18-8022

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

LEONICIO ARIAS-COREAS --- PETITIONER

vs.

COMMONWEALTH OF VIRGINIA --- RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES SUPREME COURT

PETITION FOR REHEARING

Leonicio Arias-Coreas, #1432706
Lawrenceville Correctional Center
1607 Planters Road
Lawrenceville, VA. 23868

IN THE SUPREME COURT
OF THE UNITED STATES

LEONICIO ARIAS-COREAS, # 1432706
DEFENDANT/PETITIONER

VS.

RECORD NO: 18-8022

HAROLD W. CLARKE,
RESPONDENT.

CERTIFICATE OF GOOD FAITH

COMES NOW Petitioner, Leonicio Arias-Coreas, # 1432706, Pro Se, and makes certification that his petition for rehearing is presented to this court in good faith pursuant to Rule 44. Petitioner Arias further states the following:

1. This court entered its judgment denying petitioner a Writ of Certiorari on April 1, 2019. Petitioner believes that he presents this court with adequate grounds to justify the granting of rehearing in this case and said petition is brought in good faith and not for delay.

Furthermore, petitioner believes that based upon the law of this court and facts of this case, Arias is entitled to relief which has been unjustly denied him. He further believes that if the Fourth Circuit Court of Appeals are continually allowed to apply the **Strickland** standard improperly, a number of people will be denied their constitutional right to due process.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on this 10 day of May, 2019.

Leonicio-ARIAS-COREAS

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PETITION FOR REHEARING AND SUGGESTIONS IN SUPPORT

COMES NOW Petitioner, Leonicio Arias-Coreas, # 1432706, Pro Se, and prays this court to grant Rehearing pursuant to Rule 44, and thereafter, grant him a Writ of Certiorari to review the opinion of the Fourth Circuit Court of Appeals.

In support of petition, Mr. Arias states the following.

STATEMENT OF FACTS

Petitioner states that he was never arrested in 2002 at any time by any police department, nor questioned, interrogated, confessed or voluntarily gave up his DNA to anyone in 2002. In fact, Petitioner states that he was only arrested for the first time in his life, in 2003, by Fairfax Police Officers and taken to the Fairfax Police Department where he was questioned and interrogated for a period of four hours by Detectives.

Petitioner could did not speak, read, write, or understand English (See Exhibit: 1, School Progress report; Personal Learning Plan; and Test Report; which show his current educational evaluation score at a second grade learning level), and that the Officer that attempted to interview him only knew a few words of Spanish which is Petitioner's native tongue, so another Officer of Puerto Rican decent who spoke a different dialect of Spanish than Petitioner, but just enough to communicate was brought on as a translator.

Petitioner was released after his interview, neither being charged with any charges stemming from the allegation from the 12 year old girl, or for the Public Intoxication for which he was arrested.

Petitioner was told upon his release that he would receive something in the mail about a court date but never did. Petitioner resided at: 510 Four Mile Road, Apt. 304; Alexandria, Va. 22305. He lived at that address until 2004 when he moved to: 1323 Whittle Road, Apt. #311; Houston, TX. 77055; for work. He then returned to Virginia at the end of 2004, where he lived at Fairfax, Va. at 6423

Verchilk Drive 22310.

In 2008 Petitioner moved to 7108 Lerte Drive; Oxon Hill, Md. 20745; and on May 28, 2010 Petitioner was arrested in the City of Alexandria, by the Alexandria Police, for Public Intoxication, and when they ran his Texas drivers license, he was told he was wanted by the Fairfax Police Department for an out-standing warrant. He was then turned over to the Fairfax Police Department and again, the same detective that had previously questioned him, attempted to do so a second time but Petitioner refused, asking for a lawyer.

The detective became irate, saying that a lawyer wasn't going to help him because they already had all the evidence against him they needed for a conviction. Petitioner repeated that he wanted a lawyer and knew he had a right to one, and the detective responded that he had no rights in this country because he was here illegally, and went on about how men like him gave good Latinos a bad name. Petitioner went on saying he had witnesses to prove both: that he was innocent, and that he (the detective) was out to get him.

The detective responded that it did not matter because they had his confession from 2002 in which the two began to argue and another detective had to come in and allow the detective to exit the room to cool out. Petitioner refused to speak with anyone and asked for an attorney.

Petitioner was remanded to the Fairfax County Jail where he was held till trial. He retained Attorney Paul Mickelson, ESQ.; 3976 Chain Bridge Road; Fairfax, Va. 22030; to represent him. During his representation of Petitioner, Counsel informed Petitioner that he was having trouble obtaining discovery from the Commonwealth, as well as finding the victim's boyfriend to interview and be able to call him as a witness on his behalf.

Defense received several documents with the victims age listed differently on each and when brought to the attention of the Commonwealth Attorney, defense counsel was told that several reports were made by different officers involved who didn't understand Spanish, so it was a minor mistake.

Defense later learned that the victim had given several different versions of the events, none of which were truthful. Defense was also told the reports would be made available to him, but it was never done so.

Counsel began to advise Petitioner that it was in his best interest that he plead guilty because he could not find the victim's boyfriend to interview and call as an alibi witness, as well as not being able to obtain documentation to further prove that he was innocent and namely that he did not give a confession, although detectives said he wrote out a confession.

Feeling great apprehension, fear and pressure, Petitioner pled guilty on August 9, 2010 to one count of sodomy pursuant to Va. Code Section 18.2-67.1 as Counsel advised, although maintaining his innocence and claiming that the detectives lied on him because he never confessed, nor was on the run from the law as they claimed. Petitioner informed his attorney that the detectives could not be trusted because they were purposely deceiving the court that he was guilty.

Petitioner then was sentenced on November 19, 2010 to thirteen years to serve in prison. He did not file a Direct Appeal, of Petition for Writ of Habeas Corpus. Then in June of 2014 Petitioner learned that the victim had written a letter recanting her stories years before, and telling yet another story that she claimed to be true that exonerated Petitioner from all accusations and charges, which she mailed to the detective on her case. Nothing ever came out of her letter because it was not made known to the Defense Counsel or Petitioner.

Petitioner only learned of it when other letters written from the victim to his daughter explained that he was innocent and that she had written the detective on her case a letter letting him know so, but that nothing happened. These letters were sent to Petitioner by his daughter so that he could use them to prove his innocence. As a result, Petitioner's daughter was later threatened by victim's boyfriend, Selso Antonio Romero Galdame, an illegal alien and MS-13 gang member, stating that if her Dad brought up his name to authorities to prove his innocence, he would cause her serious harm. He told her he had

friends in EL Salvador and the United States that would not hesitate to cause her harm, just as he found out that detectives had been asking around about him and the matter.

Petitioner then filed a motion based on the information he had received to have DNA testing conducted on the physical evidence collected at the time the victim's parents filed a complaint. He was not successful as the Commonwealth alleges that no such evidence still exists. Now Petitioner seeks to obtain a hearing to present further evidence on the claims alleged within this independent action.

REASONS MERITING REHEARING

The Fourth Circuit Court's decision is clearly in conflict with Strickland v. Washington, 466 U.S. 668 (1984); and Williams (Terry) Taylor, 529 U.S. 362 (2000), emphasizing that in determining Strickland prejudice, the court must examine the correct facts and apply the law accordingly, which it did not do with the following claims below:

Ineffective assistance of Counsel and Denied Due Process in violation of Petitioner's Sixth and Fourteenth Amendments to the United States Constitution, in that:

1. The Habeas Court did error in finding that counsel was not ineffective for failing to conduct a proper pre-trial investigation of the case, including discovery of the case, to discover that Commonwealth Attorney and its agents committed fraud upon the defendant and court which resulted in the conviction of Petitioner Arias who is actually innocent: When counsel did not learn that the Commonwealth's claim that Petitioner Arias was arrested on May 7, 2002 by the Fairfax county Police for public intoxication after leaving the residence of a coworker, and taken to the Police Department where a uniformed Officer attempted to interview him regarding the allegation made from a 12 year old girl that he Raped, Sodomized, and Penetrated her with an Animate Object, was false.

2. The Habeas Court did error in finding that counsel was not ineffective for failing to conduct a

proper pre-trial investigation of the case, including discovery of the case, to discover that Commonwealth Attorney and its agents committed fraud upon the defendant and court which resulted in the conviction of Petitioner Arias who is actually innocent: When counsel did not learn that the Commonwealth's claim that Petitioner Arias wrote out his confession to the crime when was questioned and interrogated about when arrested, was not true.

3. The Habeas Court did error in finding that counsel was not ineffective for failing to conduct a proper pre-trial investigation of the case, including discovery of the case, to discover that Commonwealth Attorney and its agents committed fraud upon the defendant and court which resulted in the conviction of Petitioner Arias who is actually innocent: When counsel did not learn that the Commonwealth's claim that Petitioner Arias's DNA was recovered from the victim's panties and mattress, were tested, resulting in a positive match to Petitioner's DNA that was voluntarily collected from him during his arrest in 2002; which Petitioner clearly states is false because he is actually innocent of the crimes charged, and that he was never arrested or questioned, nor voluntarily gave up his DNA, in 2002.

4. The Habeas Court did error in finding that counsel was not ineffective for failing to conduct a proper pre-trial investigation of the case, including discovery of the case, to discover that Commonwealth Attorney and its agents committed fraud upon the defendant and court which resulted in the conviction of Petitioner Arias who is actually innocent: When counsel did not learn that the Commonwealth discovered that Petitioner's DNA did not match that which was collected from the victim, and withheld that evidence; instead of informing defense that there was no evidence of DNA. Nor did they test Mr. Selso Antonio Romero Galdame's DNA against that which was recovered from the victim, or against the DNA voluntarily recovered from the arrest of Petitioner in 2002, when they discovered through the recantation letter from the victim, that it was her boyfriend who had been arrested in 2002 using Petitioner's name and identity.

5. The Habeas Court did error in finding that counsel was not ineffective for failing to conduct a proper pre-trial investigation of the case, including discovery of the case, to discover that Commonwealth Attorney and its agents committed fraud upon the defendant and court which resulted in the conviction of Petitioner Arias who is actually innocent: When counsel did not

learn that the Commonwealth discovered through victim's recantation letter that victim was afraid of her parents discovering that she had been having con-sexual sex with her boyfriend, and when they found out, she made up a story of being raped which led her parents to call the police on her boyfriend; and it was non other than Selso Antonio Romero Galdame, the boyfriend of the victim who was arrested by Fairfax Police in 2002, questioned and who's DNA was voluntarily recovered, whom used Petitioner's name and identity when arrested, and as a result of the victim's parents calling the police on him for having a sexual relationship with their daughter; which the Commonwealth never made known to the defense.

6. The Habeas Court did error in finding that Petitioner's Guilty Plea was voluntary, knowingly and intelligently made as there was no misadvise/misinformation of counsel regarding the a plea of guilty and what constitutional protections he would be foregoing by pleading guilty, that petitioner relied on in deciding to plead guilty.

As noted by the respondent, 28 U.S.C. 2254 (d) provides a standard for when relief can be granted for claims adjudicated on the merits in state court: Relief should be granted when the state court adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." The United States Supreme Court interpreted that that language in **Williams (Terry) v. Taylor**, 529 U.S. 362 (2000).

The Court held that 2254 (d) (1)'s "contrary to" clause required the rejection of state court decisions which were "substantially different from the relevant precedent of this court." The court gave an example of a misinterpretation of **Strickland v. Washington**, 466 U.S. 668, 694 (1984):

If a state court were to reject a prisoner's claim of ineffective assistance of counsel on the grounds that the prisoner had not established by a preponderance of the evidence that the result of his criminal proceeding would have been different, that decision would be "diametrically different," opposite in character or nature," and "mutually opposed" to our clearly established

give rise to a presumption that the defendant was informed of the nature of the charge against him, **Henderson v. Morgan,** 426 U.S. 637, 647, 96 S. ct. 2253, 2258, 2259, 49 L. ed. 2d. 108 (1976); and in order to plead voluntarily, a defendant must know the direct consequences of his plea, including the actual value of any commitments made to him, **Marby v. Johnson,** 104 S.Ct. 2543, 2547(1984); also see **Machibroda v. U.S.,** 368 U.S. 487, 493 (1962) where the court stated that a plea must be found to be involuntary if it was based upon promises or threats that deprived it as voluntary character as in the present case of petitioner, who did not have a true understanding of the direct consequences of his plea, or the actual value of any commitments made to him because of the misadvice given to him by counsel which had him believing he could withdraw his plea once he obtained the evidence to mount a defense and prove his innocence.

In **Strader v. Garrison,** 611 f. 2d 61(4th cir. 1979) the court found that when the client asks for advice about "collateral consequence" and relies upon it in deciding whether to plead guilty, the attorney must not grossly misinform his client about the law; and in **Hammond v. U.S.,** 528 F.2d (4th cir. 1975) the court stated that when a client/defendant is grossly misinformed about the plea agreement/sentence by his lawyer, and relies upon that misinformation, he is deprived of his constitutional right to effective assistance of counsel, when the erroneous advice induces the plea, permitting him to start over again is imperative remedy for the constitutional deprivation.

Induced by such erroneous advice, the plea in the present case of petitioner was no less involuntary or unintelligent than in Hammonds. And in order to demonstrate ineffective assistance in the context of a guilty plea, petitioner must demonstrate that his counsel's advice regarding the plea was objectively unreasonable and that there is a reasonable probability that, but for counsel's error, petitioner wound not have pled guilty, but would have insisted upon a trial, **Hill v. Lockhart,** 474 U.S. 52, 106 S. ct. 366, 88 L. ed. 2d. 203 (1985), and **Strickland v. Washington,** 466 U.S. 668, 104 S. ct. 2052, 80 L. ed. 2d. (1984).

Petitioner can surely show that counsel's misadvice demonstrates ineffective assistance of counsel, as petitioner would not have pled guilty had counsel conducted a proper pre-trial investigation of the case and prepared a defense to go to trial with, instead of believing that he would be able to withdraw his plea to present his defense and prove his innocence as counsel advised him ..... but would have insisted on going to trial; if it was not for such misadvice about the plea that influenced petitioner to plead guilty. Moreover underlying any criminal prosecution are concerns "honor of the government, public confidence in the fair administration of justice, and the effective administration of justice." Quoting **U.S. v. Carter,** 454 F.2d. 426, 428 (4th cir. 1972) and when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled. See: **Johnson v. Commonwealth,** 214 Va. 515, 517-18, 201 S.E. 2d. 594, 596 (1974), and some courts hold that enforcement of the agreement should be compelled only where the defendant's performance implicates his or her constitutional rights.

Also see: **People v. Navarroli,** 121, Ill. 2d 516, 118 I11. Dec. 414, 418, 521 N.E. 2d.891, 895 (1988), and because petitioner's case is no less significant or different from the ones above, where he was induced by promises in reliance on entering the guilty plea, whether it was misadvice of counsel or inducement from counsel, prosecutor, law enforcement, or collectively, it renders the guilty plea involuntary. "The validity of a guilty plea hinges on whether it was a voluntary and intelligent choice among alternative courses of action open to the defendant."

And, **Banks v. U.S.,** 920 F. supp. 688 (E.D. Va. 1996) petitioner submits he was not afforded the intelligent choice among the alternative courses of action due to counsel's ineffective assistance. Therefore, petitioner is entitled to relief.

Prejudice will be found when there is a reasonable probability that, absent the substandard performance the outcome would have been different. A reasonable probability exists when confidence

in the outcome of the trial has been undermined. **Strickland,** 466 U.S. at 694. A reviewing court must be highly deferential of the trial counsel's performance. The goal of the review is "not to grade counsel's performance." **Strickland,** 466 U.S. at 688; **Pruett v. Thompson,** 996 F.2d 1560, 1568 (4th Cir. 1993). Rather, the goal is to consider the counsel's choices with an eye toward reasonableness in all the circumstances that arise in the course of a trial. **Strickland,** 466 U.S. at 691. The issue whether trial counsel provided effective assistance presents a mixed question of law and fact. **Strickland,** 466 U.S. at 698; **Lewis v. Warden,** 274 Va. 93, 111, 645 S.E.2d 492, 502 (2007); **Yarbrough v. Warden,** 269 Va. 184, 195-96, 609 S.E.2d 30, 36 (2005). A circuit court's findings of fact and conclusions of law "are not binding upon this Court, but are subject to review to determine whether the circuit court correctly applied the law to the facts." **Curo v. Becker,** 254 Va. 486, 489, 493 S.E.2d 368, 369 (1997); see also **Green v. Young,** 264 Va. 604, 608-09, 571 S.E.2d 135, 138 (2002). Moreover, **Virginia Code Section 8.01-654(B) (4)** provides that the Court may decide the merits of a Habeas petition "on the basis of the record" if the allegations can be fully determined on the basis of recorded matters; which can definitely be determined in the present case.

Further, Petitioner would not have pled guilty if counsel would not have acted ineffectively by misadvising him regarding being able to plead guilty, and later when he obtained evidence of his innocence, be able to withdraw his guilty plea to put forth the evidence to prove his innocence. The misadvice regarding the guilty plea was in part due to the ineffectiveness that preceded it, in that counsel did not conduct a proper pre-trial investigation of the case. To support that petitioner is entitled to a writ of Habeas corpus, we need look only to the principles to be distilled from : **Coles v. Peyton**, 389 F. 2d 224 (4th Cir. 1984) where counsel Failed to investigate and interview; **Stevens v. Johnson,** 575 F. Supp. 881 (E.D.N.C.1983) where Counsel's lack of investigation denied petitioner a potentially viable defense.

CONCLUSION

For the reasons stated, this court must grant rehearing of its judgment entered on April 1, 2019, and issue a Writ of Certiorari to hold the Fourth Circuit accountable for failing to properly apply the law of this court and grant Mr. Arias relief. Should Arias' cry for justice not be heard and denied relief; may this court also cry and not be heard "For whoever shut their ears to the cry of the poor will also cry themselves and not be hears." Proverbs 21:13.

Respectfully Submitted,

Leonicio-ARIAS-COREAS 5/10/2019

Leonicio Arias-Coreas, # 1432706
Lawrenceville Correctional Center
1607 Planters Road
Lawrenceville, VA. 23868

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed, postage prepaid, this 5/10/2019 day of May, 2019, to; Ms. Katherine Q. Adelfio, Asst. Attorney General; 202 North 9th Street; Richmond, Virginia 23219; by first class mail.

Leonicio-ARIAS-COREAS

Leonicio Arias-Coreas, # 1432706

Additional material from this filing is available in the Clerk's Office.