SUPREME COURT OF THE UNITED STATES

CHARLES LITTON MORRIS,
Petitioner,

v.

Sup. Ct. No. _____
11th Cir. No. 18-10087-D
Dist. Ct. No. 3:16cv40-LC-CJK

STATE OF FLORIDA, and,
Sec., Fla. Dept of Corrections,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT COURT OF APPEALS

Submitted for Certiorari Review from the Court of Appeals for the Eleventh Circuit.

Charles Litton Morris # 223820
Walton Correctional Institution
691 Institution Road,
Defuniak Springs, FL, 32433-1831

Provided to Walton CI
On 8-22-18 for Mailing
Date
By (officer initials) mc CM

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LIST OF PARTIES

1. Bondi, Pamela J., Attorney General, State of Florida.

2. Cobb, Lauren B., Assistant Public Defender, Escambia County Circuit Court.

3. Collier, Lacey A., Senior U.S. District Court Judge, Pensacola Division.

4. Dannheisser, Thomas V., Escambia County Circuit Court Judge.

5. Duffy, Thomas H., Assistant Attorney General, State of Florida.

6. Eddins, William 'Bill', Florida States Attorney.

7. Jones, Julie L., Secretary, Florida Department of Corrections

8. Kahn, Charles J., Magistrate U.S District Court Judge, Pensacola Division.

9. Nobles, Linda L., Escambia County Circuit Court Judge.

10. Pryor Jr., William H., United States 11th Circuit Court of Appeal Judge.

11. Riley, Michael C., Assistant State Attorney, Escambia County Circuit Court.

12. Townsend, Madison, Alleged-Victim.

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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

For cases from federal courts: The opinion of the United States court of appeals appears at Appx. A and C to the petition and its reported cite is unknown.

For cases from state courts: Petitioner has no state court records in his possession; Please see Appendix. B, Doc. 43, pages 6-9.

JURISDICTION

For cases from federal courts: The date on which the United States Court of Appeals decided my case was April 9, 2018.

A petition for rehearing was timely filed in my case on April 18, 2018.

A timely petition for rehearing was denied by the United States Court of Appeals on June 5, 2018, and a copy of the order denying rehearing appears at Appx. "C".

For cases from state courts: Petitioner does not have state copies in his possession. Please see Appx. "B"

STATEMENT OF THE CASE

The "statement of the issues" (infra) explain in a large-part what this case is about. In more detail, petitioner, here-in-after "Morris," appeared before the lower state court at a "plea or trial" hearing on March 28, 2013. He had previously, only briefly, met with his public defender, Lauren B. Cobb, at the county jail, and discussed matters through a glass partition. Morris could see that Ms. Cobb had transcript booklets with her, but could not read what any of them said. Cobb told Morris that a plea offer would be in his best interest as the transcripts she had were not good and that one transcript in particular, from a so-called eyewitness named "Kyle Morris", no relation, was the most incriminating of all. Petitioner Morris could not believe this because "he was not guilty of this alleged crime", he maintained his innocence in the arrest report, and he asked Cobb to provide him with a copy of the transcripts which she said "she would provide him copies," but she never did. Morris also later discovered via a Florida Bar Complaint some 20 months post conviction that "no transcript from Kyle Morris ever existed". **Cobb lied to Morris to induce his nolo plea.** "The validity of a plea is in doubt where it is shown that petitioner made the unfavorable plea on the constitutionally defective advise of counsel. "Bradshaw v. Stumpf, 125 S.Ct. 2398, [8-9] at 2407 (2005), citing Tollett v. Henderson, 93 S.Ct. 1602, 1608 (1973).

At the March 28, 2013 plea or trial hearing, lower state court Judge Linda L. Nobles asked Morris the standard question, "Are you satisfied with the services of your attorney"? What occurred from this point on is contained in "the plea colloquy transcript"; see excerpt in the District Courts (Doc. 43) Order at pages 4/35 thru 5/35; See also, Petitioners (Doc. 34) Pro Se Reply Attachment 1; and States (Doc. 31) Response Appendix "B".

In sum, Morris said "he did not do it" in the arrest report. This is confirmed in the arresting officers written report and in that officers pretrial transcript. The District Court argued to support its habeas denial that "petitioner did not protest his innocence at his plea hearing", but in a way, "**yes he did**"! Federal Courts draw inferences all the time, so Morris contends the inference must be drawn in his favor that since he claimed innocence in the arrest report, he was still claiming innocence at his plea hearing while specifically requesting (twice) copies of the discovery information (pre-trial transcripts), otherwise, what would be the point? It would make no sense to say, "yes, I did it, I am guilty, may I please review the evidence to see what is being said against me"! Morris contends such a conclusion would be an absurd one. In fact, Morris was requesting the information in hopes that the lower court would protect his rights to proper notice as to exactly what was actually being said against him, so that he could carefully scrutinize the information to determine the viability of a defense, and had he then discovered that

those pre-trial transcripts were not of the incriminating nature that Cobb portrayed them to be through that glass partition at the county jail - which is what he did in fact discover too late to be of any help - Morris would have without a doubt proceeded to trial and prevailed.

The plea colloquy transcript clearly demonstrates that "before the entry or acceptance of the plea", Morris made a proper request for discovery on the record and was denied by his public defender due to "office policy not to provide copies of discovery to defendant's,"[1] by "the prosecutors absolute silence to the request"[2], and by the lower court judge due to "budget cuts". In other words, "before the entry or acceptance of the plea", upon Morris' request for discovery and the subsequent denial, a manifest "Strickland/Brady Violation" occurred, respectively, from the prosecutors failure to provide that discovery information upon request,[3] and by Cobb's failure to represent Morris' pro se discovery request, to provide for that request herself, or to enter that information into the case-record herself, in violation of Rule 3.030(b)[4], Fla. R. Cr. P. "Criminal cases will arise where the only reasonable and available defense strategy requires introduction of evidence".

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1 Such an "office policy" violates the Supreme Court's holding in Monell v. Dept. of Soc.Serv.'s, 98 S.Ct. 2018, [6] at 2037-8 (1978); See also Petitioner's (Doc. 34) Pro Se Reply at pages 3-4.

2 See Bagley, [3] at 3383, "A prosecutor's failure to respond to a specific and relevant discovery request is seldom, if ever, excusable."

3 See Brady, [3] at 1196-7, "suppression by the prosecution of evidence favorable to an accused upon request violates due process."

4 Rule 3.030(b) requires case related documents to be entered into the case record. Morris contends this should be especially true if the subject of said record is raised in case proceedings, thereby proving an intent to conceal the requested information.

Hinton v. Alabama, 134 S.Ct. 1081, [3-5] at 1088 (2014). "Defense counsel renders ineffective assistance when she fails to prepare evidence to support the defense." Michael v. Crosby, 430 F.3d 1310, [13] at 1320 (11th Cir. 2005). "A new trial must be granted when evidence is not introduced because of the incompetence of counsel." Strickland v. Washington, 104 S.Ct. 2052, [19] at 2068 (1984).

Morris contends that the plea colloquy, in its entirety, did not comply with Brady/Strickland, the requirements for the proper acceptance of pleas as mandated by Fla. R. Cr. P. 3.172(c)(1)/Fed. R. Cr. P. 11 (b)(1)(G), or any of the other issues raised throughout his filings which rise to constitutional magnitude.

Morris contends that Brady/Strickland controls this issue because 'his discovery request, its denial, and his attorney's failure to represent him in the matter', all occurred prior to the actual entry or acceptance of the plea, and the event as a whole demonstrates that 'Morris only-reluctantly entered his nolo plea because he was lead to believe that he had no right to the requested information and therefore, ***all he could do was plea*' - 'no evidence, no counsel on his side, no chance to win.'**

That in and of itself is not only contradictory to the mandates of Brady and Strickland, but also implicates the lower court defendant's V, VI, and XIV Amendment Constitutional Rights as protected by the United States Constitution. Accordingly, Morris' conviction and custody are hereby demonstrated as 'in

violation of the Constitution and/or laws of the United States as mandated by the United States Supreme Court.' 28 U.S.C. §2254(a).

STATEMENT OF THE ISSUES

1. Judicial Bias: Morris contends his habeas petition was not afforded proper review due possibly to loyalties between judges from all of the previous lower courts, both State and Federal. Morris' original state case arises out of the First Judicial Circuit Court in and for Escambia County, Florida, of which senior United States District Court Judge Lacey A. Collier was formerly a State Circuit Court Judge, and magistrate Judge Charles J. Kahn was formerly a Judge in Florida's First District Court of Appeal, in which Morris appealed his state-lower court case once claiming 'withheld evidence/Strickland/Brady violations', and again 'after obtaining the withheld-favorable evidence' via a Florida Bar Complaint, for which both the post-conviction cause and appeals were wrongfully (rubber-stamp) summarily denied without hearing and per curiam affirmed. With all due respect to all previous judges, Morris believes unfair loyalties between colleagues and possibly home-town friends may have played a part in the District Court Judges decision-making process, resulting in unfair bias/prejudice against Morris and his claims of obvious 'violations of the Constitution and laws of the United States'. 28 U.S.C § 2254(a). Morris contends that it may be found seldom, if ever, that the

United States District Court in Pensacola, Florida rules favorably for habeas petitioners who proceed from the state/circuit court in Pensacola.

2. District Court Failure to Comply with 28 U.S.C. §636: Similar to the above, Morris contends there is no possible way that his (District Court Doc. 47) 'Motion in Opposition (Supreme Court Appx. 'D') to the District Courts (Doc. 43) Report and Recommendation' (Appx. 'B') was afforded a just and proper review as required by 28 U.S.C. §636, where the District Courts (Doc. 48) Order adopting the Magistrate Judges Report and Recommendation (Appx. 'B') was issued on December 19, 2017, a Tuesday, a mere 4 days after he mailed it on December 14, 2017, a Thursday. Common sense dictates that if Morris mailed his Opposition Motion on a Thursday, and allowing for over the weekend mailing time the District Court Clerk received and docketed the motion on the following Monday, and it was then officially denied the very next day, 'Tuesday December 19', Morris contends it is highly-improbable that in a mere 1 day or less, that opposition motion progressed through the Clerks docketing procedures all the way through to a just and proper review and judgment by the District Courts Senior Judge, especially with all of the Courts other business at hand. It is noted that the District Courts (Doc. 48) Order adopting the (Doc. 43) Denial only vaguely refers to 'objections filed and making a de novo determination thereto', which is difficult to believe actually occurred in a mere '1 day or less', creating the impression that

Morris' Opposition Motion (Appx. 'D', Doc. 47) was not really reviewed at all, or at least not carefully scrutinized, supporting his item 1 contention (above), in violation of §636(b)(1), and denying Morris the just and proper less-stringent review that pro se litigants are entitled to pursuant to Haines v. Kerner, 92 S.Ct. 594, 596 (1972), and SEC v. Elliot, 953 F.2d 1560, 1582 (11th Cir. 1992).

"An appellate court must be satisfied that a district judge has exercised his authority 'by considering the actual objections', and not merely by reviewing the magistrates report and recommendations". Holt v. Crist, 233 Fed. Appx. 900, [1] at 901(11th Cir. 2007)."We assume that the district court performed its review function properly in the absence of evidence to the contrary." Id.

Morris contends that an alleged-review of a mere 1 day or less is sufficient evidence to believe that 'the district courts review function in this case was not performed properly', creating and continuing an injustice against Morris.

3. Brady/Strickland/Constitutional Claims Ignored by District Court:

Morris claimed in his (Appx. 'D') Opposition Motion (Doc. 47 at pg. 36), "There are Brady/Strickland requirements — There are no Brady/Strickland exceptions". The District Court never addressed whether Morris' Brady/Strickland claims implicated the 'contrary to/unreasonable application-determination' clauses of §2254(d)(1) and/or (2), which are the primary concerns in this habeas cause. The Supreme Court clearly established that "the function of federal habeas corpus

is to redress constitutional errors, not to relitigate state criminal cases". Herrera v. Collins, 113 S.Ct. 853, [2] at 861 (1993). However, that is exactly what the District Court did in Morris' case - instead of addressing Morris' Brady, Strickland, or any of his other constitutional claims, the District Court focused on state court procedural issues such as "petitioner did not claim innocence at his plea hearing", (Appx. 'B', Doc. 43, pg. 28), or "identify the exculpatory evidence" or "the viable defense", (Appx. 'B' Doc. 43, pg. 20). Morris did however identify the exculpatory evidence and the viable defense because, 'the exculpatory evidence' - the subject withheld discover - 'was the viable defense'. Morris contends these procedural issues raised by the District Court are not only insufficient to deny his claims of 'violations of the Constitution or laws of the United States', but do in fact demonstrate the District Court 'relitigating lower-state court procedural issues' while ignoring the more serious claims of Brady/Strickland violations, or 'actual innocence' and 'fundamental miscarriage of justice'. See Schlup v. Delo, 115 S.Ct. 851 (1995); Sawyer v. Whitley, 112 S.Ct. 2514 (1992); Murray v. Carrier, 106 S.Ct. 2639 (1986); Henderson v. Campbell, 353 F.3d 1308 (11th Cir. 2001). "If a convicted state criminal defendant can show a federal habeas court that his conviction rests upon 'a violation of the Constitution or laws of the United States', (§2254(a)), he may well obtain a writ of habeas corpus that requires a new trial... or release". Trevino v. Thaler, 133 S.Ct. 1911, [1] at 1917 (2013).

4. State Probationary Split Sentence Violates the Supremacy Clause/Conflict Pre-emption Doctrine of Article VI, Clause 2, of the United States Constitution: Morris raised a claim in his (Appx. 'E', Doc. 34, pgs. 24-29) habeas reply that his 'State Probationary Split Sentence' violated the 'Supremacy Clause/Conflict Pre-emption Doctrine of Article VI, Clause 2, of the United States Constitution', and the District Court erred in completely failing to address this constitutional claim.

5. Original State Court Divested Itself of Personal and Subject Matter Jurisdiction: Morris raised a claim in his (Appx. 'E', Doc. 34, pgs. 15-21) pro se reply that when he made his 'Brady/Bagley request for specific discovery information' on the lower court plea colloquy record and was denied by the lower court judge, Judge Linda L. Nobles, that court thereby divested itself of all jurisdiction over the defendant and the case by failing to provide 'real notice of the true nature of the charge the defendant was being required to enter a plea to', clearly in violation of Brady/Bagley as determined by the United States Supreme Court. The District Court erred in failing to properly address this Constitutional claim. See also, Berger v. United States, 55 S.Ct. 629 (1935); In Re Oliver, 68 S.Ct. 499 (1948); Williams v. New York, 69 S.Ct. 1079 (1949); McCarthy v. United States, 89 S.Ct. 1166 (1969); Boykin v. Alabama, 89 S.Ct. 1709 (1969); Brady v. United States, 90 S.Ct. 1463 (1970); Gray v. Netherland, 116 S.Ct. 2074 (1996); United States v. Reed, 887 F.2d 1398 (11th Cir. 1989).

"Where a defendant pleads to a crime without having been informed of the crimes elements, (especially upon request – the right to notice) standard has not been met and the plea is invalid." Bradshaw v. Stumpf, 125 S.Ct. 2398, [2-3] at 2405 (2005), citing Henderson v. Morgan, 96 S.Ct. 2253, [3] at 2258 (1976).

6. Judicial Participation in Withheld Evidence: Walton v. Arizona, 110 S.Ct. 3047, [3-5] at 3057 (1990) held, "trial judges are presumed to know the law and apply it in making their decisions", however, Brady, [3] at 1196-7 held, "suppression by the prosecution of favorable evidence upon request violates due process", and Bagley at 3390 held, "the prosecution has an affirmative duty to turn over to the defendant ***all*** information known to the government".

"The ends of justice will best be served by a discovery system which gives both parties the maximum amount of information with which to prepare their cases for trial". Wardius v. Oregon, 93 S.Ct. 2208, [3] at 2211 (1973). "Florida law provides for liberal discovery... with reciprocal duties requiring state disclosure to the defendant". Id. at 2212. "Discovery must be a two-way street". Id., [4] at 2212. "Where there was a substantial possibility that state trial courts constitutional error may have infected the verdict, it was necessary that the conviction be reversed." Id. fn. 9 "If there is to be any imbalance in discovery rights, it should work in the defendant's favor". Id., fn 9, [4] at 2212.

As Morris explained supra, item 5, where he made his 'on the record request for discovery', (Appx. 'B', Doc. 43, pgs 4-5), Judge Linda Nobles admitted on the plea colloquy record, (transcript not included, pg. 6, L. 14-15 and 18-19; See excerpt, Appx. 'B', Doc. 43, pg. 5 top), that "**she was aware of** the fact that Morris did not have a full understanding, or real notice, of the true nature of the charge Morris was being required to enter a plea to", and that "**she was not aware of** any authority she had to make them provide copies of the requested discovery materials", thereby contradicting Porter v. McCollum, 130 S.Ct. 447, [1] at 453 (2009) which held that "in Florida, it is the sentencing judge who makes evidentiary determinations", thereby proving that if Judge Nobles was unaware of her evidentiary authority, then she severely lacked qualifications to preside over the instant state court case, thereby rendering that original court without jurisdiction and that courts judgment void. (See Appx. 'E', Doc. 34, bottom pg. 5).

"A trial judges ruling on evidence will not be disturbed absent an abuse of discretion". Dessaure v. State, 891 So.2d 455, [6] at 466 (Fla. 2004). "A trial court abuses it's discretion if its ruling is based on erroneous views of the law". Patrick v. State, 104 So.3d 1046, 1056 (Fla. 2012). Under such circumstances, the trial courts legal conclusions are reviewed de novo. Pantoja v. State, 59 So.3d 1092, [1-3] at 1095 (Fla. 2011); Almond v. State, 1 So.3d 1274, 1276 (Fla. 1st DCA 2009). However, Morris contends that at his plea hearing, Judge Nobles did not have 'an

erroneous view of the law' regarding the discovery request, but rather, with all of the well- established authority concerning discovery issues, including Brady and its progeny, Morris contends Judge Nobles colluded with the state and defense counsel to induce his unintelligent/involuntary nolo plea via the withheld evidence to procure an unconstitutional conviction.

7. Plea Invalid: The District Court concluded in its (Appx. 'B', Doc. 43, pgs. 17-20) Order, Report and Recommendation that 'Morris entered his plea freely and voluntarily', however, Morris argued that his plea was induced via the 'requested - withheld discovery materials', (Appx. 'E', Doc. 34, pgs. 22-24), and therefore involuntary, unintelligent, and invalid, and that the plea colloquy further demonstrates that the prerequisites for the courts proper acceptance of a nolo plea were not complied with pursuant to Florida Rule of Criminal Procedure 3.172(c)(1), which is synonymous with Federal Rule of Criminal Procedure 11(b)(1)(G), also rendering the plea and the state-courts acceptance of it invalid-void. See Appx. 'D', Doc. 47, Opposition Motion pages 8-15, and Appx. 'E', Doc. 34, pages 14-15; See also, Bradshaw v. Stump, 125 S.Ct. 2398, [2-3] at 2405 (2005); Henderson v. Morgan, 96 S.Ct. 2253 (1976); Brady v. United States, 90 S.Ct. 1463 fns 3, 4, 6 (1970); Boykin v. Alabama, 89 S.Ct. 1709 (1969); McCarthy v. United States, 89 S.Ct. 1166 (1969); Berger v. United States, 55 S.Ct. 629 (1935); United States v. Reed, 887 F.2d 1398, [8] at 1403 (11th Cir. 1989); Major

v. State, 814 So.2d 424, 432 (Fla. 2002); and see, Appx. 'E', Doc. 34, pgs. 14-15, pro se reply citing Grantham v. State, 665 So.2d 348, [1] at 351 (Fla. 1st DCA 1995) which held, "It is a trial courts responsibility to determine that the circumstances surrounding the plea reflect a full understanding of the significance of the plea and it's voluntariness. We have recently noted that such a procedure is a matter of federal constitutional mandate. If a trial court failed to conduct an inquiry along the lines proposed in Rule 3.172..., the claim that the plea had not been intelligently or voluntarily made stands unrefuted." Accordingly, Morris' plea and the state courts acceptance of it were invalid.

8. Insufficient Evidence to Support Conviction: Morris claims that 'his right to freedom from wholly arbitrary deprivation of liberty' was violated in that ' there is no actual evidence in the record to support the conviction', thereby violating Supreme Court precedent. See Jackson v. Virginia, 99 S.Ct. 2781 (1979); In Re Winship, 90 S.Ct. 1068 (1970).

"The ultimate question presented to us is whether the charge against petitioner was so totally devoid of evidentiary support as to render his conviction unconstitutional under the due process clause of the XIV Amendment. The question is not 'sufficiency of the evidence', but rather 'does the conviction rest upon any evidence at all'". Thompson v. City of Louisville, 80 S.Ct. 624, [1] at 625 (1960). "The fundamental error doctrine applies to alleged errors of

insufficient evidence... that a defendant committed any crime." Monroe v. State, 191 So.3d 395, [4] at 401-2 (Fla. 2016). "If there is no support for a conviction in the record it is void as a denial of due process". Thompson, [6-8] at 628. "It is a violation of due process to convict and punish a man without evidence of his guilt." Thompson, [9-13] at 629. "We conclude the error was fundamental where there was no evidence to corroborate the alleged victims version of the events. This was a swearing match between the defendant and the alleged victim." Fike v. State, 4 So.3d 734, [9] at 739 (Fla. 5th DCA 2009).

9. Denied Evidentiary Hearings: Throughout all levels of the court process - state and federal - Morris consistently requested evidentiary hearings every step of the way (see Appx. 'E', Doc. 34, pg. 29; Appx. 'D', Doc. 47, pgs. 28-32) and those requests were consistently denied and/or ignored, thereby violating the Supreme Courts holding in Townsend v. Sain, 83 S.Ct. 745, [13] at 757 (1963).

" To be entitled to a federal evidentiary hearing, a habeas petitioner must (1) allege facts which, if proven, would entitle him to relief, and (2) show that he did not receive a full and fair hearing in a state court. A petitioner who meets these conditions must receive a hearing. See Williams v. Taylor, 120 S.Ct. 1479 (2000)." Belmontes v. Brown, 414 F.3d 1094, [29] at 1124 (9th Cir. 2005). "Where facts are in dispute, a federal habeas court must grant an evidentiary hearing if the applicant did not receive a full and fair hearing in a state court. Townsend at 756."

Stano v. Dugger, 883 F.2d 900, [1-2] at 904-5 (11th Cir. 1989). "A violation must rise to the level of a denial of 'fundamental fairness'". Shaw v. Boney, 695 F.2d 528, [1-2] at 530 (11th Cir. 1983). "The Supreme Court has found state factual findings unreasonable under §2254(d)(2) when the direction of the evidence, viewed cumulatively, was too powerful to conclude anything but the petitioners factual claims." French v. Warden...,790 F.3d 1259, [12-13] at 1267-8 (11th Cir. 2015). "The truth is more likely to be arrived at by hearing the testimony of all persons who may seem to have knowledge of the facts, leaving the credit and weight of such testimony to be determined by the jury or the court. "Washington v. Texas, 87 S.Ct. 1920, [6] at 1924-5 (1967).

10. Mandates of §2254(d)(1) and/or (2) Ignored: Morris has found no Supreme Court authority that mandates that he state 'specifically' whether a prior courts ruling was 'contrary to', **or** involved 'an unreasonable application' **or** 'an unreasonable determination' of clearly established Supreme Court precedent, but rather, the statute expressly allows - using the word '**or**' - for a litigant to claim that all prior lower court rulings implicate either of those clauses as expressed in the statutory language of §2254(d)(1) and/or (2), apparently leaving it up to the Federal Courts to identify which clause most appropriately applies to the specific issue. However, Morris contends that all prior court rulings in this cause do in fact

implicate §2254(d)(1) and/or (2), thereby warranting an evidentiary hearing and/or habeas relief.

Important to Remember: "...there was no evidence to corroborate the alleged-victim's version of the events — this was a searing match between the defendant and the alleged-victim." Item 8 supra, citing Fike v. State. "If one of only two eyewitnesses to a crime had told the prosecutor (or police) that the defendant was definitely not the perpetrator, and if this statement was not disclosed to the defense, no court would hesitate to reverse the conviction resting on the testimony of the other eyewitnesses." United States v. Agurs, 96 S.Ct. 2392, [10-11] at 2401-2 (1976).

Important to Remember: The primary gist of this cause is 'Brady/Strickland Violations' – 'requested favorable evidence withheld **upon request** – suppressed via collusion between the state court, the prosecutor, and defendants public defender'. "The government's failure to provide requested Brady information... requires automatic reversal." United States v. Bagley, 105 S.Ct. 3375, 3379 (1985). "A new trial must be granted when evidence is not introduced because of the incompetence of counsel." Bagley, [3] at 3383. "A discovery violation constitutes reversible error." United States v. Camargo–Vergara, 26 F.3d 1075, 1080 (11th Cir. 1994). "A defendant is entitled to a new trial if... disclosure of the evidence... would have produced a different result." Smith v. FDOC, 572 F.3d 1327, [2] at

1334 (11th Cir. 2009). "Failure to disclose material evidence justifies setting aside a conviction." Wood v. Bartholomew, 116 S.Ct. 7, [1-2] at 10 (1995). "A conviction must be reversed upon constitutional violation." Bagley, [3] at 3381-3. "The trial courts exclusion of evidence would require reversal." Chapman v. California, 87 S.Ct. 824 (1967). "We will reverse a conviction where doing so is necessary to prevent a manifest miscarriage of justice." United States v. Fries, 725 F.3d 1286, [1-4] at 1291 (11th Cir. 2013). "A new trial is required if the suppressed evidence could have affected the judgment." Giglio v. United States, 92 S.Ct. 763, [1-3] at 766 (1972).

Morris contends, with all of the above courts, both the 11th Circuit and this Supreme Court, ruling that either 'convictions must be reversed or set aside' or that 'new trials must be granted' upon defense counsel and/or prosecutor involvement (collusion) in the suppression of favorable evidence, it is inconceivable that the District Court in this cause did not find that one of the clauses of §2254(d)(1) and/or (2) were not implicated, thereby warranting habeas corpus relief.

11. Denied Request's for Appointment of Counsel Prejudiced Petitioner: And finally, Morris also requested appointment of counsel to assist him in this cause every step of the way because he is, quite obviously, untrained in the science of law, and the District Court denied that request as well. Morris contends that pro se leniency was not afforded to him as mandated pursuant to Supreme Court

precedent cited by Morris (Appx. 'D', Doc. 47, pgs. 4-5) and he would have forwarded a far-more competent cause, and the District Court would have showed his filings far-more respect, had this cause been submitted to the court, or had Morris been represented by, a professional who is properly trained in such matters, which in all probability severely prejudiced this habeas petitioner.

REASONS FOR GRANTING THE PETITION

Petitioner Morris prays that the Honorable Justices of this Supreme Court will perceive the nervousness, fear, and sheer-terror of a defendant who is unskilled in the ways of court-room etiquette, abandoned by his public defender and thereby left all alone to fend for himself, exacerbating that fear and nervousness, not to mention facing the toughest challenge of his entire life.

Morris admits that the gist of his entire criminal history record has been DUI and Driving While License Suspended offenses. Although wrong, if he were to be classified as any certain type of offender, that would be it. Unequivocally, petitioner insists 'he is not a sex offender, and he is not guilty of lewd lascivious molestation.' But now, and at the time of his plea hearing, that nightmare of becoming wrongfully labeled as such a heinous-disgusting person was consuming his every thought - 'That he was going to be wrongfully labeled a sex offender for the rest of his life.' Per se, 'a life sentence for a crime he did not commit, and for

which there was no evidence ever entered into the record to support the commission of the alleged-crime or the conviction for it.'

Morris contends that the plea colloquy transcript proves that before anything else in that hearing occurred, even prior to the entry or acceptance of his plea, he requested a copy of the only evidence he was aware of — pre trial transcripts — and he was denied by his own public defender, the prosecutor, and the lower/state court judge — a manifest Brady, Strickland, and V and VI Amendment violations. **And this is what controls this cause**.

The problem at that point was that this scared and naive defendant did not know anything about the law at that time, he did not know the withholding of the subject favorable requested evidence amounted to the aforementioned violations, and in fact, when he was told by the lower court judge that he did not have a right to the requested evidence, i.e., 'effectively mislead,' he felt he was at the end of his rope with nothing left to do but to enter a nolo plea, with no ability to develop a defense without the requested information and to try some kind of appeal later.

Some 20 months post conviction Morris filed a Florida Bar complaint against his public defender with a copy of the plea colloquy transcript and convinced the bar that he had made a proper request for the discovery materials on the record, which the bar then directed Morris' public defender (Cobb) to provide the pre-trial transcripts by a certain date. Ms. Cobb so badly did not want Morris to

see those transcripts that she failed to provide them upon the bars first directive, prompting Morris to write the bar again and the issuance of a second bar directive. Upon finally receiving the requested/withheld pre-trial transcripts, it became obvious why they were withheld to begin with. (Please see, Certiorari Appendix 'D', Petitioner's Doc. 47 'Motion in Opposition to Courts (Doc. 43) Order', Attachment 1, Petitioner's 'Motion for Leave to Amend/Supplement Pro Se Reply to States Show Cause Response' at pages 3-9, which highlights the critical contradictions in the pretrial transcripts which work in favor of Morris' cause). Once Morris read them, he knew without a doubt that had the lower court ordered the transcripts to be provided **upon request**, he would not have entered his plea but would have insisted on going to trial, and that is why the transcripts were withheld to begin with — **to hinder a trial**. The lower court judge, the prosecutor, and Morris' own public defender colluded to take advantage of his legal ignorance and fear, withholding favorable requested evidence from him for the sole purpose of procuring an unconstitutional conviction, and now Morris stands wrongfully labeled a sex offender for the rest of his life.

There never was any evidence in the record to support the alleged-crime. Morris is actually innocent and convicted of a crime he did not commit. And he contends that the unconstitutional-force expended by all lower court judicial officials to withhold that evidence, that clearly strong inference provides that those

judicial officials knew perfectly-well that what they were doing was wrong, proves collusion to purposely violate Morris' rights as contemplated by Brady and Strickland for the sole purpose to procure that unconstitutional conviction against Morris.

What Petitioner Morris seeks now that he has seen the withheld transcripts, is to be afforded the jury trial he was unconstitutionally deprived of, i.e., 'judicially tricked out of', at the start of this cause on March 28, 2013. If only one thing is obvious in the case record is that via judicial trickery, favorable evidence was withheld from Morris **upon request**, prior to any plea, which amounts to violations of precedent from this Honorable Supreme Court and the United States Constitution.

This fundamental miscarriage of justice must be corrected, and Petitioner Morris prays the Honorable Justices of this Great Court will do just that.

Most Respectfully,

August 22, 2018

Charles L. Morris

Charles L. Morris, *pro se*

CONCLUSION

"The function of federal habeas corpus is to redress constitutional error, not to relitigate state criminal cases. "Herrera v. Collins, 113 S.Ct. 853, [2] at 861 (1993). However, that is exactly what the District Court did in this case. They relitigated the state lower court case focusing on minor-procedural issues rather than focusing on constitutional violations. "If a convicted state criminal defendant can show a federal habeas court that his conviction rests upon a violation of the Federal Constitution...he may well obtain a writ of habeas corpus that requires a new trial... or release." Trevino v. Thaler, 133 S.Ct. 1911, [1] at 1917 (2013). And it is 'a new trial or reversal of conviction' that this petitioner seeks. Petitioner contends that is the only appropriate remedy.

Petitioner contends the District Court should have focused, first and foremost, on his Brady/Strickland claims. "The governments failure to provide requested Brady information... requires automatic reversal." Bagley at 3379. "A new trial must granted when (requested) evidence is not introduced because of the incompetence of counsel". Bagley, [3] at 3383. "It is the court and not the government that decides whether to turn over Brady material." United States v. Starusko, 729 F.2d 256, [8] at 261 (3rd Cir. 1984). "The principles of Brady and remedies for its violation are well known to all lawyers (and judges)." State v. Huggins, 788 So.2d 238, 244-5 (Fla. 2001). "This court will reverse a conviction

for prosecutorial misconduct if the misconduct prejudiced the substantial rights of the accused." United States v. Beale, 921 F.2d 1412, [53-55] at 1437 (11th Cir. 1991).

Petitioner Morris, and the plea colloquy transcript, have both demonstrated that 'before anything else occurred, Morris made a proper discovery request on the record and was denied on the record.' The United States Supreme Court held in Brady that "the suppression by the prosecution of evidence favorable to an accused **upon request** violates due process." And Bagley held that "failure to provide requested Brady information requires automatic reversal." Everything subsequent to the discovery request and its denial is irrelevant. Accordingly, the lower state court must afford Morris a new trial or vacate/reverse the instant conviction. It is the only appropriate remedy under the circumstances.

Wherefore, Petitioner Charles Litton Morris, pro se, respectfully submits this 'Petition for Writ of Certiorari' on this 22nd day of August, 2018.

Charles L. Morris

Charles L. Morris, *pro se*

UNNOTARIZED OATH

Under the penalty of perjury, pursuant to 28 U.S.C. §1746 I declare the foregoing to be true and correct.

August 22, 2018

Charles L. Morris, *pro se*