No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

HELEN ATKINS-PETITIONER

vs.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS-RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

HELEN ATKINS, DC# 797395
HOMESTEAD CORRECTIONAL INSTITUTION
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QUESTION(S) PRESENTED

I. WAS THE PETITIONER DENIED HER RIGHT TO A FAIR TRIAL WHEN THE TRIAL COURT OVERRULED HER OBJECTION TO PROSECUTOR'S CLOSING ARGUMENT AND WAS THE PETITIONER DENIED HER RIGHT TO EFFECTIVE ASSISTANCE OF CUONSEL WHEN COUNSEL FAILED TO OBJECT TO CLOSING ARGUMENT?

II. DID COUNSEL FALL SHORT OF HIS CONSTITUTIONAL DUTY TO EFFECTIVELY REPRESENT THE PETITIONER WHEN HE INFRINGED UPON HER RIGHT TO TESTIFY?

III. COULD COUNSEL HAVE PROTECTED THE PETITIONER'S CONSTITUTIONAL TO EFFECTIVE ASSISTANCE OF COUNSEL BY INVESTIGATING AND PRESENTING EXPERT WITNESS?

IV. WAS COUNSEL INEFFECTIVE FOR FAILING TO ASSERT THE PETITIONER'S SPEEDY TRIAL TIME; DENYING HER UNITED STATES CONSTITUTIONAL RIGHTS?

V. DID UNOBJECTED TO HEARSAY PREJUDICIAL EVIDENCE DENY THE PETITIONER OF HER CONSTITUTIONAL RIGHT TO A FAIR TRIAL AND EFFECTIVE ASSISTANCE OF COUNSEL?

VI. WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO JURY INSTRUCTIONS; DENYING THE PETITIONER OF HER CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL?

VII. WAS THE PETITIONER DENIED HER CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILED TO PRESENT EXTRINSIC EVIDENCE?

VIII. DID THE CUMULATIVE EFFECT OF ERRORS AND INEFFECTIVE ASSISTANCE OF COUNSEL DEEM THE PETITIONER'S TRIAL FUNDAMENTALY UNFAIR WHICH RESULTED IN A MANIFEST INJUSTICE?

LIST OF PARTIES

[x] 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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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from **federal courts**:

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

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[x] is unpublished.

The opinion of the United States District Court appears at **Appendix B** to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] 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 _____
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

[x] For cases from **federal courts:**

The date of which the United States Court of Appeals decided my case was January 3, 2018.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: February 12, 2018, and a copy of the order denying hearing appears at **Appendix C**.

[ ] An extension of time to file the petition for writ of certiorari was granted to and including _____ on _____ 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 of which the highest state court decided my case was _____.
A copy of the decision appears at Appendix _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and copy of the order denying rehearing at **Appendix __**.

[ ] An extension of time to file the petition for writ of certiorari was granted to and including _____ on _____ in Application No. __A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION AMENDMENT ONE, FIVE, SIX AND FOURTEEN- THE RIGHT TO TESTIFY, THE RIGHT TO A FAIR TRIAL BY AN IMPARTIAL JURY, THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, AND DUE PROCESS OF LAW.

STATEMENT OF THE CASE

The Petitioner was charged by amended information with committing Arson of a Dwelling on June 15, 2008. The State filed a Prison Release Re-offender (PRR) notice on July 29, 2008. The jury for the Petitioner's trial was selected on February 16, 2009 where the Petitioner plead not guilty and proceeded to trial by jury on February 18, 2007 before the Honorable Jonathan Sjostrom, in the Circuit Court of the Second Judicial circuit, in and for Leon County, Florida. The jury was brought in and sworn after which the trial court gave preliminary instructions and the parties made opening statements.

The State then called as its first witness Sylvester Brown. Brown was the alleged victim in this cause. Brown testified that while he was asleep his bed caught on fire. He put it out and then he and Gilbert Holiday carried some things out, then came back inside and went to sleep. The next morning the Petitioner came home and they had an argument. It was alleged that the Petitioner tried to light Brown's mattress on fire while it was outside the house and also lit curtains that had been outside the window on fire.

Next Gilbert Holiday testified that on the night of the fire he heard a noise and woke up. There was smoke in the house. Brown's mattress was on fire and he was trying to put it out. They put the fire out and it started up again and they put it out again. Holiday did not see the fire start and did not see who started it. About an hour later the Petitioner returned home and got into an argument with Brown.

There was a plastic plant by the door and the Petitioner lit it on fire; Brown put the fire out.

Officer David Gantt of the Tallahassee Police Department then testified that he investigated the incident and saw a woman yelling in the street. In investigating the fire he saw where a bed had burned, some curtains had burned, and the box spring under the mattress had burned. The mattress was charred at one end, which he understood would have been the foot end; the box springs burned up. The mattress was on top of the box springs. The mattress was less significantly burned than the box springs. About six (6) inches of the mattress was destroyed and about three (3) quarters of the fabric on the box springs.

The State next call Cynthia Moore, a neighbor, who testified that the Petitioner ran when the police arrived, then later returned and was arrested. She saw the burned mattress in the bedroom and curtains and plant.

After Moore completed her testimony, the State rested, the Petitioner moved for judgment of acquittal, and the motion was denied. The Petitioner elected not to testify. A charge conference was held after which the trial court read the instructions to the jury. The parties then made closing arguments.

After closing arguments the trial court gave the final jury instructions. After retiring to deliberate, the jury returned a verdict of guilty of arson of a dwelling.

On March 25, 2009, after the court heard Petitioner's testimony at sentencing and a witness in her behalf, the Petitioner was sentenced to thirty (30) years as a

Prison Releasee Reoffender. The Petitioner appealed and on July 2, 2010, her appeal was per curiam affirmed.

On November 17, 2010, the Petitioner filed a 3.850 motion asserting ten (10) grounds in which she deserved relief.

On April 23-24, 2012, an evidentiary hearing was held on her behalf before the Honorable Mark Walker. The Appellant was presented by Nicholas Clifford.

Subsequently, on April 25, 2012, the Petitioner's Motion for Post Conviction Relief was denied.

The Petitioner filed a timely Notice of Appeal and thereafter submitted an appeal brief. On December 20, 2013, the Petitioner's appeal was per curiam affirmed.

On March 31, 2014, the Petitioner timely filed a Federal Petition for Writ of Habeas Corpus in the United States District Court-Northern District of Florida, Tallahassee Division.

On August 28, 2017, the United States District Court denied the Petitioner's petition with prejudice and ordered that a Certificate of Appealability should not issue.

On September 22, 2017, the Petitioner filed a timely Notice of Appeal and on October 16, 2017, the Petitioner filed an Application for Certificate of Appealability in the United States Court of Appeals, Eleventh Circuit.

On January 3, 2018, the United States Court of Appeals for the Eleventh Circuit entered an order denying the Petitioner's Application for Certificate of Appealability.

On January 22, 2018, the Petitioner filed a Motion for Reconsideration and on February 12, 2018, the United States Court of Appeals for the Eleventh Circuit denied the Petitioner's motion.

This Petitioner for Writ of Certiorari follows.

REASON FOR GRANTING THE PETITION

The Petitioner was denied her right to a fair and impartial jury and the denial of her constitutional right to effective representation of counsel as this court held in **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. The State courts have failed to grant relief. This Honorable Court should issue a Writ of Certiorari where her questions concern matters in which the District Courts are in conflict and which are violations of the U.S. Constitution especially where the conviction and sentence were administered to someone who was actually innocent. The questions are asserted as follows:

I. WAS THE PETITIONER DENIED HER RIGHT TO A FAIR TRIAL WHEN THE TRIAL COURT OVERRULED HER OBJECTION TO PROSECUTOR'S CLOSING ARGUMENT AND WAS THE PETITIONER DENIED HER RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILED TO OBJECT TO CLOSING ARGUMENT?

The United States Constitution entitles a criminal petitioner to a fair trial. Moreover, "**...under the cumulative error doctrine, an aggregation of non-reversible**

errors can yield a denial of the constitutional right to a fair trial, which calls for reversal." United State of America v. Hesser, 800 F.3d 1310 (11th Cir. 2015)

In the instant case, the Petitioner was denied her constitutional right to a fair trial when the trial court overruled her objection to prosecutor's closing argument. It is common law that the prosecution cannot make comments on facts that are not in evidence.

> **"Well, first of all, you have Mr. Holliday, who testified that she lit a flower on fire, that flower actually lit on fire, that it became a fire, Mr. Brown put it out, and it caused damage."**

Mr. Holliday did not testify to such, he stated that the Petitioner tried to light the flower on fire, but that it was plastic and did not really burn. Mr. Holliday never testified that it became a fire or that it caused any damage. On the contrary, he testified that the Petitioner was not successful in trying to burn a plastic plant. The prosecutor's inference of guilt based on facts not in evidence was inappropriate and improper and highly prejudicial and denied the Petitioner a fair trial and Due Process guaranteed under the Sixth and Fourteenth Amendment.

In United States of America v. Hope, 608 Fed. Appx. 831 (11th Cir. 2015), to establish prosecutorial misconduct in closing argument, the petitioner must show that the prosecutor's remarks were (1) improper and (2) prejudicially affected her substantial rights.

Moreover, the trial court overruled counsel's objection to the prosecutor's inappropriate comments and allowed the prosecutor to shift the burden of proof from the State to the defense when he made the following closing argument:

> **"Yes, by the same token he wants to tell you that you should rely on his evidence for smoking in bed, and that she didn't start the fire. Well, you can't have it both ways."**

This comment inferred that the Petitioner had to present evidence that the fire was started from smoking in bed, instead of the State having to prove that the Petitioner started the fire. Such comments are highly prejudicial and mislead the jury.

This was especially prejudicial where closing arguments were conducted after the reading of the jury instructions. In **Hope**, supra, Criminal Procedure for Trial Closing Arguments states that, **"Improper suggestions, insinuations, or assertions that are calculated to produce a wrongful conviction by misleading the jury or appealing to the jury's passion or prejudice are forbidden in closing arguments."**

Counsel had a constitutional duty to object to these prejudicial comments, yet he remained silent. The prosecutor's comments were highly prejudicial and counsel had a constitutional duty to object to it, but failed to do so. **U.S. v. Ayala-Garcia**, 574 F.3d 5 (1st Cir. 2009); **Hodge v. Hurley**, 426 F.3d 368 (6th Cir. 2005)

In **Ruiz v. Secretary, Florida Department of Corrections**, 439 Fed. Appx. 831 (11th Cir. 2011), the United States Court of Appeals held that:

> **"To establish a case of ineffective assistance of counsel, a habeas petitioner must show that (1) his counsel's performance was deficient, and (2) his defense was prejudiced by that deficient performance. There is a strong presumption that counsel's performance was reasonable and that counsel made all significant decisions in the exercise of reasonable professional judgment. Thus, the petitioner must establish that no competent counsel would have taken the action that his counsel did take."**

It is further cited that:

"Analyzing a claim of ineffective assistance under 28 U.S.C.S. 2254(d) adds a double layer of deference to counsel's performance. Under 2254(d), the question is not whether counsel's actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied Strickland's deferential standard. To demonstrate prejudice, there must be a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

In the Petitioner's case, had counsel made a timely objection to the prosecutor's closing arguments, there is a reasonable probability that the Petitioner would have been found not guilty of Arson which would have changed the outcome of her trial. It cannot be considered reasonable trial strategy on counsel's part by failing to object to prosecutor's improper closing argument but a viable demonstration that counsel's failure fell below a reasonable objective standard of prevailing professional norms. Counsel's performance was deficient and counsel's silence severely prejudiced the Petitioner rendering an outcome that was unreliable at best; resulting in a manifest injustice and a violation of the Petitioner's constitutional right to a fair trial, Due Process of Law and effective assistance of counsel under the Fifth, Sixth and Fourteenth amendment. **Strickland v. Washington**, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984)

This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

II. DID COUNSEL FALL SHORT OF HIS CONSTITUTIONAL DUTY TO EFFECTIVELY REPRESENT THE PETITIONER WHEN HE INFRINGED UPON HER RIGHT TO TESTIFY?

"A defendant has a fundamental constitutional right to testify. A waiver of this right must be knowing and voluntary, and it must be made by the defendant rather than his counsel." Roddy v. Vannoy, 671 Fed. Appx. 295 (5th Cir. 2016)

Counsel informed the Petitioner that he did not want her to testify because the jury would hear all about her prior record and her charges. The Petitioner did not want the jury to hear the details of her prior record because she thought the jury would not believe her if she testified. Clearly the Petitioner was misinformed and a waiver of this right was not knowing and voluntary made by her. Rather, it was made by counsel. (**"Like other fundamental trial rights, the right to testify is truly protected only when the defendant makes his decision knowingly and intelligently."** United States v. Leggett, 162 F.3d 237, 246 (3d Cir. 1998) ("If a defendant does waive this right [to testify], the waiver must be knowing, voluntary and intelligent."); see also Teague, 953 F.2d at 1533 **("[Advice of counsel] is crucial because there can be no effective waiver of a fundamental constitutional right unless there is an 'intentional relinquishment or abandonment of a known right or privilege.'"** (emphasis in original) (quoting Johnson v. Zerbst, 304 U.S. 458, 464, 58 S. Ct. 1019, 1023, 82 L. Ed. 1461 (1938))). In cases where a defendant is represented by counsel, counsel is responsible for providing the advice needed to render the defendant's decision of whether to testify knowing and intelligent.))

In **Roddy**, supra, the United States Court of Appeals for the Eleventh Circuit concluded that, **"...when a defendant contends that trial counsel interfered with his right to testify, the appropriate vehicle for such claims is a claim of ineffective assistance of counsel."**

Counsel incorrectly informed the Petitioner regarding the use of prior conviction. Specifically that upon testifying the jury would hear the specific nature of her prior convictions, and because of this misinformation the Petitioner did not testify.

In **United States of America v. Hung Thien Ly**, 646 F.3d 1307, (11th Cir. 2011), the United States Court of Appeals for the Eleventh Circuit held that:

> **"Implicit in the right to self-representation is an obligation on the part of the court to make reasonable allowances to protect pro se litigants from inadvertent forfeiture of important rights because of their lack of legal training."**

Contrary to counsel's information he provided to the Petitioner the jury would have only heard the number of prior convictions and misdemeanor involving dishonestly and false statements. Had the Petitioner been aware of this she would have exercised her constitutional right to testify in her own behalf. This was vital where the Petitioner's conviction rested solely on the prior statement of the victim.

Counsel's misadvise in directing the Petitioner not to testify in her own behalf prejudiced the Petitioner. Counsel's performance fell far below a reasonable objective standard, irreparably damaged the Petitioner's cause, and but for his deficient performance in misadvising her not testify, the outcome of the Petitioner's trial court have been different.

According to **Nejad v. Attorney General, State of Georgia**, 830 F.3d 1380 (11th Cir. 2016), the United States Court of Appeals for the Eleventh Circuit held that:

> **"In order to establish a claim for ineffective assistance of counsel under the Sixth Amendment, a petitioner must show both that (1) his counsel's performance was deficient and fell below an objective standard of reasonableness, and that (2) the deficient performance prejudiced his defense. For the deficient performance prong of Strickland, the court is obliged to determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. Defense counsel bears the primary responsibility for advising the defendant of his right to testify or not to testify, the strategic implications of each choice, and that it is ultimately for the defendant himself to decide. Where defense counsel has not informed the defendant of his right to testify, defense counsel has not acted within the range of competence demanded of attorneys in criminal cases."**

If the Petitioner would have been properly advised by counsel to render her testimony, she would have testified that she did not start the fire in the bedroom nor any room of the house, that she did not actually come back to the house until the fire had ended. That she and the victim did not get into a disagreement, but she did not start any fire. The Petitioner would have also testified that the victim often fell asleep with lit cigarettes and that she was usually there to put them out.

The Petitioner would have testified that she left the house prior to the fire and did not return until the next morning.

The First Amendment of the United States Constitution provided that the Petitioner had a right to testify and to have her testimony heard. **Salazaar v. U.S.**, 319 Fed. Appx. 815 (C.A. 11 (Fla.) 2009); **U.S. v. Yizar**, 956 F.2d 230 (C.A. 11 (Fla.) 1992); **Malone v. Walls**, 538 F.3d 744 (C.A. 7 (Ill.) 2008); **Harrison v. Quarterman**, 496 F.3d 419 (C.A. 5 2007); **Strickland v. Washington**, 466 U.S. 668, 104 S. Ct. 2052,

80 L.Ed.2d 674 (1984) ("Under **Strickland**, a defendant is prejudiced by his counsel's deficient performance if there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. The testimony of a criminal defendant at his own trial is unique and inherently significant because, when the defendant testifies, the jury is given an opportunity to observe his demeanor and to judge his credibility firsthand. The defendant's testimony is of prime importance when the very point of a trial is to determine whether an individual was involved in criminal activity.")

Petitioner has demonstrated that a valid claim of a denial of her First, Fifth, Sixth and Fourteenth amendment rights have occurred.

This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

III. COULD COUNSEL HAVE PROTECTED THE PETITIONER'S CONSTITUTIONAL TO EFFECTIVE ASSISTANCE OF COUNSEL BY INVESTIGATING AND PRESENTING EXPERT WITNESS?

Expert testimony is admissible if it is both relevant and reliable. Expert testimony is reliable only if offered by a witness qualified as an expert by knowledge, skill, experience, training, or education, and (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness had applied the principles and methods reliably to

the facts of the case. **United States of America v. Glover**, 479 F.3d 511 (7th Cir. 2007)

Counsel rendered ineffective assistance of counsel when he failed to investigate and present expert witness to testify concerning the statistics of someone falling asleep with a lit cigarette especially when alcohol is involved. The burns present on the scene were consistent with such. Expert testimony would have rendered supporting facts and data favorable to the Petitioner based upon based upon specific knowledge and skill. Moreover, this testimony would have been the product of reliable methods that would have applied to the Petitioner's case. Counsel's performance fell below a reasonable objective standard and deprived the Petitioner of an outcome of a proceeding that was fair and reliable. **McFarland v. Scott**, 512 U.S. 849, 855 (1994); **Hays v. Murphy**, 663 F2d 1013-14

The United States Court of Appeals for the Ninth Circuit in **Richter v. Hickman**, 578 F.3d 944 (9th Cir. 2008), reversed and remanded this cause and held that:

> **"Counsel is obligated to conduct a reasonable investigation in order to present the most persuasive case that he can. Counsel must conduct a pretrial investigation into the availability of independent, objective sources to support the part of his client's testimony that he knows or can reasonably expect will be challenged, and subsequently to present to the jury any evidence he finds that tends to show his client's innocence, tends to undermine the prosecution's case, or raises a reasonable doubt as to his client's guilt, unless he makes an informed, strategic decision that the risks of introducing such evidence outweigh its benefit to the defense."**

This "independent, objective source" would have been that of an expert witness to corroborate the Petitioner's testimony and strengthen the Petitioner's

defense; showing her innocence, casting a reasonable doubt upon the Petitioner's guilt. The expert's testimony would have proven that the fire was indeed started by the victim who fell asleep with a lit cigarette and not by the Petitioner. Counsel's failure denied the Petitioner of her constitutional right to a fair trial and his failure to call an expert witness to support the Petitioner's defense, did not amount to a reasonable trial strategy but a failure to render the effective assistance guaranteed under the Sixth Amendment; assistance that fell below the standard of reasonable prevailing professional norms of effective assistance. But for counsel's deficient performance, there is a reasonable probability that the outcome of the Petitioner's trial would have been different.

Petitioner has demonstrated that a valid claim of a denial of her Fifth, Sixth and Fourteenth amendment rights have occurred.

This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

IV. WAS COUNSEL INEFFECTIVE FOR FAILING TO ASSERT THE PETITIONER'S SPEEDY TRIAL TIME; DENYING HER UNITED STATES CONSTITUTIONAL RIGHTS?

The United States Court of Appeals for the Eleventh Circuit reviews de novo the denial of a motion to dismiss for a violation of the right to a speedy trial under the Sixth Amendment. The Sixth Amendment guarantees individuals a speedy trial in the state and district in which the crime was committed. The right to

a speedy trial under the Sixth Amendment attaches at the time of arrest or indictment, whichever comes first. **United States of America v. Knowles**, 390 Fed. Appx. 915 (11th Cir. 2010)

In evaluating a possible Sixth Amendment violation, a district court considers four factors: (1) length of delay; (2) the reason for the delay; (3) the petitioner's assertion of his right to a speedy trial; and (4) prejudice to the petitioner. The petitioner must prove actual prejudice unless the first three factors all weigh heavily against the Government.

The Petitioner was arrested on June 15, 2008 and pursuant to the laws of the State of Florida, her trial was required to commence within 175 days. The Petitioner's trial did not begin until February 16, 2009, approximately 284 days after her arrest. Counsel failed to explain to the Petitioner her speedy trial rights or to ensure that her rights were not violated.

As to factor/prong one (1), the length of the delay was one hundred and nine (109) days over the required time the Petitioner's trial was to commence. As to factor/prong two (2), the reason for the delay was that the State was not prepared, which was of no fault of the Petitioner. As to factor/prong three (3), the Petitioner had a Sixth Amendment entitlement to exercise her speedy trial right or to be reasonable informed of that right by counsel to ensure that her right was not violated. Counsel never informed the Petitioner of her right; failing in his constitutional to provide effective assistance of counsel. As to the prejudice factor/prong, the Petitioner need not prove actual prejudice as the first three (3)

factors have been satisfied to demonstrate to weigh heavily against the government for failing to adhere to Speedy Trial requirement laws of the State of Florida to have had commenced with the Petitioner's trial within one hundred seventy-five (175) days of the issuance of the indictment or the information.

The State court determined that counsel reasonably waived Petitioner's speedy trial rights under State law, **"...based on his testimony that he was not ready for trial when the case was reassigned to him."** However, once again, these continuances or delays were not caused by the Petitioner, and it was not the Petitioner's fault that the State was in fact unprepared as well, and yet counsel remained silent.

Counsel failed to explain to the Petitioner her right to a speedy trial or to even ensure the Petitioner's rights were not violated by following the proper procedures set out in the Florida Rules of Criminal Procedure, Rule 3.191.

Counsel had a constitutional duty to advise the Petitioner of her right and if it was not plausible to proceed to trial because he was unprepared to do so, counsel should have made this information known to the Petitioner and explained that it was a legitimate tactical decision. Counsel's performance fell below a reasonable objective standard. Counsel's deficient performance prejudiced the Petitioner and robbed the Petitioner of a trial that was reliable. Counsel's failure deems him effective and a violation of the Petitioner's Fifth, Sixth and Fourteenth Amendment rights occurred. **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) Had counsel properly advised the Petitioner of her right to a

speedy trial or even filed a motion to dismiss the indictment or information based upon the fact that the Petitioner had not been brought to trial within one hundred and seventy-five (175) days of such entrance of indictment or information, but for counsel's deficient performance, the outcome the Petitioner's trial would have been different. **United States of America v. Howard**, 1997 U.S. App. LEXIS 31806 (6th Cir. 1997)

Petitioner has demonstrated that a valid claim of a denial of her Sixth and Fourteenth amendment rights have occurred.

This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

V. DID UNOBJECTED TO HEARSAY PREJUDICIAL EVIDENCE DENY THE PETITIONER OF HER CONSTITUTIONAL RIGHT TO A FAIR TRIAL AND EFFECTIVE ASSISTANCE OF COUNSEL?

"Judicial findings of facts are hearsay, inadmissible to prove the truth of the findings unless a specific hearsay exception exists." **United States of America v. Jones**, 729 F.3d 763 (8th Cir. 2013)

During Petitioner's trial and testimony of Gilbert Holiday, Sylvester Brown's (the victim) roommate, the State intentionally brought out hearsay testimony of the Mr. Brown. This was not a tactical decision and inadmissible as the victim had previously recanted his prior statement and provided testimony at trial. Therefore, there was no exception necessary to except any third-party testimony of Mr. Brown

as his testimony had already been solicited. On mention of anything that Mr. Brown had to say via Gilbert Holiday, counsel had a duty to object to this hearsay testimony yet remained silent:

"Q: Did Mr. Brown have to put any fires out that morning?

A: Not that I know of, Sir.

Q: Did he make any statement to you about putting out any fires inside the house that morning?

A: Yes.

Q: What did he say"

A: He said she tried to light the curtain on fire.

Q: And those were the curtains inside the house?

A: Yes, sir, in the bedroom.

Q: And did you subsequently see whether or not those curtains were burned?

A: I never saw it. I just heard him say it."

Holiday's testimony was impermissible hearsay, intentionally brought out by the State, yet throughout this whole dialog, counsel remained silent and did not object.

Counsel, being well versed in law, should have known not only that this was hearsay and inadmissible, but that the questions posed by the State were meant to illicit hearsay testimony. Yet counsel remained silent and failed to object to this. The face of the record reflects that the victim testified in his own behalf, therefore there was no need to illicit his testimony from another witness. **"Hearsay is a**

statement, other than one made by a declarant testifying at trial, offered in evidence to prove the truth of the matter asserted." United States of America v. Worman, 622 F.3d 969 (8th Cir. 2010)

Counsel's failure to object to hearsay evidence was highly prejudicial and counsel's performance fell below a reasonable objective standard, denying the Petitioner of her constitutional right to effective assistance of counsel, a fair trial and Due process of law. **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)

Petitioner has demonstrated that a valid claim of a denial of her Fifth, Sixth and Fourteenth amendment rights have occurred.

This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

VI. WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO JURY INSTRUCTIONS; DENYING THE PETITIONER OF HER CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL?

The Sixth Amendment guarantees a criminal accused the right to assistance of counsel, and the right to counsel is the right to the effective assistance of counsel. **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); **Barrett v. Sec'y, Fla. Dep't of Corr.**, 625 Fed. Appx. (11th Cir. 2015).

As to **Strickland**:

> **"....first prong, a defendant must show that counsel's representation fell below an objective standard of reasonableness. The court applies a strong presumption that counsel's representation was within the wide range of reasonable professional assistance. A court cannot adjudge counsel's performance to be ineffective as long as the approach taken might be considered sound trial strategy. This presumption of reasonableness is even stronger where the court examines the performance of experienced trial counsel. A defendant challenging counsel's failure to take an action at trial must establish that no competent counsel would have declined to take the action."**

Counsel failed to object when the final jury instructions were read before closing arguments. This was highly prejudicial to the Petitioner in that the jury was allowed to compare the law contained in the jury instructions with each individual closing argument of the State and the Defendant and use the jury instruction to make a pre-determination of the Petitioner's guilt. The burden is on the State to prove guilt as at the outset, the Petitioner is presumed innocent. The prejudicial affect of reading the jury instructions before closing argument is that the burden shifted to the Petitioner to prove that she was innocent of the crime charged: Arson of a Dwelling. During the reading of the jury instructions before the closing arguments, counsel for the Petitioner remained silent. Experienced trial counsel would have objected to the jury instructions being read before closing arguments and his failure to do so does not constitute sound trial strategy.

Counsel had a constitutional duty to object and have the jury given instructions after closing arguments, yet he failed to do so. Counsel's performance fell below a reasonable objective standard and his failure deprived the Petitioner of an outcome that was reliable. This greatly affected the outcome of the trial when the jury entered deliberations with closing arguments instead of instructions,

affecting the decision making process and prejudicing the Petitioner. But for counsel's deficient performance in not objecting to the jury instructions being read before the closing arguments, the outcome of the Petitioner's trial would have been different. **Lockhart v. Fretwell**, 506 U.S. 364, 372 (1993); **McKoy v. North Carolina**, 494 U.S. 433 (1990); **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)

Petitioner has demonstrated that a valid claim of a denial of her Fifth, Sixth and Fourteenth amendment rights have occurred.

This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

VII. WAS THE PETITIONER DENIED HER CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILED TO PRESENT EXTRINSIC EVIDENCE?

"Where a court considers extrinsic evidence offered by one party on a particular issue, it should likewise consider extrinsic evidence offered by the other party." **Sault Ste. Marie Tribe of Chippewa Indians v. Granholm**, 475 F.3d 805 (6th Cir. 2007)

The Petitioner's trial consisted of he say/she say evidence. The State introduced several pictures showing the damage done from the fire. To show reasonable doubt, counsel should have presented photos 1D and 1E, which show the same mattress up close and far away. The key to these photographs, and which

should have been highlighted by counsel, was that it shows that right below the mattress is the butt of a cigarette. The victim admitted to falling asleep with a cigarette and these photos show that. This would have supported that the Petitioner did not start a fire. Yet, counsel failed to present this extrinsic evidence; evidence that the court would have considered; evidence that would have been favorable to the Petitioner's trial and would have caused a different outcome in the Petitioner's proceedings.

In **Sault Ste. Marie Tribe of Chippewa Indians v. Granholm**, supra, the United States Court of Appeals for the Sixth Circuit held that:

> **"The admissibility of extrinsic evidence is a question of law and is properly within the appellate court's province to determine. *However, the amount of weight to accord extrinsic evidence is a question of fact and must be determined by a trier of fact.*" (emphasis added)**

The "trier of fact" for the Petitioner's proceedings was the jury and had these photos been presented for the jury to review, the jury would have observed that a cigarette butt was present in these photos which would have corroborated the Petitioner's defense that she did not start this fire but it was started by the victim when he fell asleep in his bed. Yet, counsel fell at his constitutional duty which severely prejudiced the Petitioner. Counsel's performance fell below a reasonable objective standard and robbed the Petitioner of an outcome that was reliable. But for counsel's deficient performance in not presenting extrinsic evidence of the photos supporting the Petitioner's defense, the outcome of the Petitioner's trial would ahve been different. **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)

Petitioner has demonstrated that a valid claim of a denial of her Fifth, Sixth and Fourteenth amendment rights have occurred.

This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

VIII. DID THE CUMULATIVE EFFECT OF ERRORS AND INEFFECTIVE ASSISTANCE OF COUNSEL DEEM THE PETITIONER'S TRIAL FUNDAMENTALY UNFAIR WHICH RESULTED IN A MANIFEST INJUSTICE?

The Petitioner asserts that she asserted seven (7) viable claims for relief that have not been refuted by the record nor have an evidentiary hearing been held on all of the Petitioner's claims, though a hearing is necessary to address the Petitioner's claims. **Wilson v. U.S.**, 395 Fed. Appx. 610 (C.A. 11 (2010). Counsel's errors had a cumulative effect which deemed the Petitioner's trial fundamentally unfair, and resulted in a grave miscarriage of justice. **U.S. Ramirez**, 426 F.3d 1344 (C.A. 11 (Fl.a) 2005); **U.S. v. Lopez**, 590 F.3d 1238 (C.A. 11 (Fla.) 2009)

Petitioner has demonstrated that a valid claim of a denial of her First, Fifth, Sixth and Fourteenth amendment rights have occurred.

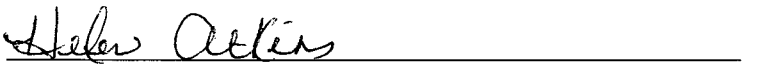
This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a

decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully Submitted,



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IN THE

SUPREME COURT OF THE UNITED STATES

HELEN ATKINS -PETITIONER

vs.

JULIE JONES, SECRETARY
FLORIDA DEPARTMENT OF CORRECTIONS-RESPONDENT

PROOF OF SERVICE

I, **HELEN ATKINS**, do swear or declare that on this date, **May 4, 2018**, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that part's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

The Supreme Court of the United States
One First Street, N.E.
Washington, DC 20543

(And to)

Attorney General's Office
The Capitol-PL-01
Tallahassee, FL 32399-1050

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 4th day of May, 2018

Helen Atkins

HELEN ATKINS, DC# 797395