No. 18-7873

REHEARING

IN THE

SUPREME COURT OF THE UNITED STATES

TROY SIERRA– PETITIONER

vs.

MARK INCH – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Troy Sierra

1599 SW 187th Avenue

Miami, Florida, 33194 – 2801

305-228-2000
Warden

QUESTION(S) PRESENTED

When an Indictment is done without counsel being afforded and the U.S. Supreme Court has Amendments against such atrocities to be performed against him shouldn't the Supreme Court do something about an illegal Indictment when shown to this Court?

- Why doesn't the U.S. Supreme Court see the valid constitutional violation done at Petitioner Sierra's trial that resulted in his unjust conviction and grant this Certiorari and demand a new trial? Isn't the Supreme Court supposed to see that everyone that goes to trial and convicted was to have received a fair trial?
- Doesn't the U.S. Constitution 6th Amendment guarantee that everyone enjoys the right to an effective reliable defense counsel? When the defense counsel concedes guilt throughout Petitioner Sierra's trial, isn't that considered ineffective defense counsel when mitigating evidence exists but yet denies for the jury to see it? Isn't that a severe violation of Petitioner Sierra's constitutional right?
- When none of the 14 State's witnesses were never cross examined, doesn't that sound and look like ineffective defense counsel has been done to the Petitioner?
- When Petitioner Sierra was in jail on this said conviction charge, detective Deluca came to the jailhouse to interrogate Petitioner Sierra on January 3, 2008, 3 days after Deluca already arrested him and confined him. Petitioner Sierra signed "no, I wish not to speak to you now." Doesn't the U.S. Supreme Court rule State that "law enforcement officers must immediately cease questioning a suspect who has clearly asserted his right to have counsel present during custodial interrogation? Isn't it a violation of Petitioner's Fifth and Sixth Amendment rights to allow Deluca to have the longest testimony against Petitioner at his unfair trial?
- How could the lower Court of Pinellas County, Sixth Judicial Circuit convict Petitioner Sierra of murder with a firearm when Petitioner Sierra never had a firearm on himself?
- Don't you agree that the time of death in a murder trial is both exculpatory and material evidence? Do you also agree that bloody footprints leading from the dead body to the front door is also exculpatory and material evidence and they both should be shown as evidence at trial regardless of guilt or innocence? Why would you let them hide this from the jury?
- How could you let a Judge hide the State's Exhibit 28, which is a rights advisement form where Petitioner Sierra signed "no, I wish not to speak to you now" and get away with it through the U.S. Supreme Court? Do you allow other Judges and Courts to break the laws? This is very clearly stated in Appendix G, page 259, lines 2-9. Can you see in this Writ that several times the State trial Court hid very material information from the jury to unjustly convict Petitioner Sierra?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] 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:

United States Supreme Court, One First St. N.E.,
Washington, D.C. 20543; Solicitor General of the United States
Room 5614, Department of Justice,
950 Pennsylvania Ave., N.W. Washington, D.C. 20530-0001

TABLE OF CONTENTS

INDEX TO APPENDICES

were submitted on January 31, 2019

TABLE OF AUTHORITIES CITED

CASES — PAGE NUMBER

TABLE OF AUTHORITIES CITED

PAGE NUMBER

RULES:

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

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

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

[X] reported at 2018 U.S. App. LEXIS 18395; 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 C to the petition and is

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

[X] For cases from **state courts:**

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

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the_____appears at Appendix ___ to the petition and is

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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was .

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

[X] A timely petition rehearing was denied by the United States Court of Appeals on the following date: Sept. 6, 2018 and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including October 29, 2018 (date) on February 3, 2014 (date) in Application No. 18 A 444.

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

[X] For cases from **state courts:**

The date on which the highest state court decided my case was March 31, 2014. A copy of that decision appears at Appendix D.

[X] A timely petition rehearing was thereafter denied on the following date: February 28, 2014, and a copy of the order denying rehearing appears at Appendix D.

[ ] 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).

STATEMENT OF THE CASE

At aproximately 11:30 am – 12:00 noon on Friday December 28, 2007, Petitioner Sierra was seen buying a can of beer by an ABC Liquor clerk. Later on that night at approximately 11:30 pm – 12:30 am Petitioner was arrested by Deputy Brian Figueroa and told him that he had come from Clearwater.

In the evening of December 29, 2007 police responded to the address at the Carillon apartments and found a deceased body. The autopsy on that body is written to have died at 17:48 p.m. on 12/29/2007. On page 2 of Appendix A, the 11th Cir. alleges that Petitioner waived his rights to an attorney on both December 20, 2007 and January 3, 2008 when Detectives Gibson and Deluca came to interrogate him after they placed him under arrest on December 30, 2007 and confined him to jail on that date. Petitioner Sierra signed "no I wish not to speak to you" on an advisement form Detective Deluca gave Sierra to sign and date on January 3, 2008.

On page 3 of Appendix A the 11th Circuit Court inadvertently and for any unknown reason claims that Sierra had his cell phone on him when arrested but if you look at property exhibit attached to this Petition, it shows that no cell phone was found on Petitioner. Why would the 11th Circuit lie to that extent? It was never stated at trial that Petitioner was arrested with a cell phone on himself.

Unexhausted and procedurally defaulted claims: Claims 1(b), 3(b) and 5(a)

On page 6 of Appendix A the 11th Circuit states "However, reasonable jurists would debate the District Court's denial of Claim 5(a) as procedurally defaulted." On page 7 in Appendix A the Court said that Defendant is not entitled to Federal habeas relief on Claim 5(a) and that he failed to make a *Strickland* violation. That is wrong for them to say that because Petitioner did make a successful *Strickland* violation statement in his COA, please read Appendix J, pages 31-33 submitted in original Writ on January 31, 2019.

Petitioner Sierra requested through the Court at trial and through his own defense attorney to call on alibi witness to tell the jury that he was indeed at ABC Liquors on Friday December 28, 2007 between 11:30 a.m. and 12:00 noon which would very easily acquit Petitioner but Sierra's constitutionally rights were denied which were his Sixth and Fourteenth. Please read *Chambers v. Mississippi*, 410 U.S. 284, 93 S. Ct. 1038 (1973). The observation is made in terms of the Confrontation Clause but if the ultimate integrity of the fact finding process has been undermined, due process itself has been denied. What our system puts forward as an essential and fundamental requirement for the kind of fair trial which is this Country's constitutional goal. Please see *Wearry v. Cain*, 136 S.Ct. 1002 (2016) – defense counsel at trial rested on an alibi, Id. at 1003.

Petitioner Sierra was not allowed to have an alibi witness or any other witness for that matter which resulted in a very unfair trial and constitutional error in the 6th and 14th Amendment resulted in a conviction of an actually innocent person and shows a very fundamental miscarriage of justice.

This procedurally barred issue 5(a) is exactly like *Brown v. Myers*, 137 F. 3d 1154 (9th Cir. 1998)

because it held that "trial attorney's failure to present witnesses in support of his alibi claim was ineffective assistance and there was a reasonable probability that such deficiency would affect the jury's verdict." According to Rule 10(a)(c) this issue has been resolved and Petitioner Sierra should have his Certiorari granted and remanded for new trial with an alibi witness to find Petitioner Sierra not guilty. Please also read *Wilson v. Cowen*, 578 F. 2d 166 (6th Cir. 1978) held that "Defense counsel's failure to call alibi witness deprived Petitioner of his only defense." This is exactly what happened in Petitioner Sierra's trial! According to the Supreme Court Rule 10(a)(c), See Appendix L.

Because of Petitioner Sierra's procedural bar the 11th Cir. Dist. Court of Appeals and Petitioner Sierra's case being an actual innocence case just at *Schlup v. Delo*, 513 U.S. 298, 115 S. Ct. 851 (1995), Petitioner Sierra has met all the burdens to match a *Schlup* violation where in *Schlup* you had to be procedurally barred and (1) *Schlup* was actually innocent in Dade's murder; (2) trial counsel was ineffective for failing to interview alibi witnesses; (3) the State had failed to disclose crucial exculpatory evidence. Petitioner Sierra has just shown in the past 3-4 paragraphs that he already has indeed shown issue (2) in *Schlup* to be met in this actual innocence Writ of Certiorari now presented to this high Court.

Sierra will show throughout the rest of his Writ that he is actually innocent as being able to meet the (1) issue in *Schlup*. Sierra will also show that Florida State Court failed to disclose the time of death to the jury after the jury requested the Court at trial and the State failed to disclose newly discovered evidence that Petitioner Sierra partially uncovered just prior to submitting his 3.850 in trial appeal review and those two pieces of evidence conclude in meeting the (3) issue in *Schlup* and also gives Petitioner Sierra an actual innocence claim and should grant him a Supreme Court Rule 39(6) an (7) and grant him Certiorari with an argument counsel to represent him.

The 11th Cir. has shown three procedural bars against petitioner Sierra and he qualifies for a *Schlup* violation as well as *McQuiggin v. Perkins*, 133 S. Ct. 1924 (2013) – Actual innocence if proved, held to be gateway through which State prisoner petitioning for Federal Habeas Corpus relief might pass regardless of whether impeded by procedural bar.

REASONS FOR GRANTING THE PETITION

THIS REHEARING SHALL BE TAKEN INTO SERIOUS CONSIDERATION TO BY USING *SCHLUP V. DELO*, 513 U.S. 298, 115 S. CT. 851 (1995). ACTUAL INNOCENCE WHERE PETITIONER SIERRA THAT NO JUROR WOULD NOW OR AT THIS PREVIOUS TRIAL COULD FIND SIERRA GUILTY.

Because of the issues that were presented to all the Courts previous to this U.S. Supreme Court according to 28 U.S.C. §2254(d)(1) any reasonable jurist would debate the denial of Petitioner

A. Claim 1(a)

This issue is supported by *Foster v. California*, 394 U.S. 440, 89 S. Ct. 1127 (1969) "where a witness who was unsure of his identification was repeatedly shown the defendants or their photographs in a suggestive manner so that identification became all but inevitable." Petitioner has shown in Appendix I submitted with original Writ on January 31, 2019, where on page 68, lines 15-16 and 23-24 the witness said he never saw the person he was trying to identify in several pictures Detective Deluca was showing him but yet he signed them to testify against Petitioner Sierra. The witness never saw anyones face but signed a face picture and said "yes, that's him." On page 72 in Appendix I, lines 5-8 when Deluca showed the witness three or four other single photos that's when Deluca told the witness "that's him" "we have him locked up in Orlando" that's when the eyewitness signed the several photos, Page 72 in Appendix I, lines 14-16 verify this. On page 73, lines 1-4 it says a couple of days later Detective Deluca shows the witness more pictures of Sierra. On page 74, lines 7-11 the witness tells the Court that Deluca even brought witness Bodtman more pictures and that's when Bodtman believed Detective Deluca is doing this because this is the guy they caught. This is against U.S. Constitution 14 Amendment for improper due process. Pleas read *U.S. v. Gilmore*, 398 F. 2d 679 (7th Cir. 1968) held: "The Court reversed defendant's conviction and remanded for a new trial because the eyewitness identification procedure was so unnecessarily suggestive and conducive to irreparable mistaken identification that defendant was denied due process of law. Petitioner Sierra was also denied due process of law because the same thing happened to *Gilmore* happened to Petitioner Sierra. Shouldn't Sierra also be remanded for a new trial? According to Supreme Court Rule 10(a) in Appendix L? Please also read *U.S. v. Hernandez*, 135 Fed. Appx. 97 (9th Cir. 2005) held that "The totality of the circumstances surrounding an officer's identification of defendant rendered his identification inadequate to support a finding of probable cause. the Motion to Suppress should have been granted. This is again the same as Petitioner Sierra's where all above cases sites rely on *Foster* just as Sierra's does and all are reversed just as Sierra's should.

This wrongful identification of Petitioner Sierra is a *Strickland v. Washington*, 466 U.S. 687, 104 S. Ct. 2052 (1984) because (1) defense counsel performance was well below the normal standard because counsel could have shown a *Foster* violation and that Sierra's identification was improperly done by Detective Deluca by showing the witness many, many single photos in several days time and Deluca convincing eyewitness to sign the photos. This in turn show the second prong (2) prejudiced to Petitioner Sierra from defense counsel for not doing anything concerning the improper identification process done by Deluca. Please read Browning v. Baker, 875 F.3d 444 (9th Cir. 2007) id at 467 concerning identification wrongfulness.

This in turn shows a *Williams v. Taylor*, 1205 S. Ct. 1495 (2000) violation where this (1) resulted in a decision that was contrary to and involved an unreasonable application of clearly established law determined by the Supreme Court and that was of course the violation of due process and the 14th Amendment being violated against Petitioner Sierra. The Sixth Amendment violation against Petitioner Sierra for not having an effective counsel and for not having a fair trial. This then resulted in (2) a decision which was the conviction of Petitioner Sierra that was based on an unreasonable determination of the facts in light of evidence presented at Sierra's very unfair trial.

Any reasonable jurist would debate that eyewitness Bodtman made a convincing identification because (1) Bodtman did not have a good opportunity to view Mr. Sierra (2) his attention at the time was making a phone call, (3) the description that he gave police did not match Mr. Sierra's (4) he was highly uncertain of his identification because he also failed a six man photo lineup with Sierra in the layout.

B. Claim 2(a)(i)

Trial counsel was ineffective for failing to present as the jury requested (See Exhibit A, in Appendix H). The jury wrote "Please provide a copy of the medical examiner's report. We would like to know what was determined to be the time of death." The Court erred significantly as well as the prosecutor committing perjury because in Exhibit B in Appendix H the Court asked "and there was no evidence or indication that would have been provided in a medical examiner's report, right?" The prosecutor committing perjury answered "That's correct." If you look at Exhibit C in Appendix H it states very clearly the date of death as 12/29/2007 and time as 5:48 p.m.

As you can see a substantial *Strickland* violation has been settled that (1) defense counsel's performance was below standards because in Appendix H, Exhibit B defense counsel says in lines 22-24: "Well, I think you have an option of saying the precise time of death was not in evidence." That automatically satisfies the second prong of *Strickland* has been met because counsel just showed prejudice against Petitioner Sierra. This ended up in a *Williams v. Taylor*, 529 U.S. 362, 1205 S. Ct. 1495 (2000) violation because Sierra's conviction "resulted in a decision that was contrary to and involved an unreasonable application of clearly established federal law as determined by the Supreme Court of the U.S. Petitioner's 6th Amendment violated for not receiving effective counsel and his 14th Amendment violated for not having <u>all</u> evidence provided at trial which is due process. This also resulted in the conviction of Mr. Sierra that was based on an unreasonable determination of the facts in the light of evidence presented in the trial against Sierra that was unfair.

C. Claim 2(a)(ii)

On page 9 of Appendix A the 11th Circuit again fabricates the truth as has been throughout their whole denial order where they say "The trial Court could not have given a different response to the jury, as Burgess's time of death was never adduced at trial." That is a flat out lie as Petitioner Sierra has shown in Appendix H, Exhibit C where the correct time of death was shown on the medical examiner's report as requested by the jury and denied by the Court and State prosecutor and defense counsel. Petitioner has shown prejudice by all three parties in the Courtroom which in turn would show very easily a *Stickland* violation where (1) defense counsel White's performance was very well below the standard of a competent attorney and (2) this shows severe prejudice against Petitioner Sierra from not only his own counsel but the Court showed prejudice as well as the State prosecutor.

This also shows a *Williams v. Taylor*, 1205 S. Ct. 1495 (2000) violation where Petitioner Sierra's 6th Amendment rights were severely violated by not having an effective counsel and not having a fair trial. His 14th Amendment rights being violated of due process for not having the evidence shown to the jury as the jury requested.

D. Claim 2(b)

Petitioner Sierra never stated a *Brady v. Maryland*, 373 U.S. 83 (1963) violation but the Courts have always brought that issue up in Motions. As you well know Sierra does meet all three prongs of the *Brady* violation where in Sierra's case of the time of death where Petitioner Sierra was in Orlando County jail at the announcement of 5:48 p.m. on 12/29/2007 that is the time of death of the victim. In Appendix H, Exhibit D it shows the Petitioner Sierra being in Orlando County jail on open container charges since early Friday night December 28, 2007. This shows the Petitioner Sierra had already been behind bars approximately 18 hours previous to the murder. How could Petitioner be found guilty by the jurors if they were to have been given the medical examiner's report in which they asked for at trial but were denied? This would show newly discovered evidence and a serious *Schlup* violation as being met in the (1) prong in *Schlup* where *Schlup* was innocent in Dade's murder and here in Petitioner Sierra's case, Sierra is also innocent in Burgess's murder. Here is an actual innocence case which is Sierra's. Sierra still meets the *Brady* violation because as shown in Appendix H, Exhibit B the prosecutor lied and suppressed the evidence. The (3) prong in *Brady* is easily met that Petitioner Sierra was prejudiced by the State Court, his own defense counsel and of course the State prosecutor. Petitioner hopes the U.S. Supreme Court does not prejudice petitioner Sierra and not grant Certiorari because Sierra has shown and will show in more relevant issues with "actual innocence with factual evidence."

Just as in *Schlup's* claim of innocence as in Sierra's was the ineffectiveness of counsel. See *Strickland* violation in Sierra's claim where counsel was so deficient that nothing at all was done for

Petitioner Sierra except pure prosecution done by the State, in all three respects of the State. The State prosecutor of course, the State paid defense counsel and the State paid Judge all three prosecuted petitioner Sierra, with no defense. This shows without a doubt a second prong of *Strickland*, where only prejudice showed at that trial on July 14-16, 2009. In *Carrier v. Hutto*, 724 F. 2d 396 (4th Cir. 1983) held that Defendant was denied due process of law under the Fourteenth Amendment. In Petitioner's Sierra's case it was when the State Court erred and refused the jury's request for the correct time of death.

This of course shows the *Williams v. Taylor* violation where Petitioner's 6th and 14th Amendments were violated for not having an effective counsel and forced to endure an unfair trial where that deviates due process. That made the second prong in *Williams* come true unfortunately with the conviction of Sierra because no evidence was provided on his behalf but evidence clear enough to acquit him existed but was not presented. How can you incarcerate an innocent man with a very constitutionally error filled trial?

E. Issue 3(a)

The trial counsel made a very prejudiced and unreasonable decision not to pursue an alibi defense and to give Sierra no defense at trial whatsoever. This denied Petitioner Sierra of his 6th and 14th U.S. Amendment rights, please read *Chambers v. Mississippi*, 93 S. Ct. 1038 (1973). This again is the second prong to *Schlup* violation where "trial counsel was ineffective for failing to interview alibi witnesses." [redacted].

Petitioner Sierra contention relies on the confrontation, due process and equal protection clauses of the Federal Constitution. If Petitioner Sierra is denied his Writ of Certiorari then his Federal Constitution rights are then rendered useless or forfeited. This is an actual innocence being shown by Petitioner Sierra and *Schlup* violation shown. A precise *Strickland* violation has just been shown for counsel deficiency and prejudice. Also a *Williams v. Taylor* violation being shown because Petitioner Sierra's 6th and 14th Amendments were violated for ineffective counsel for not calling and interviewing Petitioner Sierra's alibi witness to show Sierra at ABC Liquor buying a can of can of beer at 11:30 – 12:00 noon on Friday, December 28, 2007 when the State was stating at trial that's when the victim was murdered but no one witnessed the victim being shot. This then resulted in a innocent human being incarcerated for the rest of his life for a crime he did not commit.

F. Issue 4(a)

On page 11 of Appendix A submitted to this Court it says "The State trial Court concluded that Mr. Sierra had freely and voluntarily waived his right to counsel prior to both interviews." That is **false**!

Petitioner Sierra signed "Q: Having these rights in mind, do you wish to talk to us now?" A: "no." Please see Appendix H, Exhibit G, rights advisement form January 3, 2008. Petitioner also verbally asked Detective Deluca to speak to an attorney at the same exact time he was signing and dating the form. According to U.S. Supreme Court case law *Edwards v. Arizona*, 101 S. Ct. 1880 (1981) – "It has been established a second layer of prophylaxis for the Miranda right to counsel. Once a suspect asserts the right not only must the current interrogation cease but he may not be approached for further interrogation until counsel has been made available to him." Detective Deluca refused to leave the interrogation room and that violated Petitioner's Fifth Amendment right under the U.S. Constitution and *Miranda v. Arizona*, 86 S. Ct. 1602 (1966).

Petitioner Sierra was also forced to read the advisement form to himself and was not read to by Detective Deluca and that also violates Petitioner Sierra's Fifth Amendment right set in *Miranda.* Please read Appendix G, Pg. 235, line 10 (unintelligible) the tape would show where Deluca does say "Read the form to himself" If you could please provide legal assistance to obtain that tape to verify 5th Amendment violation.

Petitioner Sierra met the requirements set by the Supreme Court Rule 10(a)(c) by here submitting a U.S. Court of Appeals decision that conflicts with the 11th Circuit Court of Appeals issue which is this important issue 4(a) that both are in conflict and that has been explained in the previous paragraphs and that case site is: *Jones v. Harrington*, 829 F. 3d 1128 (9th Cir. 2016), please read in detail because it says: "The Supreme Court has made it clear that when a suspect simply and unambiguously says he wants to remain silent, police questioning must end.

On page 11 of Appendix A it says "The State trial Court concluded that Mr. Sierra had freely and voluntarily waived his right to counsel prior to both interviews. The State trial Court's saying this is very untrue according to State records as Petitioner Sierra has already shown. the State trial Court is incorrect in saying this and getting away with that statement. Petitioner Sierra has already provided clear and convincing evidence that would definitely overcome the State trial's presumption. Please also read *Garcia v. Long*, 808 F. 3d 771 (9th Cir. 2015) where "police violated Miranda by conducting interrogation after Petitioner asserted right to silence by responding to officer's question "So you wish to talk to me now?" With simple "no" notwithstanding other statements *Garcia made during interview "no" meant "no." Garcia's* case was reversed and remanded with instruction to release prisoner.

-> in APPENDIX A

On page 12 the 11th Circuit proclaims that it was correct that the State trial says that Sierra waived his right to counsel. This is incorrect according to U.S. Supreme Court precedent where under *Santos v. U.S.*, 417 F. 2d 340 (7th Cir. 1969) "Unless a defendant is fully aware of a constitutional right, he cannot fully waive it." Please also read *Burgett v. Texas*, 389 U.S. 109, 114-115 (1967) where it says

"A valid waiver of the right to counsel must appear on record and will not b e otherwise presumed from a silent record." This shows that Petitioner Sierra never waived his right to counsel as State Court tries to say without no record of such. Please also read *Santos v. U.S.*, 417 F. 2d 340 (7th Cir. 1969) "It is axiomatic that 'unless the defendant is fully aware of a constitutional right, he cannot fully waive it.'"

This satisfies both Supreme Court Rules 10(a) and (c) where the 11th circuit has decided on an important federal question in a way that conflicts with relevant decisions (as shown above) decisions of this Court. Petitioner showed conflicts with 11th Circuit decision with other U.S. Court of Appeals decisions and petitioner wishes to have Certiorari granted because of what has been shown above.

Petitioner has shown a *Strickland* violation of great importance because defense counsel should have suppressed both illegal interrogations and stopped the testimony of Detective Deluca. This shows prejudice in *Strickland's* second prong because doing nothing is presumed prejudice. A *Williams v. Taylor*, violation is also shown where (1) Petitioner's Sierra's 6th and 14th Amendment rights were severely violated for counsel not suppressing the testimony of Detective Deluca and where the Judge erred significantly by hiding State Exhibit 28 Petitioner's January 3, 2008 rights advisement form. Please read Appendix G, page 259, lines 2-9 the State Court declares to proffer or hide the January 3, 2008 (State exhibit 28) where Petitioner signed "no" to speak to detectives. The Judge hid that document during their (jury) deliberations and Petitioner has proof of that on record as shown above.

G. Issue 4(b)

Under *Napue v. Illinois,* 79 S. Ct. 1173 (1959) Convictions obtained through the use of false testimony also violate due process. The most illegal testimony and most damaging in that trial was the false testimony given by Mr. McCombs. Trial counsel performed an outrageous *Strickland* violation by not motioning to suppress McCombs illegal and very damaging testimony. Defense counsel knew it was wrong to allow it and illegal but said and did nothing about it anyway. Second prong of *Strickland* is met because in doing nothing that extremely shows prejudice to Petitioner Sierra because defense counsel was a seasoned attorney and he would know that any testimony after an accused has been indicted without counsel is illegal. Shown here:

1. Petitioner Sierra arrested and confined in jail by Detective Deluca on December 30, 2007.

2. On January 3, 2008 Detective Deluca drove over to the jail house in Orlando to speak to Petitioner Sierra but Petitioner signed "no" I wish not to speak to you and asked for an attorney.

3. Petitioner Sierra was indicted without counsel on January 24, 2008. (See Exhibit H in Appendix H)

4. It is alleged that informant Scott McCombs is housed in the same dorm as Petitioner after indicted without counsel during the last week of February 2008 – 1st week of March 2008. At that time Petitioner still hadn't been afforded counsel.

5. Petitioner Sierra was not afforded counsel until March 11, 2008. (See Exhibit I, in Appendix H).

The 3rd Court, relying on the Supreme Court's per curiam reversal of *McLeod v. Ohio*, 381 U.S. 356, 85 S. Ct. 1556 (1965) concluded that *Massiah* rendered inadmissible all post Indictment statements obtained without counsel regardless of the circumstances. Please also read *U.S. v. Williamson*, 447 Fed. Appx. 446 (4th Cir. 2011) "The remedy for improper self-incriminating statements and for statements made without counsel is often the same: exclusion of that evidence." Please also read *O'Connor v. New Jersey,* 405 F. 2d 632 (3rd Cir. 1969) "There is an absolute right to counsel after Indictment. Where the right to counsel attaches any confession obtained in the absence of counsel is to be suppressed independent of any issues of the voluntariness of the confession. The admission of his statement could have been critical factor in the jury's finding of malice and premeditation conviction." Vacated and remanded.

Petitioner Sierra never confessed to any human being and is innocent but was convicted anyway illegally as shown above. A *Strickland* violation has just been shown because counsel could have very easily suppressed the false testimony of McCombs but prejudiced Petitioner Sierra in not doing so. Therefore, a *Williamson v. Taylor* violation has just been shown that Petitioner Sierra was denied his 6th Amendment right to a fair trial and effective counsel and therefore his 14th Amendment right to due process has ensued. Please also read *U.S. v. Durham*, 475 F. 2d 208 (7th Cir. 1973) – A defendant is denied his Sixth Amendment right to assistance of counsel when there is used against him at trial evidence of his own incriminating words after he had been indicted and the absence of his own counsel.

This meets the requirements set by Supreme Court Rule 10(a)(c). The 11th Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court. Petitioner Sierra was indicted illegally without counsel and forced to stand trial illegally.

H. Issue 5(b) and (c)

Defense counsel as the Courts have all acknowledged is that counsel failed to cross-examine the State's witnesses. As you already know in *Pointer v. Texas*, 85 S. Ct. 1065 (1965) – The Sixth Amendment rights, of a accused to confront the witness against him is a fundamental right, essential

to a fair trial and is made obligatory on the States by the Fourteenth Amendment guarantee of due process, Id. at 405. This is a Confrontation Clause violation done to Sierra. The constitutional guarantee of due process in a criminal trial is in essence the right to a fair opportunity to defend against the State's accusations. That guarantee encompasses both the right of a defendant to confront witnesses against him and his right to assist in his own defense. See U.S. Constitution Amendment VI.

You see Petitioner Sierra was never given that chance to defend himself and was maliciously prosecuted by the State illegally. The only thing defense counsel told petitioner he could help him with was for Petitioner to sign a 30 year plea agreement to confess guilt. Petitioner Sierra declined and said he was innocent and defense counsel told Sierra that was all defense counsel could do for Petitioner because counsel worked for the State and the State directed him to do so. Petitioner had no defense counsel there to do anything for Petitioner. Petitioner now is ready to go back to trial with his newly discovered evidence of the time and date of death which Petitioner never had before.

As you can plainly see that defense counsel did commit a very severe *Strickland* violation for him not cross-examining any of the State witnesses. This shows a very negative and below the normal standard of attorney effectiveness and the first prong of *Strickland* shown. The second prong of *Strickland* violation is shown because failure to cross-examine State witnesses shows prejudice against his own client because he wants his client to be convicted. So therefore a *Williams v. Taylor* violation also followed because as shown above Petitioner's 6th and 14th Amendment rights were violated for enduring an unfair trial of due process violation and shows a very unjust conviction.

Issue 7

Petitioner Sierra has another solid issue here where trial counsel was very ineffective for failing to object to and very easily impeach Deputy Figueroa's false testimony that Petitioner Sierra came to Orlando in a bus. That false testimony is so untrue that Petitioner Sierra if known that he could, would have objected to that false testimony. Instead Petitioner Sierra just sat there as his ineffective counsel did also and none of the State witnesses were cross examined. It would have been easy for defense counsel to impeach Figueroa because in Appendix H, Exhibit M, a deposition of Figueroa dated January 20, 2009 on page 5 it says in lines 22-24: Q. He used the term "I took a bus?" A: I don't know if he used that exact term, took a bus". He said, "I came from Clearwater that being shown to this Supreme Court should be easy to see that Petitioner Sierra had a foul trial and needs to be setup to have a re-trial, do you agree? Because having an attorney not cross-examine any of the State's witnesses (See Exhibit J in Appendix H) and when defense counsel did get off his chair with two witnesses he only asked one question or two and then set back down for the rest of the day and did

nothing for the Petitioner.

As you already know, the central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact. As you can see plainly is that another *Strickland* violation here is shown that against (1) defense counsel was severely deficient for just sitting there all day and not saying anything on behalf of Petitioner Sierra's trial, first prong met of the *Strickland* violation. Second prong easily met because this shows that counsel disliked Petitioner and means prejudiced was done to Petitioner at his trial and that makes a very unfair trial, don't you agree?

Therefore, once again a *Wiliams v. Taylor* violation has been shown because clearly established federal law in *Pointer v. Texas*, 85 S. Ct. 1065 (1965) clearly shows that every witness of the State needs to be cross-examined and if not the trial shows unfair and a 6th Amendment violation of the U.S. Constitution is easily shown. This also violated Petitioner's 14 Amendment of due process and a new trial is thus warranted.

L. Issue 9

Petitioner Sierra has shown in this issue very easily on record of trial transcripts that defense counsel stood up unannounced and conceded guilt against Petitioner Sierra without first conferencing with Petitioner. Please read *Scarpa v. Dubois*, U.S. Dist. LEXIS 8768 No. 92-12948-Y (1993) where "Petitioner was entitled to a Writ of Habeas Corpus on grounds of ineffective assistance of counsel because his attorney essentially admitted Petitioner's guilt during his closing argument and he thereby caused a breakdown in the adversarial system. Please see Appendix H, Exhibit P where on page 449, lines 10-14 where defense counsel says: "But would support second degree murder going to the jury." In lines 24-25, counsel says "I suppose ---taken in a light most favorable to the State, of course, he did shoot her at that time." That is conceding guilt of and about Petitioner Sierra and Petitioner never, ever admitted to such a crime to anyone. Defense counsel conceded guilt of Petitioner was completely wrong to do so and a new trial is warranted. Please read *Young v. Zant*, 677 F. 2d 792 (11th Cir. 1982) held that "Defendant's Sixth and Fourteenth Amendments were violated for ineffective counsel when counsel conceded guilt. Again, Petitioner Sierra never gave any indication to counsel to push for a second degree murder and never admitted to hurting anyone.

This issue already very easily shows a *Strickland* violation for the defense counsel's deficient performance where instead of trying to help his client win his trial, defense counsel was trying to convict him of second degree murder which ensues easily the second prong of *Strickland* is met with severe prejudice. Of course this shows a *Williams v. Taylor* violation where the above site *Young* supports that Petitioner Sierra's 6th and 14th U.S. Constitution Amendments were violated and unjust

trial had taken place against Petitioner Sierra and also an invalid conviction of life in prison. A new trial should be given to Petitioner Sierra.

N. Request for Production (Police Investigator Report)

Petitioner Sierra has shown over the years in all Courts that he is requesting a "Technical Service Report" that he was sent of just the front cover which is in Exhibit K in Appendix H and it shows 388 photos at the crime scene with footprints that are bloody leading from the deceased body to the front door. This exculpatory evidence is material to the actual innocence of Petitioner Sierra but Detective Deluca refuses to release it to Petitioner Sierra or the Court. Please read *Browning v. Baker*, 875 F. 3d 444 (9th Cir. 2017) – "Evidence that was not disclosed to Petitioner prior to trial --- including an officer's shoeprint observation at the scene of the robbery and murder. Case reversed and remanded. This would prove an actual innocence claim by Sierra as was done in *Schlup* in the (3) issue where in *Schlup* it says "The State has failed to disclose critical exculpatory evidence. Detective Deluca works for the State of Florida and he should have turned this report over to the State prosecutor's office to be shown at trial which was not. If this could be shown at a new trial then "that no reasonable juror would find Petitioner Sierra guilty beyond a reasonable doubt." This is a new revelation with new evidence in Sierra's case which shows innocence for Sierra. Please see *House v. Bell*, 126 S. Ct. 2064 (2006) – "But new revelations cast doubt on the jury's verdict." Time of death Id. at 547 U.S. 526. Sierra has shown both at the time of death being not shown at his trial and this bloody footprints not being shown that he indeed has made the most stringiest showing required by actual innocence exception beyond a reasonable doubt. Sierra has just shown in the standard *Murray v. Carrier*, 106 S. Ct. 2639 (1986) which shows a constitutional violation has probably resulted in the conviction of one (Sierra) who is actually innocent." Id. at 496.

Petitioner Sierra is then asking this Court to please contact St. Petersburg police department and to have them turn over the Technical Service Report in question that shows actual innocence of Sierra and to please afford Sierra a new trial. Please also see Supreme Court Rule 39(6)(7) in Appendix L.

This is newly discovered evidence because Petitioner was convicted on July 16, 2009 and shipped off to prison in August 2009 with no discovery or any other paper work with him in order to help fight his actual innocence case. It took Petitioner almost three years to get most of the exhibits in Appendix H to file an appeal petition. So this is indeed a *Schlup* violation as shown. The heart of Sierra's case as was *Murray v. Carrier*, 106 S. Ct. 2639 is that in Sierra's issue of bloody footprints unrelated to Sierra's show size and pattern would have established Sierra's innocence. The significance of such claim can easily be lost in a procedural maze of enormous complexity. Detective Deluca had and has a 14th U.S. Constitutional Amendment duty to fulfill of due process. Please see Appendix L.

Please read Browning pg Id at 465 under Bloody Shoeprints.

CONCLUSION

Petitioner Sierra's newly discovered evidence of the correct time of death and the bloody footprints not related to Petitioner Sierra's foot size or pattern is so strong that this U.S. Supreme Court cannot have confidence in the outcome of Sierra's trial and that Sierra's trial was not free of constitutional error. As you can plainly see a *Schlup* violation has unfortunately happened to Sierra and he needs to have an attorney be given to him via Supreme Court Rule 39(6)(7). Sierra needs the full Technical Service Report given to him and given a new trial. Sierra has fulfilled all *Schlup* requirements of actual innocence. The 11th Circuit Court of Appeals denial of Sierra's issues is very contrary to and a very unreasonable application of federal authority and an unreasonable determination of the facts presented at an unfair trial against Sierra unfortunately was given. Sierra has shown a very fundamental miscarriage of justice done to him at trial. A very malicious treatment done to him by his unforgiving counsel and State trial Court and of course the perjury done by State prosecutor Davidson. When Petitioner Sierra is given a new fair trial "no jurist would or could find Petitioner Sierra guilty of the crime he was accused of." Petitioner Sierra will be sadly disappointed if the U.S. Supreme Court declines to support him in Supreme Court Rule 39(6) and (7) and to get to exculpatory bloody footprints Detective Deluca is hiding and to have Petitioner Sierra be granted a new trial as warranted by the U.S. Constitution 6th Amendment and 14th Amendment.

Grounds for new trial also rely on Fed. R. Civil Proc. 60(b)(2). See Appendix L. I always thought my defense attorney was supposed to handle all this.....but I was wrong.

Petitioner Sierra is relying heavily upon *Wearry v. Cain*, 136 S. Ct. 1002 (2016) – where "Accused was denied due process rights under Federal Constitution's Fourteenth Amendment at State murder trial by prosecutions failure to disclose evidence that allegedly supported accused's assertion of innocence. This was part written in curiam in opinion and it fits Sierra's case like a glove where they all agreed on "*Brady* suppression occurs when the government fails to turn over even evidence that is known only to police investigators and not to the prosecutor per curiam of Roberts, Kennedy, Ginsburg, Breyer, Sotomayor and Kagan.

Undisclosed bloody shoeprints held by St. Petersburg police investigators is the same thing in Sierra's case as stated above by Supreme Court justices. All constitutional law applied to *Wearry's* case is identical to all constitutional law violated in Sierra's case just as Wearry's defense at trial rested on an alibi, so did Petitioner Sierra's. Id. at 1003. Please grant Certiorari

The petition for writ of certiorari should be granted.