

No. _____

TERM 2018

IN THE

SUPREME COURT OF THE UNITED STATES

MIGUEL PEDRAZA— PETITIONER

VS.

JULIE L. JONES, SECRETARY FLORIDA
DEPARTMENT OF CORRECTIONS, ET AL., — RESPONDENT

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

Miguel Pedraza, DC# B06713
Southbay Correctional Facility
Post Office Box 7171
Southbay, Florida 33493
(Petitioner *pro se*)

QUESTION(S) PRESENTED

ISSUE ONE

THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT ERRED WHEN IT DENIED PETITIONER'S CERTIFICATE OF APPEALABILITY (COA) APPLICATION BASED ON THE CONCLUSION, THAT PETITIONER HAS FAILED TO MAKE A SUBSTANTIAL SHOWING OF A DENIAL OF A CONSTITUTIONAL RIGHT PURSUANT TO 28 U.S.C. § 2253(c) (2).

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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The decision of the United States Court of Appeals for the Eleventh Circuit denying petitioner a Certificate of Appealability (COA), and Leave to Proceed in Forma Pauperis was rendered on November 29, 2017. Reconsideration denied, March 12, 2017.

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The decision of the Florida's United States Middle District Court rendered a final opinion and order denying Petitioner's petition under Title 28 U.S.C. § 2254, for

**Writ of Habeas Corpus, Certificate of Appealability (COA), and Leave to Proceed in
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner Miguel Pedraza, DC# B06713, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at 2017 U.S. Dist. LEXIS 50928
or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.
☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Third District Appeals court appears at Appendix _____ to the petition and is

☐ reported at _____: or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was November 29, 2017.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition of rehearing was denied by the United States Court of Appeals on the following date: March 12, 2018 and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case _____ A copy of that decision appears at Appendix _____.

☐ A timely petition of rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to an including _____ (date) on _____ (date) in Application No. ____ A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner intends to rely upon the following constitutional provisions, treaties, statutes, rules, ordinances and regulations: Fifth, Sixth, and Fourteenth Amendment to the United States Constitution.

STATEMENT OF CASE AND FACTS

It was alleged that Petitioner, Miguel Pedraza and his co-defendants shortly after midnight on November 24, 2005, unlawfully entered the house located at 18060 Nalle Road in North Fort Myers, Florida. According to the record Petitioner was driving the vehicle that transported the individuals to the Nalle Road residence with the express purpose of robbing the men inside. The owner of the Nalle Road residence was Petitioner uncle, Rafael Tinco. Tinco used the North Fort Myers residence to house construction workers employed by his Miami based construction company. During the course of the robbery shots were fired and one man, Jose Gomez, was killed.

On February 1, 2006, the Grand Jury for the Twentieth Judicial Circuit in and for Lee County, Florida, indicted Petitioner, Miguel Pedraza on charges of felony murder in the death of Jose Gomez in violation of Florida Statutes § 782.04(1), 775.087(2)(a), and 777.011.

On January 23, 2009, the jury found Pedraza guilty of felony murder. Petitioner filed a motion for a new trial on April 2, 2009, which was denied by the trial court on October 13, 2009.

Petitioner appealed the trial court's denial of his motion for a new trial on October 19, 2009. Florida's Second District Court of Appeals *per curiam* affirmed the trial court's ruling on July 1, 2011.

On April 27, 2012, Petitioner filed a motion to correct illegal sentence pursuant to Florida Rules of Criminal Procedure 3.800. He was ordered to file an

amended motion because his original motion was not filed under oath. On October 16, 2013, he filed his amended motion. The rule 3.800 motion was denied on October 16, 2013.

On July 23, 2013, Petitioner filed a motion for post-conviction relief pursuant to Fla. R. Crim. P. 3.850. That motion was denied on March 17, 2014. The Second District Court of Appeals affirmed the denial without opinion and the appeals court's Mandate was issued on May 18, 2016. *Pedraza v. State*, 190 So. 3d 72 (Fla. 2d DCA 2016).

Petitioner filed his § 2254 petition for writ of habeas corpus in the Florida's United States Middle District Court's on May 5, 2016, when he handed it over to prison authorities for mailing in accordance with the mailbox rule. He was assigned Case No. 2:16-CV-338-FTM-29MRM.

On April 04, 2017, United States District Judge John E. Steel rendered an opinion and order dismissing the Florida Attorney General from this action, and denied in part and dismissed in part petitioner's § 2254. Ground One, denied on the merits. Grounds Two and Three dismissed as procedurally defaulted, and Ground Three denied alternatively on the merits. Petitioner was not entitled to a certificate of appealability, and he was denied to appeal in forma pauperis.

Petitioner timely filed a Notice of appeal, Leave to Proceed in Forma Pauperis, and for issuance of a COA to the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit denied issuance of a COA and Leave to

Proceed in Forma Pauperis, and his reconsideration motion was denied, March 12, 2018.

This certiorari follows.

REASON FOR GRANTING PETITION

THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT ERRED WHEN IT DENIED PETITIONER'S CERTIFICATE OF APPEALABILITY (COA) APPLICATION BASED ON THE CONCLUSION, THAT PETITIONER HAS FAILED TO MAKE A SUBSTANTIAL SHOWING OF A DENIAL OF A CONSTITUTIONAL RIGHT PURSUANT TO 28 U.S.C. § 2253(c)(2).

Petitioner sought a COA. The Eleventh Circuit Court of Appeals denied his COA application after deciding that he failed to make a substantial showing of a denial of a constitutional right pursuant to 28 U.S.C. § 2253(c) (2). *Slack v. McDaniel*, 529 U.S. 473, 478, 120 S. Ct. 1595, 1600-01, 146 L. Ed. 2d 542 (2000).

Petitioner raised the following three grounds in his § 2254 petition:

A. Ground One: Ineffective Assistance of Counsel

In Ground One, Pedraza avers that trial counsel should have argued that Reed's testimony was biased because she was a suspect in a second robbery/homicide after the Nalle Road robbery/homicide at issue in Pedraza's case. Although Reed was questioned about the second robbery/homicide, she was never charged. Pedraza states that during her initial interview and subsequent interviews Reed "continuously exculpated" him. (Doc. #1, at 5). Pedraza contends that it was only after Reed was questioned and implicated in a second robbery/homicide investigation-approximately a year and a half after the instant case that Reed agreed to enter into a plea deal with the State of Florida.

After Reed made her deal with the State Attorney's Office, she then changed her position regarding Pedraza and implicated him in the November 24, 2005 murder of Gomez. Pedraza argues that since Reed was never charged in the second

robbery/homicide investigation, it should be presumed that she received a deal and her testimony would be biased against him.

Pedraza argues that trial counsel tried to introduce Reed's bias caused by her being dropped as a suspect in the second robbery/homicide at his trial, but was prevented by the trial court. At the trial, trial counsel did indeed attempt to question Reed about her potential involvement in a second robbery/homicide. Trial counsel argued that exposing Reed as a suspect in the second, but unrelated robbery/homicide would demonstrate that her testimony was tainted with bias. However, before trial counsel could pursue that line of questioning, the prosecutor objected. After a bench conference, the trial court sustained the prosecutor's objection and Pedraza's trial counsel's attempt to discredit Reed due her possible participation in a second robbery homicide was barred.

Pedraza argues that he was prejudiced because trial counsel did not attempt to argue that Reed's testimony was biased due to the fact that no charges were pressed against her in the second robbery/homicide. Pedraza wanted counsel to insinuate that Reed was not charged because she cut a plea deal and agreed to testify against him in order to escape prosecution in the second robbery/homicide.

Pedraza contends that since Reed was the only witness who could tie him to the crime, he should have been allowed to probe her bias on cross examination. Consequently, Reed argues that trial counsel was ineffective because she did not bring up Reed's obvious bias based upon the fact that she cut a deal with the State of Florida which led to her not being charged in the second robbery/ homicide.

The post-conviction court unreasonably denied Pedraza's Rule 3.580 claim finding that Pedraza could not satisfy both requirements under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Pedraza alleges the error and the prejudice are manifest in the record. The post-conviction court's determined that trial counsel attempted to challenge Reed's credibility by insinuating that she was not charged in the second robbery/homicide because she agreed to testify against Pedraza. The State objected to that line of questioning. The trial court sustained the State's objection, and thereafter Pedraza's trial counsel did not pursue Reed's connection to the second/robbery homicide.

Upon review, the post-conviction court held that trial counsel was not deficient in her response to the prosecutor's objection because the second robbery/homicide was inadmissible and the trial court correctly sustained the State's objection. (Ex. 22, at 1072). The post-conviction court noted that Pedraza's trial counsel did cross examine Reed at trial and challenged her credibility on matters related to Pedraza's case.

Pedraza's trial counsel was ineffective under *Strickland*. Pedraza proved his trial counsel was ineffective, and that trial counsel's performance was deficient and that her deficient performance prejudiced his case. Here, the trial court ruled that use of Reed's possible involvement in a second robbery/homicide-a crime for which she was never charged-would violate Florida law. At the bench conference on the State's objection to that line of questioning, trial counsel vigorously argued for the inclusion of the second/robbery homicide in order to undermine Reed's credibility.

Once the trial court refused to allow that line of questioning, trial counsel did cross examine Reed about the terms of her plea deal and inconsistencies between her trial testimony and her previous contradictory statements regarding the Nalle Road robbery/homicide.

When questions regarding the second robbery/homicide were barred, Pedraza's trial counsel attacked Reed's credibility within the parameters allowed by the trial court's rulings. As such, trial counsel's performance did fall below an objective standard of reasonableness under prevailing professional norms and thus, her performance was deficient because the trial court barred evidence to impeach Reed's credibility.

Moreover, Pedraza has demonstrated prejudice because his trial counsel was only allowed the opportunity to cross examine Reed about her plea deal. Pedraza was prejudiced by trial counsel's actions because the outcome of the case could have been different had the second robbery/homicide been admitted. Thus, Pedraza's claim for ineffective assistance of counsel should have been granted. Pedraza suffers from a deprivation of his constitutional right to a fair and impartial trial because trial counsel assistance was so ineffective as to have impinged upon the fundamental fairness of the trial and sentence in violation of the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

The state court's factual finding involved an unreasonable application of clearly established Federal law, and resulted in a decision that was based on an

unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

The trial court made an unreasonable decision since the error is so egregiously prejudicial as to vitiate the fundamental fairness of the entire trial. The Court of Appeal's review should not have rested on the ground that Pedraza's has failed to make a substantial showing of a denial of a constitutional right pursuant to 28 U.S.C. § 2253(c) (2) as to this ground for relief.

B. Ground Two: Denial of Jury Instruction of Duress and Accessory After the Fact

In Ground Two, Pedraza alleged that he was denied his constitutional right to due process and a fair and impartial trial because the court did not allow a requested jury instruction of duress and accessory after the fact. Pedraza avers that he was not complicit in the robbery/homicide, but that he was merely at the scene, and was under the influence of narcotics and a dominant co-defendant. Pedraza further claims that his mere presence at the scene is not sufficient to establish that he was a principal to the crime.

Pedraza acknowledges that he has never raised his claim challenging the State court exclusion of a requested jury instruction of duress and accessory after the fact. (Doc. #1, at 7). Thus Ground Two was not exhausted in state court, but Pedraza argues should be allowed to raise it now because he is not an attorney and did not understand the rules and procedures for filing a direct appeal. Thus, he claims he should be allowed to bring an unexhausted claim for the first time on federal habeas review.

Pedraza argues that under *Martinez v. Ryan*, 566 U.S. 1, 132 S. Ct. 1309, 182 L. Ed. 2d 272 (2012) Ground Two should not be procedurally barred as unexhausted because he did not have the knowledge to aid him in his initial collateral review. In *Martinez*, the United States Supreme Court held that “[w]here, under state law, ineffective-assistance-of-trial-counsel claims must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing those claims if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.” *Id.* Pedraza’s *Martinez* argument does not lack merit.

It was error to dismiss Ground Two as both unexhausted and procedurally barred. The Eleventh Circuit denied Pedraza’s his COA application after deciding that jurist of reason could not dispute that the District Court’s procedural ruling was correct. Petitioner alleged that jurist of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurist of reason would find debatably whether the district and appeals court was correct in its procedural ruling.

Pedraza suffers from a deprivation of his constitutional right to a fair and impartial trial because trial counsel assistance was so ineffective as to have impinged upon the fundamental fairness of the trial and sentence in violation of the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution.

The Eleventh Circuit decision was based solely on its conclusion rooted in the District Court finding, that petitioner failed to show cause or prejudice in

connection with his procedurally defaulted claim or a miscarriage of justice based on new reliable evidence. The Eleventh Circuit erroneously denied Pedraza's COA application after deciding that jurist of reason could not dispute that the District Court's procedural ruling was correct.

C. Ground Three: Improper Opinion Testimony

In Ground Three, Pedraza alleged he was denied his constitutional rights of due process and a fair and impartial trial due to the trial court allowing the improper opinion testimony of Det. Kalstrom. Pedraza claims that Det. Kalstrom alluded to his guilt in his testimony and offered his opinion that Pedraza was the mastermind of the entire robbery/ homicide.

Pedraza made a motion for mistrial at the end of Det. Kalstrom's testimony. The trial court erroneously held that Det. Kalstrom was not offering an opinion on Pedraza's guilt or innocence but was explaining why he thought Pedraza was a suspect. The state court's factual finding involved an unreasonable application of clearly established Federal law, and resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Pedraza states that he did not bring the issue on direct appeal because as a lay person he did not understand the rules and law regarding appeals. (Ex. 5, at 26-30). Since Ground Three was not raised as a federal claim on appeal, Respondent argues that Ground Three was procedurally barred.

In his direct appeal to the Second District Court of Appeals, Pedraza argued, on Florida law and claimed he was a due process because the trial court should have granted a mistrial since Det. Kalstrom said in his "opinion" Pedraza planned the robbery. In this instance, it was error to dismiss Ground Two as both unexhausted and procedurally barred.

The Eleventh Circuit denied Pedraza's COA application after deciding that jurist of reason could not dispute that the District Court's procedural ruling was correct. Petitioner alleged that jurist of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurist of reason would find debatably whether the district and appeals court was correct in its procedural ruling.

Even though Pedraza acknowledged he has never raised the claim presented in Ground Three on direct appeal. (Ex. 5, at 26-30). He raise an issue of ineffective assistance-of-appellate counsel arguing that he was uninformed and lacked knowledge of the process to raise this issue on appeal. (Doc. #15, at 2-3). He states he was required to rely on institutional law clerks to help him with his procedures.

Pedraza admits that the issue is unexhausted, but argued under the cause-and-prejudice standard that his appellant counsel ineffectiveness for failing to exhaust Ground Three on appeal as cause to excuse the default. He asserted as prejudice, he suffered based appellate counsel default was not be able to present the persevered objection and challenge of the trial court's error to permit Det. Kalstrom giving an opinion as to his guilt or innocence. (Ex. 5, at 27). Therefore, Pedraza

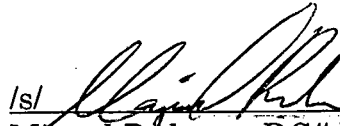
procedural default should have been excused satisfying the cause-and-prejudice standard with respect to that claim. *Edwards v. Carpenter*, 529 U.S. 446, 450-51, 453, 120 S. Ct. 1587, 146 L. Ed. 2d 518 (2000).

The Eleventh Circuit decision was based solely on its conclusion rooted in the District Court finding, that petitioner failed to show cause or prejudice in connection with his procedurally defaulted claim or a miscarriage of justice based on new reliable evidence. The Eleventh Circuit erroneously denied Pedraza's COA application after deciding that jurist of reason could not dispute that the District Court's procedural ruling was correct. Petitioner case presents a strong factual basis for jurist of reason to debate whether petitioner has shown by clear and convincing evidence that the state court's factual determination was wrong. The Eleventh Circuit erred when it concluded otherwise.

CONCLUSION

Petitioner's motion to proceed in forma pauperis and the petition for a writ of certiorari should be granted, vacating the judgment of the 11th Circuit Court of Appeals, and remand this case for further consideration of the question of whether Petitioner is entitled to a COA.

Respectfully Submitted,

/s/ 

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