

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES RONALD WELCH, JR., — PETITIONER
(Your Name)

vs.

JULIE JONES, SEC'Y — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

11th Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Ronald Welch, Jr.

(Your Name)

New River Correctional Institution
P.O. Box 900

(Address)

Raiford, FL. 32083

(City, State, Zip Code)

N/A
(Phone Number)

Questions Presented

1. Will this Court Allow U.S. Circuit Court Judge Kevin C. Newsom (~~is~~ hereinafter "Judge Newsom") to show unfairness in how he constructed or viewed Evidence to deny Appellant a Certificate of Appealability ("COA")?

2. Will this Court Allow Judge Newsom to deny Appellant a COA without reviewing and acknowledging Appellant's Application (with Brief) for COA wherein Appellant showed unreasonableness of lower court's rulings?

3. Will this Court Allow Judge Newsom to deny Appellant a COA on the improper standard that Appellant has not, or may not, prevail on appeal?

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:

Respondents are: Julie Jones, Sec'y, Dep't of Corrections,
State of Florida, et. al.

Parties to the proceeding:

ALICE L. Blackwell	_____	Judge
COREY I. Cohen	_____	Attorney
ROY B. DALTON, Jr.	_____	judge
LORI N. HAGAN	_____	AAG (State)
BRIAN D. Lambert	_____	Judge
MARC L. Lubet	_____	judge
Kimberly MANN	_____	Assistant states Attorney
Kevin C. Newsom	_____	Judge
William D. Palmer	_____	Judge
Thomas B. Smith	_____	Judge

Corporate Disclosure Statement

Appellant is not in any way part of any Corporation.
Appellant has no stocks, shares, bonds, investments, or
holdings in any corporation. And Appellant has no corporate
affiliations or interests.

Signed by,
James Ronald Welch, Jr.
Appellant

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PART TWO - INDEX TO Exhibits

The following is a list of exhibits
often cited - AS they APPEAR in motions, Petitions, Appeals, etc.

- Exhibit # 2, B Defense witness Kathy Bodlak's
stated reasons for committing Perjury
- Exhibit # 2, D Victim's sworn statement regarding
underlying charge Appellant was on probation for.
- Exhibit # 2, L-4 Updated Criminal history
scoresheet
- Exhibit # 2, M Arrest report / charging Affidavit for
underlying charge Appellant was on
probation for.
- Exhibit # 18 Negotiated PLEA for underlying
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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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OTHER

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

☒ 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. I think.

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

☒ reported at 2017 U.S. Dist. Lexis 121514; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☒ For cases from **state courts**:

CASE NO. SD15-3834

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished. I think

CASE NO. SD15-2748

The opinion of the Lower Tribunal, PCA by Appeal court appears at Appendix D to the petition and is

☒ reported at Welch v. State, 2016 Fla. App Lexis 1655 ^{183 So.3d 372 (2015)}; 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 April 04, 2018 by single Judge.

→ ☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals 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 and including _____ (date) on _____ (date) in Application No. A.

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

Appellant did not file timely Motion For Rehearing as he was advised, likely via Judge Newsom to file "Motion For Reconsideration". See order directing Appellant, Appx. A At i.

Appellant filed timely Motion For Reconsideration on 04-19-2018, Appx. J
Appellant filed untimely Petition For Panel Rehearing on 05-04-2018, Appx. K

☐ For cases from **state courts**:

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

☐ A timely petition for 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 and 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

1. ISSUE ONE - TRIAL COURT ERROR

Judge used false statements by attorneys as collateral crime evidence, in violation of state and federal laws, to adjudicate Appellant a danger to community under Fla. Stat. § 948.06 (B)(c) AND deprive him of his liberty.

Therefore, Appellant was denied his United States Fifth and Fourteenth Amendment rights to due process of law.

See *Townsend V. Burke*, 334 U.S. 736, 740-41 (1948) (sentence based on assumptions concerning defendant's criminal record which were materially untrue is inconsistent with due process and such a conviction cannot stand.).

2. Issues Two through Eight - Ineffective Assistance of Counsel (hereinafter "IAC")

Appellant showed under *Strickland V. Washington*, 466 U.S. 668 (1984) that (1) actions or omissions of his attorney were deficient. AND, (2) that he was prejudiced by his attorneys acts or omissions.

Therefore Appellant was denied his United States Sixth Amendment right to reasonable assistance of counsel. And Appellant's imprisonment is constitutionally illegal AND fundamentally unfair.

STATEMENT OF THE CASE

On April 22, 2008, Appellant entered into a negotiated plea and was convicted of Lewd and Lascivious molestation under Florida statute § 800.04 (5)(c)(2), which acknowledges that the crime may not have been intentional. Appellant was sentenced to 51 weeks in county jail followed by 2 years probation. See exhibit ("ex.") #18, sentence and conviction.

On April 19, 2010, Appellant violated terms of probation by consumption of alcohol in excess and loss of GPS monitoring device.

On December 09, 2010, the Ninth Judicial Circuit Court in and for Orange County, Florida, Alice L. Blackwell, held a "Sentencing and Danger To the Community Hearing" ("Danger Hearing") under Fla. Stat. § 948.06 (8)(e) and adjudicated Appellant a danger to community.

All of Appellant's state and subsequent federal filings are based on the injustices he suffered at the Danger Hearing. The transcripts from that hearing are listed as Appendix O and are referenced throughout all Appellant's motions, Petitions, Appeals, etc. as "T" or "TT" followed by the appropriate page no.

On February 09, 2016, Appellant filed a Petition For Writ of Habeas Corpus ("habeas corpus") in the U.S. Middle District and raised (11) eleven grounds for relief.

On August 02, 2017, the district court denied habeas corpus with prejudice and denied Appellant a COA.

On September 01, 2017, After filing Notice of Appeal, Appellant "rushed" AND filed Application for COA with Brief ("initial COA"), listed as Appendix ("Appx.") M.

On October 05, 2017, After filing leave to Amend COA AND receiving Notice from Eleventh Circuit Court Clerk in order dated September 08, 2017, Appellant had 30 days to file Application for COA, Appellant filed AN Amended Application for COA with Brief ("Amended COA"), listed as Appx. N.

IN INIAL AND AMENDED Application for COA Appellant RAISED Eight (8) issues/grounds both Respondent AND District Court conceded were timely raised AND Adequately exhausted in state courts, timely filed in habeas corpus.

On April 04, 2018, U.S. circuit court judge Newsom denied Appellant A COA on all eleven(11) grounds raised in habeas corpus.

This Petition is in regards to Judge Newsom's denial of A of A COA, AS STATED ABOVE. His denial is listed AS Appx. A. In the preface of order denying COA, Appx. A at i, Appellant WAS ADVISED by Clerk of Court, likely VIA judge Newsom, to file "Motion For Reconsideration" instead of Motion For Rehearing.

On April 19, 2018, Appellant filed a timely "Motion For Reconsideration" of judge Newsom's denial of A COA. AS he WAS ADVISED to - The Motion For Reconsideration ("MFR") is listed as Appx. J. In MFR Appellant showed the unreasonableness of judge Newsom's denial of COA according to evidence regarding Questions presented herein Petition.

On MAY 04, 2018, before judge Newsom denied MFR, After realizing he was mised or deceived into filing for Reconsideration when he should have filed for Motion for Rehearing, Appellant filed untimely Petition For Panel Rehearing ("PFPR") listed Appx. K. In PFPR, Appellant showed that Judge Newsom used the lower court's statements and reasons for denying Appellant relief in their court as his reason to deny Appellant a COA. And that Judge Newsom NEVER even read AND ACKNOWLEDGED Appellant's Application for COA (initial or amended) wherein Appellant showed unreasonableness of lower court's orders of denial and why COA should issue under proper standard.

Appellant filed PFPR (Appx. K) before judge Newsom's denial of MFR (Appx. E) ~~AS~~ Appellant KNEW in his heart that, based on character and nature of denial of COA, there was NO reasonable possibility ^{Judge Newsom} ~~he~~ would fairly review, to grant Appellant's MFR. And Appellant did not believe Judge Newsom could, with integrity, rule on PFPR as he KNEW nature and character of claims presented in MFR.

However, in a Corrected order (listed Appx. C at 3) dated July 10, 2018, Appellant was notified that Judge Newsom was the Presiding Senior judge, with Julie Carnes in tow, denying Appellant's MFR and PFPR in order dated July 05, 2018 wherein Appellant was mised or deceived as to seniority of judges (Appx. C at 2).

REASONS FOR GRANTING THE PETITION

1.) Will this Court Allow U.S. Circuit Court Judge Kevin C. Newsom (hereinafter "Judge Newsom") to show unfairness in how he constructed or viewed evidence to deny Appellant a Certificate of Appealability ("COA")?

Just prior to denying Appellant a COA on all grounds, AND later as reasoning to deny one ground, Judge Newsom Alleged that the victim (14 year old girl) gave sworn testimony Appellant "grabbed her buttocks". Which is prejudicially untrue. See Victim's sworn statement, Exhibit ("ex.") #2, D

2. Will this Court Allow Judge Newsom to deny Appellant a COA without reviewing AND acknowledging Appellant Application for COA AND brief supporting it?

Especially since Judge Newsom used the lower court's statements and arguments to deny Appellant a COA, AND Appellant showed the unreasonableness of the lower court's rulings in Application for COA?

3. Will this Court Allow Judge Newsom to deny Appellant a COA on the improper standard that Appellant has not, or may not, prevail on Appeal?

Appellant contends that Judge Newsom's improper actions in denying Appellant a COA undermine public confidence in our judicial system AND constitute such a departure from propriety that it calls for an exercise of this Court's supervisory powers.

1. Will this Court allow U.S. Circuit Court Judge Newsom to show unfairness in how he constructed or viewed evidence to deny Appellant a COA?

Just prior to denying Appellant a COA on All issues, AND later as reasoning to deny ^{an} issue (ground) in particular, Judge Newsom alleged (Appx. A at 1-2), that the 14 year old victim for underlying charge Appellant was on probation for gave sworn testimony Appellant "grabbed her buttocks" which is prejudicially untrue. See victim's sworn testimony - ex.# 2, D.

In MFR at 1 (Appx. J), claim one, Appellant related that Judge Newsom's improper allegation, after citing the charging Affidavit, that the victim gave sworn testimony Appellant "grabbed her buttocks" was wrong AND prejudicial and it appears to show Judge Newsom was not open mindedely considering All the evidence. Which was a pervasive error.

Appellant cited the victim's sworn testimony (ex.# 2, D) shows she merely said Appellant touched (or pushed) her forward (while going through a doorway). That there was a great difference between a "touch" and wilfull "grab" of the buttocks. As one (a push or touch) shows the incident can be accidental, and the other (grabbing of buttocks) shows wilful intent to commit crime.

Other facts and arguments Appellant presented that show Judge Newsom showed unfairness in how he constructed ~~and~~ viewed evidence is as follows:

(a) In MFR at 1, claim 2, Appellant related that in his order denying Appellant a COA (Appx. A at 1-7), the evidence shows Judge Newsom did not review and acknowledge

Appellant's Application for COA.

Facts and arguments for this claim are presented in depth under Question Two herein Petition. But they support Question One and should be considered as such.

(b) In PFPR, Appx. K at 2 (claim B), Appellant related that Judge Newsom's Allegation that the victim for underlying charge Appellant was on probation for gave sworn testimony Appellant "grabbed her buttocks" was not only factually untrue, but it seems to have infected his judgement of Appellant and relevant records. That essentially Judge Newsom wrongly became biased against Appellant and unilaterally viewed the evidence in a way harmful to Appellant and the truth.

Appellant related that even the charging Affidavit, ex. #2, M, does not actually say the victim gave sworn testimony as Judge Newsom Alleged. And that even though the charging Affidavit cited Fla. Sta. § 800.04(5)(a), Appellant was not convicted of knowingly offending victim.

(c) Issue Seven - Ground Nine in habeas corpus

"Counsel rendered ineffectiveness by failing to object to the state saying in closing statements that Petitioner solicited a 14 year old girl and had (sexual) urges for minors that may be exacerbated by alcohol."

1) In MFR, Appx. J at 15-17, Appellant related that Judge Newsom used his improper construction or view that the victim gave sworn testimony Appellant grabbed her buttocks as evidence to deny this claim by Alleging that

"Competent counsel would have no basis on which to object to these statements, as they were all supported by evidence presented... or charging Affidavit..."

Appellant related that Judge Newsom's reasons for denying this claim were unduly narrow and unfair. That Appellant's attorney said he could have beat the original charge in court, and Appellant related some of those facts in MFR: plea, score sheet, history, errors in charging aff, etc.

It should be evident to any reviewing court that Judge Newsom's comments amounted to a proclamation that: "Appellant's attorney would have been incompetent to object to the state saying Appellant 'solicited a 14 year old girl' and had sexual 'urges' for minors based on evidence presented or available. Appellant should be adjudicated as a pedophile!"

2.) In PFPR, Appx. K at 13-14, Appellant showed by quoting the district court's denial of habeas corpus (Appx. B at 17-18), and referencing the state court's denial of post conviction motion (PCMR), Appx. D at 14-15, that Judge Newsom based his denial of this ground on their statements and arguments and on his improper construction or view that the victim gave sworn testimony Appellant "grabbed her buttocks" as evidence competent counsel would have no basis to object to these statements. w/out acknowledging other evidence.

(d) Facts and arguments regarding Question Three, the denial of a COA on improper standards, may also support evidence for Question One.

QUESTION TWO

2. Will this Court Allow Judge Newsom to deny Appellant a COA without reviewing AND Acknowledging Appellant's Application for COA AND Brief supporting it?

Especially since Judge Newsom used the lower court's statements AND reasons to deny Appellant a COA, AND Appellant showed unreasonableness of lower court's rulings in Application for COA?

Appellant first raised the above claim in MFR, Appx. J at 1, claim 2, AND in MFR at 2-4, Statement of the case AND facts. Appellant related that the evidence strongly indicates that his Application for COA WAS NOT read OR Acknowledged. Like, that Judge Newsom denied Appellant a COA on eleven grounds, but Appellant only applied for COA on Eight. In body of MFR, Appellant often related that Judge Newsom's reasons for denying COA were the same AS the District Court used to deny habeas corpus (Appx. B). AND that he failed to Acknowledge Appellant showed unreasonableness of district's court's rulings in Application for COA (Appx. N).

Appellant raised the above claim in PFPR, Appx. K at 3-4, Claim C. Appellant related that Judge Newsom heavily relied on the lower courts statements for denying Appellant's Appeals AS his reason to deny Appellant a COA. AND that Judge Newsom failed to Acknowledge Appellant showed unreasonableness of lower reasons in Application for COA.

A. ISSUE ONE - TRIAL COURT ERROR

THE trial court judge used false statements by attorneys as evidence to adjudicate Appellant a danger to the community.

1. IN MFR, Appx. J at 4-6, AND Amended COA, Appx. N at 9, Appellant showed the statements attorneys made that Appellant had "on misdemeanors lately... last ten years... had misdemeanors... then from 2004 to the present (2010), he's had misdemeanors..." that the trial court used as evidence for danger factor "C" under Fla. Stat. § 94B.06 (3)(c) SAYING "It does not appear that he's-- and his persistent misdemeanor history over the past ten years, it makes it clear he's not amenable to non-incarcerative sanctions." And Appellant also showed from the transcripts that the judge admitted it was using what it heard as evidence of Appellant's (criminal) record.

IN MFR Appellant showed the unreasonableness of Judge Neusom's denial of this claim (Appx. A at 2) as he alleged Appellant was complaining that trial court erroneously found he had a "persistent misdemeanor history" instead of acknowledging Appellant showed the trial court erroneously found Appellant had "A persistent misdemeanor history over the past ten years" based on attorneys' statements, and that there was no reasonable possibility, absent attorney's statements, the trial court would have cited "A persistent misdemeanor history over the past ten years" as Appellant only had misdemeanors from 2003 to 2006 since 1994 as shown by criminal history scoresheet, ex. #2, L-4. Thus Appellant showed unreasonableness of Judge Neusom's allegations that reasonable jurists

would not debate district court's determination this claim lacked merit due Appellant's criminal history, AND that Appellant did not show court improperly relied on any false statements.

In Amended COA, Appx. N At 9, Appellant showed the unreasonableness of district court's denial of this claim (Appx. B At 5-6). And A review of that denial shows judge Newsom essentially used that court's REASONS to deny habeas corpus AS his REASONS to deny COA: Both court's do NOT Acknowledge trial court erroneously cited Appellant AS having A "persistent misdemeanor history over past ten years". Both court's equate Appellant's misdemeanors from 2003 to 2006 AS evidence of the trial court's findings. And both court's allege Appellant failed to show that court improperly relied on false statements.

2. In PFPR, Appx K At 5-6, Appellant showed by quoting the district court's denial of this claim (Appx. B At 5-6) that the records show that Judge Newsom's denial of A COA on this claim (Appx. A At 2) were largely or wholly based on the district court's stated reasons for denying habeas corpus relief. And that judge Newsom simply added A little reasonable jurist insert quotation to make it look legal.

Appellant related that had Judge Newsom adequately reviewed Appellant's Application for COA, he would have known that the reasons he used to deny A COA were already shown unreasonable when used by the district court to deny habeas relief.

B. Issue TWO - Ineffective Assistance of Counsel ("IAC")

"Counsel rendered ineffectiveness by eliciting prejudicial (fraudulent) testimony from defense witness" (defendant's sister).

In ALL APPEALS Appellant related that he advised his Attorney (hereinafter "counsel") that he did not drink Alcohol until he was in his 30's (other than a few times in prison), and Appellant did not want a phony defense of Alcohol and violence.

Moreover, the crime Appellant was on probation for and his VOP involved Alcohol. But Against Appellant's wishes, counsel elicited prejudicial fraudulent testimony Appellant struggled with Alcohol throughout his life from defense witness Kathy Bodlak ("Bodlak"). This false evidence counsel created, that Appellant struggled with Alcohol throughout his life, undermined the adversarial process and denied Appellant a fair hearing.

1. In MFR, Appx. J At 6-8, Appellant related that Judge ^{Appx A At 4} Newsom's reasons for denying a COA on this claim ~~were~~ objectively unreasonable as he essentially used the district court's reasons for denying habeas relief (Appx. B At 12-13) and failed to see or acknowledge that Appellant had already addressed, and showed to be unreasonable, the district court's reasons to deny habeas corpus in Application for COA - which Judge Newsom never acknowledged.

For example, to deny Appellant a COA, Judge Newsom, like the district court: (a) Wrongly Alleged Appellant maintained his sister improperly testified he drank Alcohol when he committed violent crimes as a teenager. (b) Broadly Alleged that the court took other factors into consideration. But Judge Newsom failed to acknowledge Appellant related that he showed on Appeal (ex. #4 At 14-17, now

Appx. T) that he was not adjudicated on competent substantial evidence or legally sufficient evidence, (3) Alleged that Appellant failed to show prejudice. But in MFR Appellant reiterated that he showed prejudice in numerous ways in Amended COA (Appx. N At 11-12). Including, but not limited to, the fact that he was adjudicated a danger to community for his first VOP based on the mistaken belief he had committed multiple and repeat sex crimes (crimes of 1979 and 2007) and violent crimes (crimes of 1979 and 1994) due to alcohol issues and he was (supposedly) still abusing it. However, the court adjudicated him on highly prejudicial but untrue information, then sentenced him to minimum he scored out to, and afterward said, "I hate to do it to him". That is Prejudice!

2. In PFPR, Appx. K At 6-7, Appellant showed by quoting the district court's denial of habeas corpus (Appx. B At 12-13), AND the State Court's denial of PCM (Appx. D At 4-7), that Judge Newsom's denial of A COA (Appx. A At 4) on this claim constituted a few statements taken from the lower court's and paraphrased.

In Amended COA (Appx. N At 13), Appellant showed unreasonable of district court's denial.

And in Amended COA (Appx. N At 12), Appellant related that he showed in Memorandum (Appx. Q At 13) some of the unreasonableness of lower state court's denial of PCM (Appx. D), that he showed unreasonableness of lower state court's denial on Appeal (Appx. T At 11-14, or Ex. #4 At 10-14), and some in Petition (Appx. P At 11, 12-[E, F]).

C. ISSUE Three - IAC

"Counsel rendered ineffectiveness by failing to notify defense witness of when defendant's hearing would actually take place".

1 In MFR, Appx. J at 8-9, Appellant related that Judge Newsom's denial of this claim was objectively unreasonable as, like the district court (Appx. B at 13-14), he alleged that:

(a) Multiple witness testified on Appellant's behalf as to the same issues to which Appellant claimed his probation officer ("Cullars") would have testified to, including he was a responsible person. Thus, her testimony would have been cumulative. (b) Appellant did not show deficiency by counsel or prejudice.

In rebuttal, in MFR, Appellant related that: (a) None of the witness, individually or collectively, testified to what Cullars would have testified to. And the reviewing court's have ^{failed to acknowledge} that Appellant showed how Cullars testimony would have nullified three (3), if not all, of the trial court's five (5) danger to community findings. (b) The district court didn't allege counsel didn't perform deficiently in this claim - so that issue was debatable - so that issue was not addressed in application for COA (Appx. N at 13-14).

In MFR Appellant reiterated some ways he showed prejudice in Amended COA, contrary to Judge Newsom's allegations in denial of COA (Appx. A at 4).

Furthermore, Appellant related in MFR that Judge Newsom's denial of this claim shows he failed to acknowledge that Appellant already rebutted most of his reasons to deny a COA in application for COA. And that his failure to review

AND ACKNOWLEDGE Appellant's Application for COA shows propensity, determination, and bias inclination to deny due process.

2. In PFPR, Appx. K At 7-8, Appellant showed by Quoting the district court's denial of habeas corpus (Appx. B At 13-14), And the state court's denial of PCM (Appx. D At 7-9), that Judge Newsom's denial of a COA on this claim (Appx. A At 4) consisted of a few statements taken from the lower courts And then PARAPHRASED a little. That Judge Newsom failed to see or Acknowledge that Appellant had already shown the lower courts orders of denials were objectively unreasonable in Application for COA (Appx. N At 15-16). And that Judge Newsom did not even Know Cullars WAS A MAN - NOT A WOMAN - which shows he didn't review material evidence.

D. Issue Four - IAC

"Counsel rendered ineffectiveness by making statements harmful to defendant in the closing process of hearing."

1. In MFR, Appx. J At 9-12, Appellant asserted that Judge Newsom's reasons for denying a COA on this claim were objectively unreasonable as he used the district court's reasons to deny habeas corpus (Appx. B At 14-15). And he failed to acknowledge Appellant had already showed the unreasonableness of the district court's rulings in Application for COA (Appx. N At 16-19).

For example, to deny a COA (Appx. A At 4-5) on this claim, Judge Newsom alleged: (a) Appellant claimed counsel conceded Appellant had prior convictions for burglaries and misdemeanors and portrayed him as an out of control drunk who had a pattern of bad behavior. (b) It would have been unreasonable for counsel not to address Appellant's criminal record. (c) Appellant admitted he had a problem with alcohol. (d) Counsel made a strategic decision to acknowledge these issues and minimize their import.

Appellant reiterated that he had already addressed these allegations. Namely, that: (a) Appellant did not argue prior convictions. For subclaim A Appellant showed that counsel said Appellant committed "multiple" burglaries since 1979 - when Appellant committed one. For subclaim B Appellant showed counsel said Appellant committed "misdemeanors lately and misdemeanors over last ten years" when Appellant only had misdemeanors between 2003 and 2006 since 1994. For subclaim C

Appellant related that after the court "heard" all of Appellant's crimes and troubles were because of alcohol, and attorney's "built-up" appearance of Appellant's criminal history, counsel repeatedly told Appellant "was drunk" in an out of control way and it was a "pattern" of alcohol bad behavior. For Subclaim D Appellant related, by referencing his state motion (Appx. S at 25-27) where he showed that, counsel repeatedly reminded trial court of worst crimes Appellant did (those of 1979, see ex[#] L-4) in subtle and increasing magnifications. And Appellant briefly, in MFR, related ways he showed prejudice in Amended COA: that the court used counsel harmful statements and words as evidence to adjudicate Appellant a danger to community.

(b) Embellishing Appellant's criminal history in closing is not reasonable way to address Appellant's criminal record. (c) Appellant testified he was amenable to (alcohol) treatment. (d) The record does not support that counsel made informed strategic decisions to help Appellant.

2. In PFPR, Appx. K at 8-10, Appellant showed by quoting the District court's order denying habeas corpus (Appx. B at 14-15), and the state court's order denying PCM (Appx. D at 9-10), that in order to deny Appellant a COA (Appx. A at 4-5) Judge Newsom simply took some statements from the above cited courts and added a personal touch to them to make it look authentic and legal.

Moreover, Appellant related that by failing to read and acknowledge Appellant's application for COA, Judge Newsom lost the crux of Appellant's claims. Namely, that: Appellant never argued prior convictions. Appellant committed one

burglary since 1979 but counsel said Appellant committed multiple ("burglaries"). Appellant only had misdemeanors between 2003 and 2006 but counsel said Appellant had "misdemeanor lately last ten years..." had misdemeanors".

And Appellant showed in Application for COA how the court used counsel's harmful statements as evidence to adjudicate Appellant.

Appellant related that he showed in initial and amended COA the unreasonableness of the lower court's rulings - which Judge Neeson used to deny COA - and why COA should issue.

E. ISSUE FIVE - IAC

"Counsel rendered ineffectiveness by failing to introduce, AND investigate AND introduce, favorable mitigating evidence."

1. In MFR, Appx. J at 12-14, Appellant ASSERTED that Judge NEWSOM's denial of this claim WAS objectively UNREASONABLE AS he ALLEGED (Appx. A at 5) Appellant failed to show prejudice (reasonable probability outcome of proceedings would have been different) regarding Subclaim A (1994 burglary conviction) AND Subclaim B (Amenability to Alcohol treatment). And that Judge NEWSOM, like the district court (Appx. B at 15-16), incorrectly ALLEGED that ample evidence WAS presented regarding Appellant's amenability to treatment when no such evidence WAS presented.

Appellant related that Judge NEWSOM failed to acknowledge how Appellant showed prejudice at length in Amended COA (Appx. N at 19-23). How that had counsel presented mitigating evidence that he AND Appellant Agreed needed to be presented, it would have nullified three(3), if NOT ALL, of the five(5) factors it cited to Adjudicate Appellant A danger to community.

In MFR, Appellant briefly reiterated some things he showed in Application For COA (Appx. N). Namely, that:

In Subclaim A, Appellant showed that if counsel presented evidence regarding the ^{only} burglary Appellant committed since 1979 (only Alcohol related burglary), the trial court would NOT have Adjudicated him A danger to community, in context of Factor "a", BASED on supposed lengthy history of being violent relevant to Alcohol issues AND being

back at that behavior in 1994.

In Subclaim B, Appellant showed that if counsel presented evidence regarding Appellant's amenability to alcohol treatment in a residential program as evinced by Appellant's alcohol and trouble free life between 1994 and 2003, the trial court would not have adjudicated Appellant a danger to community for factor "C" based on "A persistent misdemeanor history over past ten years" (that didn't exist) and as lacking in amenability to treatment.

In Subclaim C, Appellant showed that had counsel presented evidence regarding Appellant seeking residential treatment prior to his only VOP, the court would not have adjudicated him not taking action to address his alcohol issues as reasoning to not reinstate probation.

In Subclaim D, Appellant showed that had counsel presented evidence regarding Petitioner's only VOP, the trial court would not have cited a "pattern of alcohol related bad behavior" like the one counsel advocated as reasoning to deny Appellant treatment and not reinstate probation.

And Appellant briefly reiterated how counsel's actions were ineffective under Strickland, 466 U.S. id at 688.

2. In PFPR, Appx. K At 10-12, Appellant showed by Quoting the records that Judge Newsom denied Appellant A COA (Appx. A At 5) by using some of the district court's statements (Appx. B At 15-16) and Arguments, As well as the state courts (Appx. D At 11-12), in their orders denying Appellant relief in their courts. That Judge Newsom used the lower courts Arguments and statements that there was no reasonable probability had evidence been presented regarding Appellant's 1994 burglary conviction and his amenability to Alcohol treatment that it would have changed the outcome of the proceedings as reasons to deny Appellant A COA.

Appellant related that he showed in Application for COA (Appx. N At 19-23) the unreasonableness of the lower court's stated reasons for denying him relief in their courts, but there is no evidence that judge Newsom read, considered, or even Acknowledged Appellant's initial or Amended Application for COA.

F. ISSUE SIX - IAC

"counsel rendered ineffectiveness by failing to develop or present a reasonable (and truthful) AND coherent strategy of defense".

1. In MFR, Appx. J at 14-15, Appellant asserted that Judge Newsom's denial of this claim was objectively unreasonable as he alleged that "this ground appears to be merely a restatement of his prior IAC claims, combined to allege broadly that counsel failed to utilize an effect (sic) defense strategy. For the reasons discussed above, this claim fails". (Appx. A at 5).

Appellant related that by failing to review and acknowledge Appellant's application for COA (Appx. N at 23-26), Judge Newsom missed the crux of Appellant's claim - That Appellant was denied his most primitive right to a Truthful Defense, which would have also been reasonable. And that in Amended COA (Appx. N) Appellant showed the truthful defense he and counsel agreed to present that would have likely changed the outcome of the proceedings.

In MFR, Appellant related that ^{counsel} presented (created) false evidence that Appellant struggled with Alcohol throughout his life by eliciting perjured prejudicial testimony, which is per se ineffective under Nix v. Whiteside, 106 S. Ct. 988, 994 (1986) (holding, "counsel is precluded from ... presenting false evidence"). And counsel created false evidence by alleging Appellant committed multiple burglaries since 1979, and committed

misdemeanors lately and misdemeanors over the last ten years—as the court used counsel's Allegations, and the perjured testimony he elicited/created, as evidence to adjudicate Appellant a danger to community even though it was untrue evidence. Appellant related to judge Newsom that Appellant showed all these things in Amended COA.

Moreover, Appellant reiterated briefly in MFR, that he showed in Amended COA, that the deceitful defense counsel presented to the court—which was contrary to the truthful defense counsel and Appellant had agreed to, constituted IAC according to STICKLAND, 466 U.S. Id at 688-91.

2. In PFPR, Appx. K at 12-13, Appellant showed by Quoting the records that Judge Newsom's denial of a COA on this claim (Appx. A at 5) essentially constituted a few statements taken from the district court (Appx. B at 16-17) and state court's (Appx. D at 12-13) orders denying relief in their court's, paraphrased a little.

That in failing to review and acknowledge Appellant's Application for COA (Appx. N. at 23-26), judge Newsom missed the crux of Appellant's claim—that he was denied his fundamental right to a truthful defense. Which was reasonable, and likely it would have changed outcome. Thus Appellant was denied due process.

G. ISSUE SEVEN - IAC

"Counsel rendered ineffectiveness by failing to object to the state saying in closing statements that Petitioner "solicited a 14 year old girl" AND had (sexual) "urges" for minors that may be exacerbated by alcohol." Subclaim B

1 In Application for COA (Appx. N at 26-27), Appellant related that prior to the state's slanderous statements, counsel elicited perjured prejudicial testimony Appellant struggled with alcohol throughout his life (issue two) and portrayed Appellant as an out of control drunk in closing. Therefore, based on the state's statements in closing, Appellant was unfairly portrayed and uncontestedly frightened as a raging pedophile who had committed multiple and repeat sex crimes (crimes of 1979 and crime of 2007) due to alcohol issues who was "still" abusing alcohol. That counsel's failure to object to the state's comments undermined Adversarial process

In MFR, Appx. J at 15-17, Appellant related that he showed in his (Application) for COA that counsel's failure to object to the state's harmful statements denied him of a fair hearing and undermined the Adversarial process. But that judge Newsom's denial of this claim showed (Appx. A at 5-6) he didn't even review Appellant's Application for COA as he alleged Appellant was also contesting subclaim C (counsel failed to object to state saying Appellant court ordered into treatment program(s)) when Appellant only contested Subclaim B (as related above).

Appellant related that Judge Newsom's denial of this claim was objectively unreasonable as related above and that Judge Newsom used his unfair construction of the evidence that the victim gave sworn testimony (Appx. A at 1-2) "Appellant

grabbed her buttocks" as evidence to deny this claim by alleging "competent counsel would have had no basis on which to object to these statements as they were all supported by evidence... or charging Affidavit...".

Appellant related that Appellant's Attorney, Corey I. Cohen, said he could have beat the original charge based on the evidence (victim's statement, lies and embellishment in charging Affidavit, manager's statement where incidence occurred - ex. #2, Q, etc.) that was available to Judge Newsom.

Moreover, Appellant related in MFR that in today's society even judges are not immune to Allegations of child molestation as evinced by the way he (Judge Newsom) immediately - but wrongly - Alleged the victim swore Appellant "grabbed her buttocks". Then judged Appellant according to his own Allegations. But that the real evidence shows the victim merely ^{swore} Appellant pushed her forward with his hands on her butt while going through a doorway - which shows innocence of "intentional molestation".

2. In PFPR, Appx K at 13-14, Appellant showed that the district denied Appellant's habeas corpus (Appx. B at 17-18) by making arguments regarding Subclaim B AND C.

Appellant cited where the state court's denial of PCM was for this claim (Appx. D, 14-15).

Appellant then quoted Judge Newsom's denial of this claim (Appx. A at 5-6) which incorrectly argues that Appellant was contesting Subclaim B AND C when Appellant only contested Subclaim B.

Appellant then related that the records show that Judge Newsom used the lower courts arguments to deny this claim and his own previously stated accusation (Appx. A at 1-2) that the victim gave sworn testimony Appellant "grabbed her buttocks". As evidence "competent counsel would have no basis to object to these statements...".

Appellant related that the evidence shows that Judge Newsom never "bothered" to review and acknowledge Appellant's application for COA. That he did not open-mindedly review relevant records.

Closing Argument For Questions Two And Three

In *Hohn v. United States*, 524 U.S. 236, 242-243 or ~~244-45~~, (1998) this court held that "if a COA is ruled on by a single Justice, the decision has to be able to be regarded as an action of the court itself and not of the individual Justice".

Under Question One, Appellant showed that Judge Newsom harmfully twisted the evidence to allege, just prior to denying Appellant a COA on all issues, that the victim for underlying charge Appellant was on probation for gave sworn testimony Appellant "grabbed her buttocks". Which is prejudicially untrue.

And the record strongly indicates that he used his very malignant interpretation of the above stated evidence to deny issue seven by alleging that competent counsel would have no basis to object to the state saying in closing that Appellant was a pedophile threat to society.

These instances show Judge Newsom showed unfairness in how he constructed and/or viewed evidence, which was pervasively harmful to Appellant.

Under Question Two Appellant showed that Judge Newsom didn't even bother to review and acknowledge Appellant Application for a COA wherein Appellant showed the unreasonableness of lower court's rulings and why COA should issue under proper standard.

Also under Question Two Appellant showed by referencing and quoting the records that Judge Newsom

USED the lower court's unilateral unrebutted arguments and statements, in their orders denying Appellant relief, to deny Appellant a COA. This shows a predisposition and determination to deny Appellant a COA without respect for, or regard to, all the relevant evidence.

Based on the facts, evidence, and arguments Appellant has presented, it can not be reasonably held or attested to that Judge Newsom's actions and rulings regarding Appellant's Application for COA can be regarded as an action of an equitable U.S. Court of Appeals and not that of an individual justice.

Question Three

3. Will this Court Allow Judge Newsom to deny Appellant A COA on the improper standard that Appellant has Not, or may Not, prevail on Appeal?

Prior to denying All Appellant's IAC claims, the district court (Appx. B at 4), the state court (Appx. D at 3), and Judge Newsom in his order deny Appellant A COA (Appx. A at 3), All cited STRICKLAND v. WASHINGTON, 466 U.S. 668 (1984). And All related that in order to succeed on AN IAC claim, a petitioner must show that (1) his Attorney's performance was deficient, and (2) it prejudiced the defense. STRICKLAND, 466 U.S. at 694. And to demonstrate prejudice, the petitioner must show that there is a "reasonable probability that, but for counsel's unprofessional errors, the results of the proceeding would have been different." STRICKLAND, 466 U.S. at 694.

Then, just prior to denying All Appellant's IAC claims, Judge Newsom alleged that "reasonable jurists would not debate the district's determination that the state court's denial of Welch's various ineffective-assistance claims was Not contrary to, nor did it involve an unreasonable application of, STRICKLAND."

Appellant contends that the records reflect that Judge Newsom improperly used the standard to prevail on AN IAC claim described in STRICKLAND as the standard Appellant must meet to get A COA from him. At times it appears that Judge Newsom is implying that

because Appellant has not won an IAC claim in the lower court, Appellant can not get a COA in his court. And at times it appears that Judge Newsom is denying Appellant a COA because he doesn't think Appellant can prevail on an IAC claim, or even that Appellant deserves, in his opinion, equity.

In Application for COA, Appellant cited the standard of Review for obtaining a COA determined by this Court in Slack v. McDaniel, 529 U.S. 473, 484 (2000), which requires a showing by Petitioner that "reasonable jurists could debate... whether... the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Also Appellant cited in Application for COA (Appx. N at 4) this Court's holding in Miller-El v. Cockrell, 537 U.S. 322, 336 (2003), that it is unnecessary for a "Petitioner to prove, before the issuance of a COA, that some jurists would grant the Petition for habeas corpus". That "A claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case received full consideration, that petitioner will not prevail". Miller-El, 537 U.S. 338

Appellant believes he made the required showing cited above in his Amended COA (Appx. N).

Appellant offers the following to show he was denied a COA under the improper standard necessary to prevail on an IAC claim:

*Note: This claim/argument was first raised in MFR, Appx. J at 3, in STATEMENT OF THE CASE AND FACTS. And in PFR, Appx. K at 3-4, claim C.

A. ISSUE TWO - IAC

"Counsel rendered ineffectiveness by eliciting prejudicial (fraudulent) testimony from defense witness (defendant's sister).

1. In MFRC, Appx. J At 6-8, Appellant related that Judge Newsom's reasons for denying this claim (Appx. A At 4) were that Appellant "failed to show he was prejudiced by his sister's alleged false testimony". STRICKLAND, 466 U.S. At 694.

In MFRC Appellant related that he showed prejudice in many ways in his Amended COA (Appx. N At 10-13). And in MFRC Appellant briefly reiterated some ways he showed prejudice.

2. In PFPR, Appx. K At 6-7, Appellant showed by quoting the district court's denial of habeas corpus (Appx. B At 12-13) and the state court's denial of PCM (Appx. D At 4-7) that Judge Newsom used their statements by paraphrasing them a little (Appx. A At 4) to deny Appellant a COA by alleging Appellant didn't show prejudice. Quoting Strickland.

Appellant related that, therefore, Judge Newsom used the standard to prevail on an IAC claim as the standard to deny Appellant a COA.

Appellant related that he showed prejudice in Application for COA and why COA should issue under the proper standard set forth in Slack, supra, and Miller El, supra (PFPR At 4).

B. Issue Three - IAC

"Counsel rendered ineffectiveness by failing to notify defense witness of when Defendant's hearing would actually take place."

1. In MFRC, Appx. J at 8-9, Appellant related by referencing the record, which clearly shows, that Judge Newsom denied this claim (Appx. A at 4) by alleging that Appellant "failed to show either that counsel performed deficiently by failing to call the probation officer (witness) or that he was prejudiced by the omission of her testimony"

THIS clearly shows Judge Newsom denied this claim by using the Strickland, supra, standard of Review to prevail on AN IAC claim.

2. In PFPR, Appx. K at 7-8, Appellant showed by quoting the district court's denial of habeas corpus (Appx. B at 13-14), AND the state court's denial of PCM (Appx. D at 7-9), that Judge Newsom used their statements, after paraphrasing them a little, to deny Appellant a COA by alleging that "her (Mr. Cullars [Cullars]) testimony would have been cumulative, AND he failed to show either that counsel performed deficiently by failing to call the probation officer (Cullars) or that he was prejudiced by the omission of her testimony."

Appellant related that Judge Newsom didn't even know Cullars WAS A MAN - NOT A WOMAN, and he improperly used the standard of review to prevail on AN IAC claim under Strickland (supra, PFPR at 4) AS REASONING to deny this claim.

C. ISSUE FIVE - IAC

Counsel rendered ineffectiveness by failing to introduce and investigate and introduce, favorable mitigating evidence."

1. In MFRC, Appx. J At 12-14, Appellant related that the record shows that Judge Newsom denied this claim by Alleging that "there is no reasonable probability that the outcome of the proceeding would have been different if the evidence identified (mitigating evidence regarding 1994 burglary conviction and lack of convictions between 1994-2003 showing amenability to treatment) had been presented to the judge. See Strickland, 466 U.S. At 694."

Appellant related that in violation of the standard of review delineated in Miller-El, 537 U.S. 322, 336 (supra), Judge Newsom used an outcome standard based on his opinion rather than the proper standard (Appellant quoted) in Miller-El. See Judge Newsom's denial (Appx. A At 5)

2. In PFPR, Appx. K At 10-12, Appellant showed by Quoting the district court's denial of habeas corpus (Appx. B At 15-16), the state court's denial of PCM (Appx. D At 11-12), and Judge Newsom's denial of a COA (Appx. A At 5), that Judge Newsom used some of the statements and arguments of the lower court's to deny this claim by Alleging that "there was no reasonable probability" had evidence been presented regarding his 1994 burglary conviction (subclaim A) and amenability to Alcohol treatment (subclaim B) that it would have changed the outcome of proceeding 5.

Appellant related that Judge Newsom improperly used the outcome standard governing IAC claims under Strickland, supra (PFPR At 4) to deny Appellant a COA instead of Applying the correct standard delineated in Stack, supra, and Miller-El, supra (PFPR At 4) to see if COA should issue.

Closing Argument For Question Three

There is NO evidence that Judge Newsom correctly Applied the Standard of Review for obtaining a COA determined by this Court in Stack, 529 U.S. 484, *supra*, and Miller-El, 537 U.S. 322, 336, 338, *supra*.

Also, This Court held in Bulk V. Davis, 137 S.Ct. 759, 773 (2017) that "THE COA inquiry, we have emphasized, is NOT COEXTENSIVE WITH A MERITS ANALYSIS. At the COA stage, the only question is whether the Applicant has shown that "jurists of reason could disagree with the district court's ~~final~~ resolution of his constitutional claims or that jurist could conclude the issues presented are adequate to deserve encouragement to proceed further." This threshold question should be without "full consideration of the factual or legal bases adduced in support of the claims".

The record of Judge Newsom's denial of a COA, Appx. A at 2-6, show that he didn't review and Acknowledge Appellant's initial or Amended Application for COA (Appx. M and N) wherein Appellant showed that COA should issue under proper standard.

And Appellant showed by referencing the records that Judge Newsom denied Appellant a COA, on several of more issues, by improperly using the standard necessary to prevail on an IAC claim under Strickland, *supra*.

OATH

I declare under penalty of perjury that the foregoing is true and correct and that this Petition was placed in the prison mailing system on _____. Signed by,
James Ronald Wilk, Jr.

Certificate of Compliance

This Petition contains 6,708 words.
See Separate document.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James Ronald Wilk, Jr.

Date: August 29, 2018