it's hopeless, I'm gonna—they've already got me hung, I'm losing the case. That's why I figured, well, if I have nothing to lose, that's why I want to call Mr. Ditto, because that's maybe my one last chance of hope, you know, if he'll come clean and be honest and that's what's going on." *Id.* at 1202.

³⁴ *Id.* at 1203.

³⁵ *Id.* at 1202. Puglisi's attorneys argued to the court that Puglisi agreed that his defense attorneys could concede to the jury in closing arguments that Puglisi was guilty of two misdemeanor crimes of culpable negligence and theft. *Id.* at 1202–03. However, Puglisi told the court that, "I didn't talk to them about any of this [and] I still want Mr. Ditto to come [and testify]." *Id.* at 1203.

³⁶ *Puglisi v. State*, 56 So. 3d 787, 792 (Fla. Dist. Ct. App. 2010).

³⁷ *Id.* at 794.

³⁸ *Id.* at 793.

³⁹ *United States v. Burke*, 257 F.3d 1321, 1323 (11th Cir. 2001).

⁴⁰ *Id.* at 792 (quoting *Burke*, 257 F.3d at 1323).

⁴¹ *Puglisi v. State*, 112 So. 3d 1196, 1197 (Fla. 2013).

level proceedings are conducted.⁴² Litigants who wish to appeal a trial court order must file an appeal in one of the five district courts of appeal.⁴³ The ultimate appellate state court is the Florida Supreme Court.⁴⁴ Importantly, it is not always possible for a litigant to appeal a district court of appeal decision to the Florida Supreme Court.

The Florida Constitution has granted only limited jurisdiction to the Supreme Court to hear appeals from a district court of appeal. The five categories of jurisdiction are (1) mandatory appellate jurisdiction; (2) discretionary review jurisdiction; (3) discretionary original jurisdiction; (4) exclusive jurisdiction; and (5) advisory opinions.⁴⁵ Many of these jurisdictional categories are very specific and limited in scope, such as “mandatory appellate” jurisdiction, which is limited to appeals of death penalty cases, validation of public revenue bonds, Florida Public Service Commission decisions, and a district court of appeal’s declaration of the invalidity of a statute or constitutional provision.⁴⁶ Accordingly, many appellants believe that the only viable option to obtain Supreme Court review would be to proceed under the catch-all category of “discretionary review” jurisdiction.

The Florida Supreme Court may review district courts of appeal opinions which contain a written decision that details the court’s reasoning and which “expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.”⁴⁷ Fundamentally, the conflicting opinions “must appear within the four corners of the majority decision.”⁴⁸ Specifically, “the opinion must contain a statement or citation effectively establishing a point of law upon which the decision rests.”⁴⁹ Therefore, unless an appellant can substantially argue that the holding in his or her case is in irreconcilable conflict with another jurisdiction’s opinion or that the district court of appeal erroneously misapplied case precedent, the chance of

⁴² FLA. CONST. art. V, § 5.

⁴³ *Id.* § 4.

⁴⁴ *Id.* § 3.

⁴⁵ *See id.* § 3(b) (stating the extent of the Supreme Court’s jurisdiction).

⁴⁶ *Id.* § 3(b)(1)–(3); *see, e.g.*, *Trepal v. State*, 754 So. 2d 702, 707 (Fla. 2000) (quoting *State v. Matute-Chirinos*, 713 So. 2d 1006, 1008 (Fla. 1998)) (“[I]n addition to our appellate jurisdiction over sentences of death, we have exclusive jurisdiction to review all types of collateral proceedings in death penalty cases.”).

⁴⁷ FLA. CONST. art. V, § 3(b)(3); *see also* FLA. R. APP. P. 9.030(2)(A)(iv).

⁴⁸ *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986).

⁴⁹ *Fla. Star v. B.J.F.*, 530 So. 2d 286, 288 (Fla. 1988).

obtaining “discretionary review” is severely limited.⁵⁰

In this case, Puglisi appealed the decision of the Fourth District Court of Appeal to the Florida Supreme Court “on the ground that it expressly and directly conflicts with a decision of the Fifth District Court of Appeal in *Cain v. State* . . . on a question of law. The Fourth District subsequently certified conflict with the Fifth District’s decision in *Cain*.”⁵¹ The Florida Supreme Court found that it had jurisdiction to hear Puglisi’s appeal.⁵²

“Puglisi contend[ed] that a competent defendant, especially one facing the death penalty, should not be deprived of the right to make tactical decisions merely because trial counsel disagrees.”⁵³ Additionally, Puglisi relied on the Florida Supreme Court’s prior decision in *Blanco v. State*,⁵⁴ which he argued authorized a criminal defendant to be the ultimate decision maker in a criminal case.⁵⁵

In *Puglisi*, the Florida Supreme Court relied upon the United States Supreme Court finding in *Wainwright v. Sykes*⁵⁶ “that the accused has the ultimate authority to make certain fundamental decisions regarding the case, as to whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal.”⁵⁷ However, the Florida Supreme Court also recognized that an attorney is entitled to use his professional judgment, after consulting and considering defense strategy with his client,⁵⁸ and can refuse to

⁵⁰ *Id.* (“In effect, [it] is a limiting principle dictated to this Court by the people of Florida. While our subject-matter jurisdiction in conflict cases necessarily is very broad, our discretion to exercise it is more narrowly circumscribed by what the people have commanded.”).

⁵¹ *Puglisi v. State*, 112 So. 3d 1196, 1197 (Fla. 2013) (citing *Cain v. State*, 565 So. 2d 875, 876 (Fla. Dist. Ct. App. 1990)).

⁵² *Id.*; see FLA. CONST. art. V, § 3(b)(3), (4).

⁵³ *Puglisi*, 112 So. 3d at 1204; see U.S. CONST. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor.”) (emphasis added); FLA. CONST. art. I, § 16(a) (“In all criminal prosecutions the accused . . . shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses, to be heard in person, by counsel or both, and to have a speedy and public trial by impartial jury in the county where the crime was committed.”) (emphasis added).

⁵⁴ *Blanco v. State*, 452 So. 2d 520 (Fla. 1984).

⁵⁵ See *Puglisi*, 112 So. 3d at 1204; *Blanco*, 452 So. 2d at 524 (“The trial court finally ruled in favor of allowing appellant to present to the jury whatever evidence appellant felt was beneficial. Under these circumstances, the trial court did not err in allowing appellant to present witnesses. The ultimate decision is the defendant’s.”).

⁵⁶ *Wainwright v. Sykes*, 433 U.S. 72 (1977).

⁵⁷ *Puglisi*, 112 So. 3d at 1204 (emphasis omitted) (quoting *Jones v. Barnes*, 463 U.S. 745, 751 (1983)); see *Wainwright*, 433 U.S. at 93 n.1 (Burger, C.J., concurring); R. REGULATING FLA. BAR. 4-1.2(a) (“In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial, and whether the client will testify.”); see MODEL RULES OF PROF’L CONDUCT R. 1.2(a) (2012).

⁵⁸ *Puglisi*, 112 So. 3d at 1205; *Strickland v. Washington*, 466 U.S. 668, 690–91 (1984).

raise many issues requested by the defendant.⁵⁹

The Florida Supreme Court determined in *Puglisi* that it is necessary to provide lawyers with substantial power when representing a client:

We hold that the decision to present witnesses is not a fundamental decision resting exclusively with a criminal defendant when he or she is represented by counsel. Defense counsel must have the ultimate authority in exercising his or her client's constitutional right to present witnesses as such is a tactical, strategic decision within counsel's professional judgment. Therefore, if a criminal defendant disagrees with his or her attorney as to whether to have a witness testify at trial, it is the defense counsel who has the ultimate authority on the matter so long as he or she continues to represent the defendant. The decision ultimately made by counsel is and must be binding on his or her client. A contrary holding would 'seriously undermine[] the ability of counsel to present the client's case in accord with counsel's professional evaluation,' 'disserve the very goal of vigorous and effective advocacy,' and likely pave the way for strategic decisions ordinarily entrusted by trained counsel to be delegated to the accused.⁶⁰

Relying on *United States v. Burke*,⁶¹ the Florida Supreme Court argued that it must defend the adversarial system of justice by allowing the attorney to retain the ultimate decision-making authority over the defendant's demands, notwithstanding the

⁵⁹ *Puglisi*, 112 So. 3d at 1204 (citing *Jones v. Barnes*, 463 U.S. 745, 754 (1983)) ("[T]he Sixth Amendment does not require appellate attorneys to press every non-frivolous issue that the criminal defendant requests to be raised on appeal so long as counsel uses professional judgment in deciding not to raise those issues."); see *Taylor v. Illinois*, 484 U.S. 400, 418 (1988) ("[T]he lawyer has—and must have—full authority to manage the conduct of the trial. The adversary process could not function effectively if every tactical decision required client approval.").

⁶⁰ *Puglisi*, 112 So. 3d at 1206–07 (footnotes omitted) (citing *Faretta v. California*, 422 U.S. 806, 820 (1975)) (quoting *Jones*, 463 U.S. at 751, 754).

⁶¹ *United States v. Burke*, 257 F.3d 1321, 1323 (11th Cir. 2001) ("Defense counsel in a criminal trial is more than an adviser to a client with the client's having the final say at each point. He is an officer of the court and a professional advocate pursuing a result—almost always, acquittal—within the confines of the law; his chief reason for being present is to exercise his professional judgment to decide tactics. . . . When the defendant is given the last word about how his case will be tried, the defendant becomes his own trial lawyer. If we add to the list of circumstances in which a defendant can trump his counsel's decision, the adversarial system becomes less effective as the opinions of lay persons are substituted for the judgment of legally trained counsel. The sound functioning of the adversarial system is critical to the American system of criminal justice. We intend to defend it.").

defendant's fundamental rights provided in *Wainwright*.⁶² Additionally, the Florida Supreme Court has previously determined that "there is no constitutional right for hybrid representation at trial"⁶³ and that a defendant cannot act as legal co-counsel in his criminal case.⁶⁴ To the extent that the Florida Courts in *Blanco* and *Cain* disagreed with the antecedent decision issued by the United States Supreme Court in *Wainwright*, the Florida Supreme Court receded from *Blanco* and disapproved of *Cain*.⁶⁵ Importantly, the Florida Supreme Court asserted that a defendant who believes that he received inadequate representation from his attorney, retains the option of fighting his conviction by filing an "ineffective assistance of counsel" claim, which may result in a new trial with a new defense attorney.⁶⁶

The Florida Supreme Court held in *Puglisi* that a criminal defendant does not have the authority to make strategic decisions in his case and that it is the defense counsel that "has the final authority as to whether or not the defense will call a particular witness to testify at the criminal trial."⁶⁷ In a unanimous decision, the Florida Supreme Court found that the Sixth Amendment grants defendants only four fundamental rights in a criminal case: "whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal."⁶⁸ A defendant who chooses to represent himself would have free reign to proceed in any direction he believes would assist his defense. Otherwise, strategic decisions that a

⁶² *Puglisi*, 112 So. 3d at 1205–06; *Wainwright v. Sykes*, 433 U.S. 72, 93 n.1 (1977).

⁶³ *Mora v. State*, 814 So. 2d 322, 328 (Fla. 2002).

⁶⁴ See *Sheppard v. State*, 17 So. 3d 275, 279 (Fla. 2009); *State v. Tait*, 387 So. 2d 338, 340 (Fla. 1980).

⁶⁵ *Puglisi*, 112 So. 3d at 1207–08; see *Wainwright*, 433 U.S. at 93 (Burger, C.J., concurring) ("Once counsel is appointed, the day-to-day conduct of the defense rests with the attorney. He, not the client, has the immediate—and ultimate—responsibility of deciding if and when to object, *which witnesses, if any, to call*, and what defenses to develop. Not only do these decisions rest with the attorney, but such decisions must as a practical matter, be made without consulting the client. The trial process simply does not permit the type of frequent and protracted interruptions which would be necessary if it were required that clients give knowing and intelligent approval to each of the myriad tactical decisions as a trial proceeds.") (emphasis added) (footnotes omitted).

⁶⁶ *Puglisi*, 112 So. 3d at 1209 (Pariante, J., concurring) ("Rather, the failure of defense counsel to call witnesses requested by the defendant should be evaluated in a postconviction setting regarding whether the defense counsel made a reasonable strategic determination, after examining all applicable considerations."); see FLA. R. CRIM. P. 3.850 (2013) (providing an additional two years to the statute of limitations for counsel's failure to file a motion to vacate, set aside, or correct a sentence).

⁶⁷ *Puglisi*, 112 So. 3d at 1197.

⁶⁸ *Id.* at 1205 (quoting *Jones v. Barnes*, 463 U.S. 745, 751 (1983)).

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defendant's attorney chooses to make in a trial, are not within the control of a criminal defendant.