

### **ORDER**

This cause has come before the court upon the defendant motion to amend motion for newly discovered evidence and motion to request emergency hearing accordingly having considered the motion and the record it is here by ordered and adjudged that the state shall include a response to the motion to amend in it's forthcoming response the defendant request emergency hearing is denied

Done and ordered at Fort Lauderdale, Fla. This 5<sup>th</sup> day of May 2010.

The evidence shown it's 2 orders and 2 motions ground one with the sworn statement filed March 18, 2010 ground 2 The motion to amend with the arrest photo and police report that the Federal Judge told Malone how to refile on file May 5<sup>th</sup>, 2010 with Allison Gilman letter to assist and Bidwill clearly told Samantha Rosen (The State Attorney) to include a response to the motion to to amend

See Appendix **N** The mandamus I filed when the state did not file an response page 1 missing and this was filed July 24, 2010 page 4 I said:

I am smart to realize that the state will try the same thing again is take my motions out of the court record so I know how they think so I am sending a copy of all 3 motion to the 4<sup>th</sup> DCA and the Attorney General cause these motion may in fact walk out of the court's file again and will never be seen again by the court cause the state did not file an response they will get rid of them like in the past just to stop Malone from getting out of prison

Malone had sent his motions to the 4<sup>th</sup> DCA and Attorney General and put the court on-notice they will come up missing and put the State Court on notice of Rule 9(b) and 2244 and *Sander and Kuhlman v. Wilson* I just had that gut feeling in 2010.

### **THE 3RD COURT ORDER THE JUDGE ISSUE APPENDIX O**

On March 18, 2010 this court ordered the state of Florida to file a response to the defendant motion to amend motion for newly discovered evidence no response has been file no extension of time has been requested accordingly it is hereby ordered and adjudged that the state shall show cause why the relief sought should not be granted by filing a response within 10 day of date of this order done and ordered at Fort Lauderdale Broward County Florida this 27<sup>th</sup> day of August 2010.

### **STOP HOLD UP!!**

Ground one with the sworn statement was filed March 18, 2010 by court order Ground (two). The May 5<sup>th</sup>, 2010 motion to amend on the claim of actual innocent that the Federal Judge told Malone how to refile on with the arrest photo and police report was file May 5, 2010 the State Attorney and Judge ReWorded the August 27<sup>th</sup>, 2010 and got rid of the actual innocent claim.

Going Into 2011<sup>3</sup>

See Appendix **P** Judge Martin J Bidwill January 21, 2011 order and the state's August 31<sup>st</sup> response

Ms. Rosen said that I used my P S I for my newly discovered evidence then in Judge Bidwill order he show that the affidavit was my newly discovered evidence two different response to Ground One only not Ground 2 the May 5<sup>th</sup>, 2010 motion to amend on the claim of actual innocent

I file a motion for rehearing on February 15, 2011 Pointing out the state and court got rid of my motion to amend See Appendix **Q** the motion and order that was denied well "**rubber stamp**" March 7, 2011 so I file a notice of appeal back to the 4<sup>th</sup> DCA so I get legal mail from the appeal court on April 28, 2011 See Appendix **R**

say: Order that Gary Malone shall show cause in this court within (20) days of this order why his March 24, 2011 notice to appeal should not be dismissed by this court as prematurely file in light of the timely motion for an rehearing he filed in the trial court which remains pending

By the April 28, 2011 court order to show cause the 4<sup>th</sup> DCA clearly say that Malone motion for rehearing was timely filed in the trial court and the notice of appeal was filed too early this what they think 7 days pass See Appendix **S** May 5<sup>th</sup> 2011 Order say

Order that the above styled case is here by transferred to the Florida Supreme Court order is a March 7, 2011 is a 4<sup>th</sup> DCA order denying Appellant Motion For An Rehearing

See Appendix **T** The Florida Supreme Court May 25, 2011 Order

say: Petitioner notice of appeal filed in this court on May 13, 2011 has been treated as a petition for Writ of Mandamus seeking reinstatement of the proceeding in the district court of appeals below petitioner is allowed to including June 14, 2011 in which to file a proper petition for writ of mandamus that complies with the Florida Rule of Appellate Procedure 9.100 addressing why the proceeding in the district court of appeals should have not been dismissed the failure to file a proper petition with this court within the time provided could result in the imposed of sanctions including dismissal of this case See Fla.R.App.P. 9.410

I went by the deadline and file what the court ordered me to file when the 4<sup>th</sup> DCA had error and denied my motion for rehearing the court Rule July 15<sup>th</sup>, 2011 that and mandamus is not an appropriate vehicle

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3 Please keep in mind I Gary Malone under mandamus by the 4<sup>th</sup> DCA to make the trial court rule on my 2 motions and I mail the motions to the 4<sup>th</sup> DCA and Attorney General and made known that they will come up missing.

So!! Why the 4<sup>th</sup> DCA Denied Malone Motion for an Rehearing then send it to the supreme court to be over turn??? This court Rule First

In *Wilson v. Eric Seller*, 27 Fla. Law Weekly Fed S 183 Decided April 17, 2018

held: A Federal Habeas Corpus reviewing an unexplained state court decision on the merits should **look through that** decision to the last related state court decision that provides a relevant rationale and presume that the unexplained decision adopted the same reasoning

In Malone case that will be Appendix Q The timely filed motion for rehearing that been pending over 7 ½ years in the trial court See page12 I said:

Mandamus file on page 4 I said I am smart to know that the state will try the same thing again is take my motions out the court file so I know how they think so I am sending a copy of all 3 motions to the 4<sup>th</sup> DCA and Attorney General because these motions May in fact walk out the court file again and will never be seen again by the courts so what Malone said came out to be true I set Broward County up and got rid of ground 2 like I said they will do

Now it's clear the 4<sup>th</sup> DCA some one up there went back and took a 2<sup>nd</sup> look at the record and file and saw that I mailed them a copy of the motions and made known the state and judge will get rid of my motion cause of the way that Broward State Attorney run it's county here in Florida to where they get an conviction any way they can and will do anything in there power to make sure that the conviction never be over turn even if they got have the judge to help get rid of my 3.850 as the evidence clearly show here that the motion still pending in the trial court for over 7 ½ years on a motion for an rehearing that the 4<sup>th</sup> DCA error and denied and sent to the Florida Supreme Court to be over turn See: *Peterka v. State*, 890 So. 2<sup>nd</sup> 219 (Fla. 2004) where the Florida Supreme Court say that the ruling in *Schlup v. Delo*, 513 U.S. 298 (1995) that Schlup is not a applicable to state court proceeding so this also play an key factor that this court law is no good hear in the state of Florida and the federal Judges that agree with on this court law that you do not see often.

### **PROVISIONS OF 28 U.S.C 2254(b)**

The end of justice based on newly discovered evidence of Judge Bernard Bober June and July 13, 2017, court order alone with Petitioner docket sheet sent to him by the Innocent Project of Florida clearly show and prove what Malone has said for over 8 years. That Judge Martin J. Bidwill and State Attorney Samantha Rosen had in fact got rid of his claim of actual innocent when it was made known by the State Attorney that Allison Gilman acted as an under cover government agent and violated Malone's 6<sup>th</sup> Amendment right and the right to a fair jury trial. To stop Alison from coming forward to say she helped then State Attorney Carlos Rebello send Gary Malone to prison for 50 years for a shooting that it was no evidence Malone did that federal constitutional error do not result in the incarceration of an innocent person where a fundamental miscarriage of justice would result from failure to entertain the claim.

### **STANDARD OF REVIEW**

In *McQuiggin v. Perkins*, 133 S.Ct. 1924 (2013) actual innocence may also serve to overcome the procedural bar cause by untimely filing as the United States Supreme Court recently held actual innocent if proven serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar as was in *Schlup v. Delo*, 513 U.S. 298 (1995) and *House v. Bell*, 547 U.S. 516 (2006) to invoke the miscarriage of justice exception to AEDPA statute of limitation a petitioner must show that it is more likely than not no reasonable jury would have convicted him in the light of the new evidence.

### **SHOWING THIS COURT STANDARDS OF WHAT MALONE MUST SHOW**

#### **ALLISON GILMAN OPENING STATE TO THE JURY**

#### **TT. PAGE 145**

I want you to look at the physical description given by these people of the person that committed this crime and I think that when you hear this physical description it not going to match Gary Malone in any way I want you to look at the actions of Gary when he was arrested he was cooperative with the police there were no weapons what so ever found on him all of these things ladies and gentleman are going to add up to Gary Malone is not involved in this case

Evidence at trial and Beverly statement a tall black man came into her mom's apartment April 26, 2000 and shot my wife had dreadlocks.

#### **LENVIL MCBRIDE THE STATE KEY WITNESS TO THE SHOOTING**

#### **TT. PAGE 154 TO 158**

By Mr. Rebello:

Q: How long have you know Gary Malone?

A: I been knowing him a pretty good while.

Q: what does that mean a good while 10 years?

A: Yeah.

Q: Is he in the court room today?

A: Yeah

Q: Where is he?

A: Right here.

Q: Are you sure?

A: Yes

Q: Do you use glasses?

Y: No.

Q: And are you indicating that the gentlemen to your left is Gary Malone would you like to step down and get closer with the court's permission?

A: No

By Ms. Gilman: I don't think that the witness said he need to

A: No that Gary Malone

The Court: Sir, are you able to see the individual that you identified well enough or do you need to get closer?

The Witness: No that's good.

By Mr. Rebello

Q: You are able to see that individual?

A: Yes

Q: Does he wear glasses?

A: Who me?

Q: No Gary Malone?

A: No.

Q: Well that individual is wearing glasses.

A: He don't wear glasses.

**Q: Is there any particular reason why you pointed to one of the jury?**

**A : Oh I just look around I did not pay too much attention.**

**Q: So you have no reason why you did not correctly identify Gary Malone?**

**A: No no I just look around like this when he turn this he kind of resemble him.**

By the face of the record that do not lie my own father-in-law get in court and ID a member of the jury as being Gary Malone when ask over 3 times by the State and made known the jury member resemble him meaning look like Mr. Gary Malone.

**WHEN ASK THE TWO WITNESS DID MALONE HAD DREADLOCKS**

**LINVIL MCBRIDE 174-175**

Q: Did you describe to the police what you thought he was wearing?

A: No.

Q: You did not tell the police report?

A: No I didn't tell the police.

Q: What about his hair did you describe his hair or anything of that nature?

A: Yeah he always where his hair like he wearing it now.

Q: Just like it now?

A: Did you ever see him with dreadlocks?

Q: No.

**STATE WITNESS SHIRLEY TELFAIR TT.199-200**

Q: What was he wearing on that day?

A: A white t-shirt and short pants.

Q: Is that the description that you gave the officer that came that day?

A: Yeah.

Q: What about his hair?

A: The same way it is now.

Q: Did you tell the officer he was wearing dreadlocks?

A: No.

So the record shows that two witness to the shooting clearly said Petitioner never had dreadlocks.

**GARY MALONE ONLY WITNESS OFFICER DAVID MOORE HE CALL**  
**TT. 291-294**

Q: Part of your training and experience as an officer were you trained in the importance of filing out the reports?

A: Yes.

Q: Could you because you may need to refresh your recollection by looking at--

Mr. Rebello: I am going to object to leading.

The Court: Sustained.

By Ms. Gilman:

Q: Do you need to refresh your recollection by looking at these reports?

A: Yes.

Q: And are these normally sworn documents?

A: Yes

Q: Did you fill out a report in this case?

A: Yes

Q: And you have refreshed your recollection by looking at these reports before coming in here to testify before the jury?

A: For a short period of time.

Q: Do you need more time.

A: Possibly.

Q: Okay you will let me know if you do was there a description give to you at the scene of this person look like--

A: Yes.

Q: That committed the offense?

A: Yeah?

Q: Okay and who was that that gave you this description?

A: The two witness that was present in the room when the shooting occurred.

Q: Do you know what there relation was to the alleged victim?

A: **I believe one of the witness was the alleged victim? Mother and step father I believe.**

Q: Okay and can you tell the members of the jury what sort of clothing description was given to you regarding the perpetrator.

A: **Not without looking at the report I could not.**

Q: **If I showed you the report would it refresh your recollection.**

A: Yes.

Ms. Gilman: Permission to approach Judge.

The Court: Yes Ma'am.

Q: Is your recollection refreshed?

A: Yes

Q: Can you tell the members of the jury what clothing description was given.

A: White t-shirt black shorts.

Q: Any other clothing?

A: White bandana.

Q: **Was there any sort of hair style or specific hair style that was given by the family?**

A: Yes

Q: **What was that?**

A: **Dreadlocks.**

Q: **Did you actually write dreadlocks in your report?**

A: Yes I did.

Q: **Okay can I have that back?**

The record show (1) the first eye witness call by the State could not and did not ID me Gary Malone in open court (2) both of the eye witness said that I Gary Malone never had dreadlocks and (3) officer David Moor that Gary Malone call as his only witness said the two witness who was in the room when the shooting happen told him April 26, 2000 the description of the men had the hair style of dreadlocks so who's telling a lie here?? That the questions I Gary Malone was never at the apartment where the shooting happened.

#### **OFFICER TERRY GATTIS TT 282**

By Ms. Gilman

Q: Just briefly Detective did you ever come in contact with Gary Malone?

A: No ma'am.

Q: Did you conduct any other test for any fingerprints at the scene?

A: No ma'am

Q: Was any blood located at the scene?

A: No ma'am.

Q: Were any items of Gary Malone left there or any physical evidence in there that you found?

A: I did not search any evidence to put Mr. Malone at the residence.

The record also shows the State of Florida could not even put Gary at the residence where the shooting took place no physical evidence DNA fingerprints or anything only hear say by the State.

**TT. PAGE 322 ALLISON FINAL ARGUMENTS TO THE JURY**

**"SHE SAID"**

We know that three people that testified here in this court room were present there something that is very important ladies and gentlemen and the reason why I had to call that officer the last officer that testified state did not call him yes he may have told him to be available for me to call him **because the description given of the person that shot Beverly Malone was completely opposite of Gary Malone.** That is why I had asked witness had you ever seen anyone with dreads who doesn't look the same way it did that day yes it did yes it did yes it did why would the person that had dreadlocks—why would that description be different.

Allison clearly say on record that she call David Moore because the description given of the person that shot Beverly is completely opposite of Gary Malone and she tell the jury is that on reasonable doubt and the jury took a note of that.

**TT.370-371 9 QUESTIONS THE JURY CAME BACK AND ASK FOR IN THE MIDDLE OF DELIBERATION #5 LINE 20-21.**

**NEED WITNESS STATEMENT ON SUSPECT WITH DREADLOCKS OR POLICE REPORT**

See **Appendix U** Malone arrest photo and police report that if Allison Gilman would had put it in to evidence when I call Officer David Moore as my witness the jury would have never found Malone guilty cause (1) the description was completely opposite of Gary Malone (2) the two witness said I Gary Malone never had dreadlocks (3) Malone arrest photo clearly show Malone did not have dreadlocks when he was arrested April 26, 2000 and when Malone pull his probation file the photo that on record will show the same at an evidentiary hearing and by Allison and Carlos wrongly excluded the arrest photo and police report from the jury prejudice Malone from having a fair jury trial under the 6<sup>th</sup> and 14<sup>th</sup> Amendment of the U.S. Constitution Allison and Carlos was working together and now when I Gary Malone made it known Carlos Rebello ratted Allison out Allison has offered to come forward to assist Malone and not the State of Florida. And with this information made known to the Court's the judge and the State Attorney has did everything in there power to stop Allison Gilman from coming forward as a witness to the Court's.

**SHOWING THE SUPREME COURT WHAT THE STATE OF FLORIDA HAS COVERING UP THE PAST 18 YEARS**

**APRIL 26, 2000 THE DAY MALONE WAS ARRESTED THE POLICE REPORT**  
**APPENDIX V**

This detective after clearing the scene went back to our district and wrote an arrest affidavit out for the arrest of Gary Malone for the charge of attempted first-degree murder also a check on Malone revealed that Malone was on felony probation this det. Spoke with Malone's probation officer Helen Arnett. Arnett advised she would write a violation of probation affidavit on Malone.

On 4-26-2000 at approx. 2238 Hrs Lauderhill PD Officer Gary Celetti located and arrested the subject Malone on this det. Pc det took control of the subject Malone once at our district this det gave Malone his rights from a form which Malone stated and signed that he understood Malone waived his right. To this det Malone denied shooting his wife he never asks how she was nor did he display any remorse no tape statement was taken from Malone the handgun was not recovered.

**APPENDIX W** Page 8 and 9

October 13, 2000, Deposition of lead Det. Kenneth Klessner "Say"

Q: Was that conversation recorded?

A: No it was not.

Q: Why was that conversation not recorded?

A: Because I started- - after I gave him the rights said I want to sit down and talk about when you shot your wife and he goes I don't know what you're talking about I said well your in law said you shot her no I don't know what you're talking about. He didn't even ask how she was that was another things so I said look we're not even going to talk about this if this is what you're going to do but I am not going to take a statement from you saying I don't know what you're talking about that was his verbal statement.

Q: Other than saying I don't know what you're talking about is there any other statement of Gary Malone that you will be testifying in court regarding?

A: Well he just denied shooting his wife and he did not like I said he didn't even ask how she was which meant he did not display any remorse or misgiving or anything like that. That was about it.

Q: Did he ever make any statement to you such as I was there but didn't shoot her?

A: No.

Q: Just nothing what so ever?

A: No.

Now it's very clear from the day of the shooting Beverly her mom and her daddy the two eye witness of the shooting told David Moore the men shot Beverly had dreadlocks and gave the police Petitioner name Gary Malone name and by this lie as shown clearly in the police report and deposition detective Ken Klessner run and call my probation officer before I Gary Malone even arrested and tell her to violate Mr. Gary Malone for attempted first-degree murder then the police clearly see that they have arrest and violated the wrong person when the BOLO did not match Gary Malone of the person with dreadlocks that shot my wife so the State Attorney office had to find out a way to clean this up since they could not change the violation of probation so Malone had to be the one to take the fall for the

shooting that he denied doing and I was no evidence to put him at the apartment and my wife said I did not shoot her.

**See Appendix X "Newspaper Story"**

Where Broward State Attorney Michael Satz office that implied that his office use faulty information provided by Broward Sheriff's detectives to improperly prosecute people for murder where Barry Scheck and the innocent project call for and independent review by a special prosecutor to look into every murder case prosecuted in Broward County for the past 20 years. The evidence is clear this has been going on in Broward County for the past 30 years this the reason why my Gary Malone motions was being taken out the court record the State Attorney use Allison Gilman as an CI when I Gary Malone did not talk to Broward Sheriff Det. Kenn Klessner the day of the shooting so when the state sent 3 doctors to ask me question the police as when that did not work the state attorney got Allison Gilman to work for him in my case but the state turn around then ratted Allison out so when this was made known Allison offer to come forward to free petitioner Gary Malone so the bar members had made sure here in Florida that an "white lawyer" will not come forward to free an black men hear in the south.

### **REASON FOR GRANTING THE PETITION**

This court has unequivocally explained that the phrase second or successive is not self-defining and does not refer to all habeas application filed second or successively in time *Panetti v. Quarterman*, 551 U.S. 930 943,44 (2007)

Additionally there are numerous cases in which court have determined that petitions challenging the administration of the petitioner's sentence where not second or successive in part because the claims they raised did not exist or could not have been raised in a prior petition See *Benchoff v. Collier*, 404 F. 3<sup>rd</sup> 812, 817 (3<sup>rd</sup> Cir. 2005) stating a subsequent petition that challenges the administration of a sentence is clearly not a second or successive petition within the meaning of §2244 If the claim had not arisen or could not have been raised at the time of the prior petition *James v. Walsh*, 308 F. 3d 162, 168 (2<sup>nd</sup> Cir. 2002) See Also *Singleton's v. Norris*, 319 F. 3d 1018, 1023 (8<sup>th</sup> Cir. 2003) Finding that Singleton's petition was not successive when it raised a claim that did not arise until he was subject to an involuntary medication order pursuant to *Washington v. Harper*, and his execution date had been set and also

Petitioner asserting actual innocence pre AEDPA could obtain evidentiary hearing in federal court even if they failed to develop fact in state court See *Keeny*, 504 U.S. At 12, 112 S.Ct. 1715 a habeas petitioner's failure to develop a claim in state court proceeding will be excused and a hearing mandate if he can show that a fundamental miscarriage of justice would result from failure to hold a federal evidentiary hearing under AEDPA a petitioner seeking an evidentiary hearing must show diligence and additionally establish his actual innocence by clear and convincing evidence §§2254(e)(2)(A)(ii)B I petitioner Gary Malone has met this court standard of the law that had Allison would have put the arrest photo and police report into evidence when I Gary Malone would not have been found guilty cause they ask for the arrest photo and police report that was excluded from the 2001 jury trial.

### **FUNDAMENTAL MISCARRIAGE OF JUSTICE**

Under the fundamental miscarriage of justice exception to the procedural default rule a procedural default will be excused if the constitutional violation has probable resulted in the conviction of one who is actually innocent id: *Schlup v. Delo*, 513 U.S. 298 115 S.Ct. 851 (1995)

In *Schlup* the supreme court held that:

If a petitioner such as *Schlup* presents evidence of innocence so strong that the court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of none constitutional

error the petitioner should be allowed to pass through the gateway and argue the merits of his underlying claims

Petitioner Malone case is very clear that involves two Florida Bar members Allison Gilman trial lawyer that was appointed to petitioner Malone where at petitioner 2-13-01 jury trial at the side bar TT. 240 at the judges bench outside of the hearing range of the jury and petitioner Malone it was made known by Carlos Rebello the State Attorney that Allison Gilman was acting an an "undercover government agent" that is a violation of §90.502(c) of the Florida Bar Code and conduct say:

communication between lawyer and client is confidential and not intended to be disclosed to a 3<sup>rd</sup> person meaning the state attorney

Where also the jury clearly saw for there self that Allison Gilman was working for the State Attorney when they ask the court a question and the #8 T.T. Page 371-372 was

**IS THE DEFENDANT REPRESENTED BY STATE COUNSEL?**

Why would the jury ask the court and question like this cause they saw for there self that as an black men I Gary Malone was on trial with two state attorney and no one on my side to Defend me Gary Malone

Back to Appendix **M** The May 5<sup>th</sup>, 2010 Motion to Amend  
that will blow this court mind

**I ASK THIS COURT PAGE 11-12**

To give Allison a chance to clear Malone case cause why I say this is by the Florida Bar complaint instruction it say I Gary Malone must attempt to resolve my case with Allison, Allison made the first stage to where she want to assist Malone defense on his claim of actually innocence cause it's clear Carlos ratted her out on the face of the record and nothing can change this "but" Allison have the right to correct her past of what she did in Malone case as stated by the Florida Bar rules why you may ask is by Allison violation section 90.502 (c) this open doors to where the Florida Bar investigation of all the cases that Allison have done to where its no telling how many more people she have help the state send to prison when she suppose to be defending them and Allison have become a very important lawyer in Broward County in the public eye when she exonerated the lady with the baby shaking case on the news so Malone is asking the court to set an hearing to where Allison can

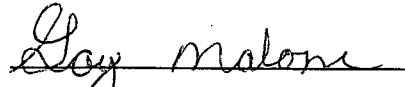
clear Malone and her name cause it's true what you do in your past and you think you have got away with it come back to haunt you and this what has happen to Allison Gilman. The state open his mouth when she help him out but an bar complaint with the evidence Malone have in his case of Allison wrongdoing in Malone case can hurt Allison Gilman that Malone don't want to do **but Malone can only put this up to the judge cause it's not nonething that can fall out of an clear blue sky that the state can refute what what Malone have in ground one or ground two the evidence and the face of the record talk for it self and Malone have the Supreme Court standing of carrie and his constitutional right and Allison to back up what Malone saying is 100 % right now.**

It clear why this motion had to come up missing out of the court file I told the state of Florida to there face that they could not beat me Gary Malone cause Allison Gilman often to come forward when Carlos Rebello ratted her out and I ask the court for an hearing and I had that felling that my motion will go for and walk that's why I mail them to the 4<sup>th</sup> DCA and the attorney general cause I did what the magistrate judge told me what to do to an point that Judge Martin J. Bidwill that took an oath to uphold the law did an 3<sup>rd</sup> court order and put his name on the motion to stop Allison Gilman from coming forward to free Malone to apoint that I as an black man for #1 did not get an fair jury trial but when I file my post conviction relief motion I can not get an fair fight either from the courts so this also an factor this court need to look at in Malone case where that Federal constitutional error do not result in the incarceration of an innocent person where an fundamental miscarriage of justice to bring Allison Gilman forward as an witness to the court Malone ask the court to look into the fact that this kind of case that Gary Malone will need and lawyer that who's not an member of the Florida Bar do to the fact that Malone trial lawyer has offer to come forward to assist Gary Malone and not the state of Florida in his case to prove his innocent

### CONCLUSION

Base on the law of this court and two federal court judge that agree with petitioner Gary Malone on this court law of "The End of Justice" of Rule 9b and 2254(B) Petitioner ask the court to grant his petition for Extraordinary Writ of Habeas Corpus 2254(b) and send his case back to the district court to hold an Federal evidentiary hearing to bring his trial counsel Allison Gilman forward as an eye witness to the court that Malone entitle to by this cour law in *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 11-12 112 S.Ct. 1715 (1992) and Rule §§2254 (e)(2)A(ii)B

Respectfully Submitted,



Gary Malone, D.C. #L00035  
New River Correctional Institution  
P.O. Box 900  
Raiford, Fl 32083

I declare certify under the penalty of perjury that the foregoing is true and correct and this petition for extraordinary writ of habeas corpus was placed in the prison mailling system on this 22<sup>nd</sup> day of October, 2018.

s/ 