

No.: _____

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PROVIDED TO APALACHEE
CORRECTIONAL INSTITUTION
ON 7/20/18
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Amended from 7-9-18

IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN COOK - PETITIONER

vs.

SECRETARY, DEPARTMENT OF CORRECTIONS, - RESPONDENT(S)
FLORIDA ATTORNEY GENERAL.

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

AMENDED PETITION FOR WRIT OF CERTIORARI

Steven H. Cook, pro se

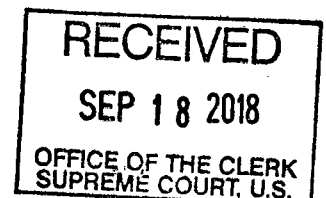
FDC # 130448

Apalachee Correctional Institution

52 West Unit Drive

Sneads, Florida 32460

(850) 718-0577



QUESTIONS PRESENTED

- Is the issue accordingly of great import to potentially thousand's of prisoners similarly situated and does it have significant impact on the public.
- Does the Federal Mail box Rule exist as a matter of federal law, and florida law?
- Was the eleventh cir. wrong to deny a C.O.A. when it was clear from the record that petitioner had been denied due process under the 5th and 14th amendment by the trial court erroneous denial of R. 3.850 collateral review?
- After the 11th Cir. granted a C.O.A. and issued a "vacate and remand" to the middle district with the opinion that 1. The petition (2254) was timely filed, and 2. The R. 3.850 motion issue claimed in the petition was also timely filed under the Federal Mail Box Rule, was the middle district wrong for misconstruing the issue and grounds of the petition as being from a R. 9.140 for ineffective "appellate" counsel rather than the appropriate R. 3.850 motion claimed in the petition? (doc. 35 mid. Dist.)
- For the purpose of the due process clause does the process of law for the "deprivation of liberty" comprise all procedures including collateral review procedures that establish and review the validity of a conviction?

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

Baab, Jr. Howard H., Elected Public Defender, Fifth Judicial Circuit, Florida;

Berger, Wendy W., Judge, Fifth District Court of Appeal, Florida;

Bondi, Pamela Jo, Elected Attorney General, State of Florida;

Cohen, Jay P., Judge, Fifth District Court of Appeal, Florida;

Hanson, Thomas Phillip, Assistant State Attorney;

Holloman, Charles R., Trial Counsel;

King, Brad, Elected State Attorney, Fifth Judicial Circuit, Florida;

Levering, Rose M., Assistant Public Defender, Appellate Division;

Magnuson, Paul A., Senior Judge, United States District Court;

Miller, William A., Assistant Public Defender;

Moore, John C., Assistant State Attorney;

Morris, Allison Leigh, Assistant Attorney General;

Orfinger, Richard B., Judge, Fifth District Court of Appeal, Florida;

Palmer, William D., Judge, Fifth District Court of Appeal, Florida;

Purdy, James S., Elected Public Defender, Appellate Division;

Sawaya, Thomas D., Judge, Fifth District Court of Appeal, Florida;

Torpy, Vincent G., Jr., Judge, Fifth District Court of Appeal, Florida;

Wall, Rebecca Roark, Assistant Attorney General;

Wells, Glenna L., Victim;

•I Hereby Certify that no publicly traded company or corporation has an interest
in the outcome of this appeal

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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 be issued to review the judgment/s of the court/s as listed in the opinions below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 'A' to the petition and is

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

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

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

The opinion of the United States court of appeals appears at Appendix 'D' to the petition and is

☒ reported at *Cook. v. Sec'y, Dep't Corr.* 686 Fed. Appx. 766 (11th Cir. 2017);
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

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

Related cases from **state courts**:

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

☒ reported at *Cook V. State*, 115 So 3d 372 (Fla 5th DCA 2013) ;
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Fifth Judicial Circuit Court, Marion County, Florida appears at Appendix 'G' to the petition and is

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

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United State Court of Appeals decided my case was February 6, 2018.

☐ 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: April 9, 2018, and a copy of the order denying rehearing appears at Appendix 'C'.

☒ An application for extension of time to file the petition for a writ of certiorari was filed (by mail box rule) on June 29, 2018. No response has been received by Petitioner as of the date of the filing of this petition.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 14, US Constitution

Amendment 5, US Constitution

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*Anders v. California*, 87 S. Ct. 1396 (1967)

*Houston v. Lack*, 108 S. Ct. 2379 (1988) [Federal Mailbox Rule]

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28 U.S.C. § 2254

28 U.S.C. § 2253

~~~~~  
*Haag v. State*, 591 So. 2d 614 (Fla. 1992) [Florida State Mailbox Rule]

§782.04, Fla. Stat. (2004)

Rule 3.850 Fla. R. Crim. P.

Rule 9.140 Fla. R. App.

## STATEMENT OF THE CASE

1. In June 2004, Petitioner was falsely accused and arrested. In June 2008 four years later petitioner was falsely convicted of first degree premeditated murder Stat. 782.04 and sentenced to natural life in prison.
2. Petitioner was unsuccessful on direct appeal where appellate counsel filed a brief under *Anders v. California*, 386 US 738 and was granted a motion to withdraw.
3. Unskilled and untrained, petitioner attempted to file a state habeas claims of IAAC but those too were unsuccessful and per curiam affirmed by the Fifth District Court of Appeals, although without opinion or addressing the individual issues raised.
4. Much of petitioner's trial record, depositions etc, had gone missing due to institution transfer causing the petitioner to hand draft from memory a Rule 3.850 motion alleging the voluminous error of trial while advising the circuit court that petitioner would file an amended rule 3.850 after lost records were acquired.
5. Petitioner timely filed the original rule 3.850 on June 11, 2010. After another transfer to North Florida some months later, petitioner was able to regroup missing records and did file an amended 3.850.
6. The trial court quickly denied the amended 3.850 motion alleging that the original motion had never been docketed and therefore the amended motion was untimely.
7. Appeal was made to the 5<sup>th</sup> DCA with the DCA advising petitioner to supplement the trial court with the original timely filed 3.850 motion.

8. Petitioner immediately did this and again the trial court summarily denied the motion as untimely ignoring the original 3.850 motion as proof of a timely filing.
9. Appeal was again taken with the 5<sup>th</sup> DCA also ignoring the original timely filed 3.850 and affirming the trial court's denial. Petitioner went on to exhaust all state remedies and thereafter timely filed the federal habeas petition 2254.
10. Due to a clerical error concerning the ground/claim of the petition an amended petition had to be filed.
11. Later, on 7-30-2015 the Middle District of Florida dismissed the petition as untimely and denied C.O.A. saying that the petition was untimely because the trial court had alleged the 3.850 had never been filed therefore the (1) year time limit under (AEDPA) had expired.
12. Appeal to the 11<sup>th</sup> Circuit was taken where C.O.A. was granted and after appeal the 11<sup>th</sup> Cir. Vacated and Remanded with an opinion that 1. The 3.850 had been timely filed pursuant to the "mail box rule" and further that the petition for 2254 Habeas had also been timely filed 11<sup>th</sup> cir. 4-26-2017.
13. The Middle District Court granted in part that the petition had been timely filed, however it dismissed the petition again denying C.O.A. alleging that petitioner had raised issues of ineffective "appellate" counsel that had been denied on the merits, and had not demonstrated that his claims are debatable or that they "deserve encouragement to proceed further." 7-24-2017
14. Again appeal was taken to the 11<sup>th</sup> Cir. Court of Appeals for C.O.A., where the 11<sup>th</sup> Circuit denied C.O.A. alleging that petitioner had not shown the denial of a constitutional right. 2-6-2018

15. Petitioner filed for reconsideration which was also denied alleging that petitioner had offered no new evidence to warrant relief. (doc. 43) 4-11-2018

## REASONS FOR GRANTING THE PETITION

### 1. Denial of the C.O.A. by the 11<sup>th</sup> Cir.

- a. The 11<sup>th</sup> Cir. Mistakenly denied the certificate of appealability alleging a failure to show denial of a constitutional right. Petitioner contends that 5<sup>th</sup> and 14<sup>th</sup> Amendments due process violation was established initially in the Federal Habeas 2254 for the state court denial of post conviction collateral review, R. 3.850.

The 11<sup>th</sup> Cir. In the "Vacate and Remand" Order to the middle district clearly stated that the Habeas Petition was timely filed, and the Fla. R. 3.850 was also timely filed under the Federal Mail Box Rule. "Exh. D" At that juncture the denial of due process was made clear by the 11<sup>th</sup> Cir., where the trial court had ignored the Federal Rule of law, and also the state rule under Florida's own mail box rule. And in doing so "deprived petitioner of his liberty against the laws of the U.S. Constitution, 5<sup>th</sup> and 14<sup>th</sup> Amendment due process See: *Thornburg v. Abbott*, 104 L. Ed 2d 459 (1989).

"If there could be any question whether State Post Conviction Procedure's are subject to due process protections, our unanimous opinion in *Yates v. Aiken*, 8 L. Ed 2d 546 (1988), make it clear they are".

When a Habeas applicant seeks a C.O.A. the court of appeal should limit its examination to a threshold inquiry into the underlying merits of the claims. *Slack v. McDaniel*, 146 L. Ed. 2d 542 (App. 2000)

The inquiry does not require full consideration of the factual or legal basis supporting the claims. "Need only demonstrate a substantial showing of denial of a constitutional right (2253)(c)(2) and must show that reasonable jurists could debate, whether for that matter agree the petition should have been resolved in a different manner, and could conclude the issues presented are adequate to deserve encouragement to proceed further Slack Supra at 484. *should have*

Thus the Eleventh Circuit issued a C.O.A to review the district courts denial of the Habeas 2254, where a 5<sup>th</sup> and 14<sup>th</sup> Amendment violation of due process was clear on the face of the record.

2. Denial of the Petition by the Middle District Court. The middle district court was wrong for denying the petition and for failing to issue a C.O.A.

The Eleventh Circuit issued a "vacate and remand" order to the middle district court stating that (1) The petition was timely filed and (2) the Fla. R. 3.850 at issue "was also timely filed under the Federal Mail Box Rule." That ruling alerted the middle district court to the fact that the issue was a due process denial of the right to the R. 3.850 collateral review, [not] issues from a past R. 9.141 ineffective "appellate" counsel state habeas motion.

The middle district was wrong when it misconstrued the issue and grounds of the petition as concerning "appellate" counsel issues that had been adjudicated years prior, and in doing so further violated the 5<sup>th</sup> and 14<sup>th</sup> amendments of the US Constitution's due process clause.

The petition should have been granted after remand from the eleventh circuit as the "timeliness" of the R. 3.850 was the issue to be resolved. The middle district should have granted the petition and remanded to the trial court an order for the trial court to hear the R. 3.850 motion on the merits as timely filed under the Federal Mail Box Rule.

3. The 5<sup>th</sup> DCA conflict with other DCA's. The 5<sup>th</sup> DCA affirmed the trial court's erroneous denial of petitioner's R. 3.850 motion. The trial court had ignored the proof of a timely filing of the R. 3.850 motion under the mail box rule after being supplemented with the original signed and dated motion. Thereafter the 5<sup>th</sup> DCA ignored the same "proof of a timely filing" and affirmed the trial court's denial.

The 5<sup>th</sup> DCA decided an important federal question (Federal Mail Box Rule) in conflict with the decisions of the 1<sup>st</sup> DCA in *Gonzalez v. State*, 604 So. 2d 874, the 2<sup>nd</sup> DCA in *Moncer v. State*, 666 So. 2d 558 (2<sup>nd</sup> DCA 1995); *Perez v. State*, 129 So. 3d 1159 (3<sup>rd</sup> DCA 2014); *Thompson v. State*, 761 So. 2d 324 (Fla. 2000); *Williams v. McNeil*, 557 F. 3d 1287 (11<sup>th</sup> Cir. 2009); and *Taylor v. Williams*, 528 F. 3d 847 (11<sup>th</sup> Cir. 2008)

4. The 5<sup>th</sup> DCA and Trial Court conflict with US Supreme Court. The 5<sup>th</sup> DCA and the trial court have decided an important federal question in conflict with relevant decisions of the United States Supreme Court.

Both the 5<sup>th</sup> DCA and the trial court have denied petitioners Fla. R. 3.850 as untimely even though both courts had before them the original signed and dated



motion as "conclusive proof" of a timely filing" under the Federal Mail Box Rule.  
*Houston v. Lack*, 487 US 266, 101 L. Ed 2d 245 (1988)

5. Petitioner is suffering under a Natural Life Sentence. Petitioner urges that he is absolutely and completely innocent of the crime for which he was convicted. Further petitioner has been deprived of his liberty these past fourteen years against the United States Constitutions 5<sup>th</sup> and 14<sup>th</sup> amendment's due process clause.

Petitioner's trial was wracked and riddled with err. Abuse of discretion. Reversible Error. More than sixty instances of the most egregious prosecutorial misconduct imaginable and dozens of acts, actions and omissions of ineffective assistance of counsel.

For the first three years of pretrial detention petitioner's case was wholly circumstantial, and would not sustain a conviction for murder. During the fourth year the state recruited a county jail inmate who would come to trial and give self serving testimony that during a one week period while he and petitioner where in a jail dorm together, petitioner confessed the crime to him.

Your petitioner has been wrongly denied and dismissed time and time again, unfairly and unjustly treated in a fight that has wasted countless judicial resources in these past nine years since trial, initially due to the trial courts desire to never have petitioner's Fla. R. 3.850 motion alleging the countless errors reviewed on its merits.

This Honorable Court is the last hope for justice in this cause, for petitioner to vindicate his right to prove himself innocent.

Without the grace and assistance of this court petitioner will be condemned to die in prison while being an innocent man. Adequate relief cannot be obtained in any other form or from any other court.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Mr. S. H. Cook

STEVEN H. COOK

Date: 7-20-18

*Amended from 7-9-18*