No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

MAHOGANY TEQUILLA ALEXANDER-PETITIONER

vs.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS-RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

MAHOGANY TEQUILLA ALEXANDER,
DC# K61640
HOMESTEAD CORRECTIONAL INSTITUTION
19000 S.W. 377TH STREET, SUITE 200
FLORIDA CITY, FLORIDA 33034

QUESTION(S) PRESENTED

I. DID TRIAL COURT ABUSE ITS DISCRETION BY CONSIDERING A NOLLE PROSSED CHARGE OF FIRST DEGREE MURDER IN SENTENCING PETITIONER TO THE 20-YEAR PLEA CAP, VIOLATING HER FIFTH AND FOURTEENTH AMENDMENT RIGHTS.

II. WAS PLEA NOT KNOWING AND VOLUNTARY MADE BECAUSE IT WAS PREMISED ON MISADVICE OF COUNSEL, VIOLATING HER FIFTH AND FOURTEENTH AMENDMENT RIGHTS.

IV. WAS COUNSEL INEFFECTIVE FOR FAILING TO CALL AN ASSISTANT STATE ATTORNEY ON HER BEHALF REGARDING PETITIONER'S COOPERATION AGAINST HER CO-DEFENDANTS IN EXCHANGE FOR A PLEA TO ACCESSORY AFTER THE FACT, VIOLATING HER FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

V. DID COUNSEL RENDER INEFFECTIVE ASSISTANCE FOR FAILING TO INFORM PETITIONER OF CHANGE OF PLEA AGREEMENT, A VIOLATION OF HER FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

VI./X. WAS COUNSEL INEFFECTIVE FOR FAILING TO ADVISE PETITIONER TO WITHDRAW PLEA AND FILE A MOTION TO DISQUALIFY JUDGE; AND WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT DURING JUDGE'S STATEMENTS WHICH WERE USED TO DETERMINE SENTENCE, VIOLATING HER FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

VII. DID COUNSEL'S PERFORMANCE FALL BELOW A REASONABLE OBJECTIVE STANDARD IN ALLOWING PETITIONER TO BUILD A CASE ON HERSELF WITHOUT SECURING A PLEA DEAL, VIOLATING HER FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

VIII. WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO TESTIMONY FROM ANOTHER TRIAL, VIOLATING HER FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

IX. WAS COUNSEL INEFFECTIVE FOR FAILING TO PROVIDE THE TRIAL COURT WITH PROPER DOCUMENTATION FOR MITIGATION, VIOLATING HER FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

XI. WAS COUNSEL'S ASSISTANCE RENDERED EFFECTIVE FOR LACK OF EXPERIENCE, VIOLATING HER FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

LIST OF PARTIES

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

[ ] 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:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

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

The opinion of the United States Court of Appeals appears at **Appendix A** to the petition and is

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

The opinion of the United States District Court appears at **Appendix B** to the petition and is

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

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

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

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

The opinion of the _____
appears at Appendix _____ to the petition and is

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

JURISDICTION

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

The date of which the United States Court of Appeals decided my case was June 15, 2018.

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

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

[ ] An extension of time to file the petition for writ of certiorari was granted to and including _____ on _____ in Application No. __A_____.

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

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

The date of which the highest state court decided my case was _____.

A copy of the decision appears at Appendix _____.

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

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and copy of the order denying rehearing at **Appendix __**.

[ ] An extension of time to file the petition for writ of certiorari was granted to and including _____ on _____ in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION AMENDMENT FIVE, SIX AND FOURTEEN-THE RIGHT TO A FAIR PROCEEDING, THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, AND DUE PROCESS OF LAW.

STATEMENT OF THE CASE

Petitioner was indicted along with several co-defendant, for first degree felony murder (principal) (count 1) and Robbery with a firearm (count 2). She entered a partially negotiated plea where in exchange for her assistance in the case against her codefendants, the State entered a nolle prosse on count 1 and Petitioner agreed to enter an open plea on count 2 with a twenty-year cap on the sentence. The trial court sentenced Petitioner to the twenty-year cap and Petitioner was committed to the Florida Department of Corrections.

Petitioner filed an appeal from the sentence and the Office of the Public Defender moved to withdraw pursuant to **Anders v. California**, 386 U.S. 738 (1967) Petitioner then filed a pro se initial brief, asserting that the trial court erred in sentencing her to the twenty-year cap because it considered the nolle prossed first-degree murder charge.

On April 4, 2013, the Fourth District Court of Appeal affirmed the sentence in a per curiam unwritten opinion and granted the motion to withdraw. Petitioner moved for rehearing, which was denied, an on June 21, 2013, the mandate issued. The Petitioner did not seek review in the Supreme Court of the United States.

On the day the mandate was issued in the Petitioner's cause, she filed a motion to mitigate sentence pursuant to Florida Rule of Criminal Procedure 3.800(c), which the trial court subsequently denied. A second motion to mitigate was filed on September 6, 2013 and this time the trial court struck the motion,

concluding that the trial court lacked jurisdiction to consider the motion more than sixty (60) days after the mandate was issued in her direct appeal.

On January 27, 2014, Petitioner then filed a motion for post conviction relief pursuant to Florida Rule of Criminal Procedure 3.850, which raised the following claims: (1) her plea was involuntary because her attorney told her the trial judge would grant a downward departure; (2) there was error on the scoresheet where it listed armed robbery but she was sentenced for robbery with a firearm; (3) counsel was ineffective because there was a verbal agreement that she enter a plea to accessory after the fact and counsel never called the witness to statement; (4) counsel was ineffective for failing to inform her that the plea agreement changed in that she was entering a plea to a different charge; (5) counsel was ineffective for failing to advise Petitioner to move to withdraw her plea and failing to move to disqualify the judge when the judge stated to her that he was going to sentence the Petitioner cold and hard and mocked her; (6) counsel was ineffective for allowing the Petitioner to build a case against herself without securing a plea deal; (7) counsel was ineffective for failing to object to the trial court using her testimony from a codefendant's case during her sentencing hearing; (8) counsel was ineffective for failing to provide sufficient documentation for mitigation; (9) counsel was ineffective for failing to object to statement made by the judge during sentencing; and (10) counsel was ineffective "due to inexperience." On March 6, 2014, the trial court dismissed the motion as "legally insufficient" and permitted her the opportunity to amend the petition.

On April 30, 2014, Petitioner filed her amended motion for post conviction relief that corrected the errors outlined in the trial court's order and explicitly couched claim 2 as one of scoresheet error as a result of ineffective assistance of counsel. After the State filed its response, the trial court denied the motion. Petitioner filed an appeal and on May 26, 2016, the Fourth District Court of Appeal affirmed the denial without written opinion and the mandate issued on June 24, 2016.

On July 15, 2016, the Petitioner filed a Petition for Writ of Habeas Corpus in the United States District Court for the Southern District.

On October 12, 2016, Magistrate Judge P.A. White filed a response to the United States District Court's order to show cause requesting that the Petitioner's Petitioner is denied.

On January 4, 2018, the United States District Court for the Southern District entered an order adopting the Magistrate's Report and Recommendation.

On February 1, 2018, the Petitioner filed a timely Notice of Appeal to the United States Court of Appeals-Eleventh Circuit.

On March 1, 2018, the Petitioner filed a timely Application for Certificate of Appealability to the United States Court of Appeals-Eleventh Circuit.

On June 15, 2018, the United States Court of Appeals-Eleventh Circuit denied the Petitioner's Application for Certificate of Appealability.

On July 2, 2018, the Petitioner filed a timely Motion to Reconsider with the United States Court of Appeal-Eleventh Circuit.

On August 6, 2018, the Petitioner's Motion for Reconsideration was denied by the United State Court of Appeals-Eleventh Circuit.

This Petition for Writ of Certiorari, timely filed with this Honorable Court, follows:

REASON FOR GRANTING THE PETITION

The Petitioner was denied her right to a fair and impartial proceedings and the denial of her constitutional right to effective representation of counsel as this court held in **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674. The State courts have failed to grant relief. This Honorable Court should issue a Writ of Certiorari where her questions concern matters in which the District Courts are in conflict and which are violations of the U.S. Constitution especially where the conviction and sentence were administered to someone who actually substantially assisted in the conviction of her more culpable co-defendants. The questions are asserted as follows:

I. DID TRIAL COURT ABUSED ITS DISCRETION BY CONSIDERING A NOLLE PROSSED CHARGE OF FIRST DEGREE MURDER IN SENTENCING PETITIONER TO THE 20-YEAR PLEA CAP, VIOLATING HER FIFTH AND FOURTEENTH AMENDMENT RIGHTS.

When determining if a sentence is procedurally reasonable, among the issues we {437 Fed. Appx. 827} review is whether the district court failed to consider the appropriate statutory factors or whether it failed to adequately explain the sentence it imposed. See **United States v. Gonzalez**, 550 F.3d 1319, 1323 (11th Cir.2008). However, a district court is not required to "state on the record that it has explicitly

considered each of the section 3553(a) factors or to discuss each of the section 3553(a) factors." **United States v. Talley**, 431 F.3d 784, 786 (11th Cir. 2005), **United States of America v. Davie Julian Rodriguez**, 713 Fed. Appx. 815; 2017 U.S. App. LEXIS 19410 (11th Cir. 2017)

It had already been established that the Petitioner was the driver and did not know and could not know because of her approximate location being outside of the store, that her co-defendant, Antony Symonette and Donald Isaiah, planned on killing the victim in this crime. The Petitioner was not privy to their intricate plans and merely did as she was told. It is clear by the record that the co-defendants intended to leave town and leave her to carry the burden of this crime alone (Plea Colloquy T-pg. 46, lns. 10-12; T-pg. 62, lines 22-25) as her vehicle was used in this crime but no other details pointed to anyone but her. The Petitioner cooperated fully with law enforcement and the State's Attorney's Office and because of her substantial assistance, and the fact that she was not the shooter in these unfortunate events, the State agreed to nolle pross the First Degree Murder charge. Because the State agreed to not prosecute the Petitioner in the on the First Degree Murder charge, it should have never been considered in determining the Petitioner's sentence.

At the Petitioner's plea colloquy, the following statement was made by the state attorney:

[T-pg. 70 (lines 18-25)]

> **"The Court: All right. As to count one [First Degree Murder], pursuant to the plea agreement, Mr. Isenhower, does the State have an announcement?**
>
> **Mr. Isenhower: Yes. As to the murder count against Ms. Alexander, the State will announce a nolle pros.**
>
> **The Court: The State has dropped that charge against you pursuant to the agreement, Ms. Alexander."**

However, the judge, thereafter made reference to the trial of the co-defendants; made reference after reference that someone had died, and gave the strict inference that the Petitioner's sentence was based upon the death of Mr. Patel; that his life was taken and that the victim would give anything to trade places with the Petitioner and her health problems that were presented to the trial court for mitigation purposes:

[T-pg. 71, (lines 1-5)-plea colloquy]

> **"The Court: Before I pronounce sentence on *count two*, let me advise those people in the audience here who are her relatives. I'm about to sentence her on a case involving the taking of human life. And that's what we're doing here....."**

[T-pg. 76 (lines 7-19)-plea colloquy]

> **"The Court: The victim in the case was a man known to this Defendant as a good man in the community. I heard testimony at several points about what kind of a person he was. I stated at one of the sentencing he set up shop in a high crime neighborhood. He was working. He cared about people. Everyone in all the trials and all of the sentencing proceedings agree with that. This was the life of a good man, a man who's not facing disease, a man who's not her saying can I get out of prison at some point, a man who would opt to live in prison so that he could visit his family every once in a while. The man is dead, for**

eternity dead. This is the severity of the case that you're facing, Ms. Alexander."

[T-pg. 78 (lines 5-12)-plea colloquy]

"The Court: With regard to your medical situation – I get it – going back to what Ms. Celidonio said – that falls under the umbrella, it's not an irrelevant consideration. It's a consideration. No doubt. But look at the severity of the crime that you're facing. Murder. As I mentioned, Mr. Patel is not struggling with a disease. He's dead. Already dead. Okay? That's the reality of that."

[T-pg. 80 (lines 3-7)-plea colloquy]

"The Court: When I looked at your situation and I looked at your involvement in the case, your age, everything involved, the weight of the evidence against you, how bad these guys, putting that all together, putting together the fact that Mr. Patel is dead, he's never coming back...."

[T-pg. 82 (lines 3-7)-plea colloquy]

"The Court: This is a tough law that you're dealing with because a human life was taken. So, with that, I will adjudicate you guilty of that count two. I will sentence you to the twenty-year cap..."

It was an error to consider murder charge that was nolle prossed in sentencing the Petitioner. The trial court's continued reference to the murder charge that was nolle prossed was an abuse of discretion and severely prejudiced the Petitioner. This abuse violated the Petitioner's Sixth and Fourteenth Amendment right to a fair trial and due process.

In **Bethel v. Bobby**, 2014 U.S. Dist. LEXIS 83603 (2014), the Sixth Circuit of the United States District Court held:

"...An abuse of discretion occurs if the deciding judge relies on clearly erroneous findings of fact, *applies the wrong legal standard,* misapplies the correct legal standard when reaching a conclusion, or makes a

clear error of judgment. A reviewing court will reverse for abuse of discretion only if it is left with a definite and firm conviction that the trial court committed a clear error of judgment...." (emphasis added)

To determine if a sentence is substantively unreasonable, **"we must, as the Supreme Court has instructed us, consider the totality of the facts and circumstances."** United States v. Irey, 612 F.3d 1160, 1189 (11th Cir.2010). We will vacate a sentence for substantive unreasonableness **"if, but only if, we are left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case."**

This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

II. WAS PLEA NOT KNOWING AND VOLUNTARY MADE BECAUSE IT WAS PREMISED ON MISADVICE OF COUNSEL, VIOLATING HER FIFTH AND FOURTEENTH AMENDMENT RIGHTS.

The Sixth Amendment guarantees a criminal accused the right to assistance of counsel, and the right to counsel is the right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Barrett v. Sec'y, Fla. Dep't of Corr., 625 Fed. Appx. (11th Cir. 2015).

Defense counsel, Mary Celidonio, led the Petitioner to enter into an open plea by telling her that the judge would honor her requests for downward departure sentence, because of the Petitioner's cooperation with the State against co-defendants, that led to two (2) successful guilty convictions. Counsel stated to

Petitioner that she knew the judge personally and he would give her what she asked for pertaining to sentencing, which was time served and probation for any more time that would be imposed upon the Petitioner. This is evidenced in the court record where counsel argued extensively that due to the Petitioner being the key witness in this case, she deserved to benefit because of her cooperation.

Defense counsel misled Petitioner into believing that she would deliver what she had promised, as discussed between them. Petitioner's plea was not given voluntary. Petitioner relied and trusted her attorney that she knew what she was doing.

It has long been established Florida law, that a plea based on a promise made by counsel or prosecutor whether or not the promise is fulfillable, such a breach of promise taints the voluntariness of plea.

"When a defendant pleads guilty to a criminal offense, he waives several constitutional rights. The record of the guilty-plea hearing therefore must affirmatively reflect that the plea is knowing and voluntary." Boykin v. Alabama, 395 U.S. 238, 243, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969). The voluntariness of a defendant's guilty plea is reviewed de novo. **United States v. Amaya**, 111 F.3d 386, 388 (5th Cir. 1997).

United States v. Puentes-Hurtado, 794 F.3d 1278, 1284-87 (11th Cir. 2015) (quoting **United States v. Hernandez**, 242 F.3d 110, 113 (2d Cir. 2001)

The United States Court of Appeals of the Fifth and Eleventh Circuits held in **Calhoun v. Fla. Dep't of Corr.**, 607 Fed. Appx. 968 (2015) that:

"A defendant, who pled guilty on the advice of counsel, may attack the voluntary and intelligent character of the plea by showing that counsel rendered ineffective assistance."

Moreover, counsel's deficient performance fell below an objective standard of reasonableness based on prevailing professional norms **Strickland v. Washington**, 466 U.S. 668, 687, 80 L.Ed.2d 674, 104 S. Ct. 2052 (1984) and was not within the range of competence demanded of attorneys in criminal cases. The Petitioner avers that she has met both prongs of **Strickland**. Also see **McMann v. Richardson**, 397 U.S. 759, 771 (1970)

This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

IV. WAS COUNSEL INEFFECTIVE FOR FAILING TO CALL AN ASSISTANT STATE ATTORNEY ON HER BEHALF REGARDING PETITIONER'S COOPERATION AGAINST HER CO-DEFENDANTS IN EXCHANGE FOR A PLEA TO ACCESSORY AFTER THE FACT, VIOLATING HER FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

Under the Sentencing Guidelines, the government may file a motion informing the district court of the Petitioner's substantial assistance and request a downward departure. *See* U.S.S.G. 5K1.1. Under Rule 35(b), **"[u]pon the government's motion,"** the district court may reduce a defendant's sentence after he has been sentenced if the Petitioner provided substantial assistance in investigating or prosecuting another defendant. Fed. R. Crim. P. 35(b). When the defendant has provided substantial assistance, the government has the power, but not the duty, to

file a substantial assistance motion. *See* **Wade v. United States**, 504 U.S. 181, 185, 112 S. Ct. 1840, 118 L. Ed. 2d 524 (1992) (addressing the government's failure to file a substantial assistance motion in the 5K1.1 context); see also **United States v. McNeese**, 547 F.3d 1307, 1308-09 (11th Cir. 2008)

Counsel should have called Jeffery Hendriks, who was the assistant state attorney initially involved in her case, and would have confirmed the fact that there was a plea agreement between him and the Petitioner that Petitioner would pled guilty to the charge of accessory after the fact in exchange for her cooperation.

Counsel for defense, Mary Celidonio and Mr. Hendricks made a verbal agreement on September 5, 2009 at the first interview, and not Daryl Isenhower, with the prosecutor who eventually tried the Petitioner's case. Counsel had every opportunity to call Mr. Hendriks as a witness to testify that this agreement had been made. In fact, Ms. Celidonio stated at the Sentencing Hearing that she would be asking Mr. Hendriks a few questions:

[T-pg. 30 (lines 10-21)-plea colloquy]

> "Ms. Celidonio: .....We're going to and get most of what I observed myself through Ms. Mahogany because this is really all about cooperation. And the sentence to be handed down I know is purely on that cooperation. It has nothing to do with outside matters in Mahogany's family and life based on the nature of these charges.
>
> However, Mr. Isenhower was not present that date. *So I'm going to be asking Mr. Hendriks a couple of questions today in reference to who was present when this first interview* which was the same interview that she pretty much testified to all the way through this case in the trials and in her deposition." (Emphasis added)

Counsel did not question Mr. Hendriks about what was said at this first interview, at the Petitioner's sentencing hearing and her failure, severely prejudiced the Petitioner because the trial court was not able to hear what the State Attorney Hendriks had offered the Petitioner at the initial plea agreement instead she allowed the Petitioner to be mishandled by Mr. Isenhower, who was not present during the initial interview and allowed her to accept a plea for Robbery with a firearm when the Petitioner did not actually possess, use or display said firearm nor did she kill the victim in this case.

Counsel also failed to question Beverly Hines, who is the Petitioner's mother-in-law, who was present at the sentencing hearing, about the plea agreement that was originally agreed upon by Mr. Hendriks. This information would have been favorable to the Petitioner's sentence. Counsel's deficient performance prejudiced the Petitioner and caused the outcome of her cause to be unreliable. This abuse violated the Petitioner's Sixth and Fourteenth Amendment right to a fair trial and due process. See **United States v. Cobb**, 2014 U.S. Dist. LEXIS 188861 (2014).

This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

V. DID COUNSEL RENDER INEFFECTIVE ASSISTANCE FOR FAILING TO INFORM PETITIONER OF CHANGE OF PLEA AGREEMENT, A VIOLATION OF HER FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

In order to establish that post-conviction counsel's failure to raise the ineffective assistance of counsel-trial claim constituted unconstitutionally ineffective assistance under the Sixth Amendment, a petitioner is required to show that (1) his counsel's performance was deficient and fell below an objective standard of reasonableness, and (2) the deficient performance prejudiced his defense. The deficient performance prong of Strickland requires the court to determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. **Kevin Sullivan v. Secretary, Florida Department of Corrections**, 837 F.3d 1195; 2016 U.S. App. LEXIS 17168 (11th Cir. 2016)

Defense counsel allowed Petitioner to cooperate with the State, testify in two trials, and never informed the Petitioner that when State Attorney Isenhower took over the case, he no longer was giving the Petitioner the charge of accessory after the fact, as State Attorney Hendriks and defense counsel agreed to give Petitioner for cooperating. Counsel did not advise Petitioner of change until counsel brought Petitioner the first plea offer from State Attorney Isenhower, which was after full cooperation, and time for the Petitioner to be sentenced.

Counsel did not have Petitioner's best interest in mind. The Petitioner relied on counsel to ensure that her Due Process rights under the Fourteenth Amendment were not violated. After counsel was privy to the agreement made between her and Mr. Hendriks, after it was off the table, counsel had a constitutional duty to reasonably inform Petitioner of this important change in plea. This change resulted

in the Petitioner receiving a more harsh sentence by undermining the confidence in Petitioner's plea and sentencing.

The United States Court of Appeals of the Fifth and Eleventh Circuits held in United States v. Millender, 635 Fed. Appx. 611 (2015) that:

> **"The guilty plea is not knowing and voluntary if the defendant does not receive reasonably effective assistance of counsel in connection with the decision to plead guilty. The guilty plea does not relieve counsel of the responsibility to investigate potential defenses so that the defendant can make an informed decision."**

This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

VI./X. WAS COUNSEL INEFFECTIVE FOR FAILING TO ADVISE PETITIONER TO WITHDRAW PLEA AND FILE A MOTION TO DISQUALIFY JUDGE; AND WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT DURING JUDGE'S STATEMENTS WHICH WERE USED TO DETERMINE SENTENCE, VIOLATING HER FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

There must be a clear effect on the jury for an appellate court to reverse based on improper comments by the trial judge. Thus, the district court abuses its discretion only when the judge's conduct strays from neutrality, and its remarks demonstrate pervasive bias and unfairness that actually prejudice a party. United States of America v. Patricia Anderson and Stephen Thomas, 542 Fed. Appx. 893; 2013 U.S. App. LEXIS 22050 (11th Cir. 2013)

The Petitioner avers that the trial court's decision resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented.

During Petitioner's sentencing hearing, as the Petitioner was speaking to the court, the judge stated to Petitioner that he was going to sentence her in a cold fashion and the judge also make other remarks in reference to the severity of how he desired to sentence the Petitioner:

[T-pg. 24 (lines 20-22)-plea colloquy]

> "The Court: **It brings me no turmoil. I do this every day. I'm going to judge you in a cold, logical fashion."**

[T-pg. 81 (lines 10-18)-plea colloquy]

> "The Court: **But when I come to a number where I think you would be released, it's significantly higher than the cap that was negotiated. And with regard to you and your attorney, I realize this has been an emotional trip for you from the beginning. I'm looking at it like a case in that cold way. And the reality is based on my calculation, it would have been a longer time for you to get out and I still think there would have been an incentive for you to testify...."**

As far as mitigating the Petitioner's sentence, the Magistrate Report, on page 45 of its response, erred in stating that the following statement made by the judge is, "wholly unsupported by the record..." The judge remarked:

[T-pg. 82 (lines 7-13)-plea colloquy]

> "The Court: **....I contemplated perhaps doing like eighteen and then two years of probation *to see if you'd slip up and get you.* I don't think that would be appropriate under the circumstances because of all the other factors we have here. I think it's better that you do your time**

and that's it. We're not trying to be cute her in that circumstance." (Emphasis added)

It was clear that given all the cooperation the Petitioner gave and the mitigating factors that the Petitioner met, the judge was still going to judge her in a cold way:

> **"The Court: So that really doesn't factor into my consideration here. It really doesn't. And your medical situation and the difference in that regard doesn't make really a difference there."**

None of these facts mattered. Even the cap was not enough time, he felt, should be spent in prison. This was grounds for disqualification as he showed that he could not be a fair and impartial fact finder in these proceedings. **United States v. Armstrong**, 517 U.S. 456, 464, 116 S. Ct. 1480, 134 L. Ed. 687 (1996)

Counsel should have advised Petitioner to withdraw her plea or after the sentence was rendered, counsel, still being undersigned counsel, had a constitutional duty to advise Petitioner and file applicable motions to expedite such. These actions should have been solidified on the premise that the judge's remarks showed that he based his decision upon the nolle prossed charge of first degree murder, the co-defendant's trials and the Petitioner's own testimony:

[T-pg. 79 (lines 12-15)-plea colloquy]

> **"The Court: So I had an idea, especially in the trials, that we would get to this juncture. And the whole time I heard you testify, the whole time I focused on the case, it's a thought in my mind of what your sentence should be..."**

It was the duty of counsel to make a contemporaneous objection to the judge's statements and counsel Petitioner to withdraw her plea.

Counsel's performance fell below a reasonable objective standard and counsel's failure resulted in a miscarriage of justice and a violation of the Petitioner's Sixth and Fourteenth Amendment right to a fair and impartial hearing and Due Process were violated.

This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

VII. DID COUNSEL'S PERFORMANCE FALL BELOW A REASONABLE OBJECTIVE STANDARD IN ALLOWING PETITIONER TO BUILD A CASE ON HERSELF WITHOUT SECURING A PLEA DEAL, VIOLATING HER FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

When analyzing a claim of ineffective assistance under 28 U.S.C.S. 2254(d), the court's review is "doubly" deferential to counsel's performance. Under 2254(d), the question is not whether counsel's actions were reasonable. The question is whether there is any reasonable argument that counsel satisfied Strickland's deferential standard. **Alvarez v. Warden, Attorney General of the State of Alabama**, 2017 U.S. App. LEXIS 27855 (11th Cir. 2017)

Counsel met with the Petitioner at police station on the second day or arrest to represent Petitioner. Counsel spoke with Petitioner, then spoke with State Attorney Hendriks. When counsel returned to where Petitioner was, she advised Petitioner that all the police were working with to build a case was the car, and

some names the Petitioner's brother provided. The Petitioner then stated to counsel that she was remorseful about what happened to the victim. Counsel advised Petitioner that she could lip up or help get the bad guys off the streets. The Petitioner stated to counsel that for her cooperation she wanted a plea deal, so counsel went and spoke with State Attorney Hendriks, when counsel returned she said Hendriks agreed to give Petitioner accessory after the fact with full cooperation and testify at trials of co-defendants. After contemplation, the Petitioner agreed to the deal.

The Petitioner then gave full taped recorded statement of events of what led to crime and how the crime happened, and who was involved. After the interview, the Petitioner judge implicated herself in the case, so that the state attorney could now also built a case on the Petitioner as well as co-defendant. Defendant relied on counsel to secure deal, which counsel did not. As the record shows, the Petitioner is now serving a twenty (20) year sentence under the charge of Robbery with a firearm.

The following excerpts from the record, made by the state attorney Isenhower, support the fact that the Petitioner created a stronger case against herself:

[T-pg. 57 (lines 6-9)-plea colloquy]

> **"Mr. Isenhower: ...But after she gave her statement, she – we had a lot more evidence *against her* and against her co-defendant, as they pointed out in their presentation today..."**

[T-pg. 57 (lines 16-23)]

> **"Mr. Isenhower: So they're right to point out that she made the case against her stronger and made the case against – made the case against the – her co-defendant's possible. Really all we had was one nickname or maybe two nicknames that we got through her brother prior to her coming in. And that was not going to get us very far. So they're right to point that out. And I think that that was very clear from the evidence."**

It was counsel's strict responsibility to ensure that the Petitioner's best interest were adhered to at all times and that errors are not made that was severely prejudice the Petitioner. These errors are ones that a reasonable competent attorney acting as a diligent and conscious advocate would not have made. **Butcher v. Marquez**, 758 F.2d 373, 396 (9th Cir. 1985).

Counsel's performance fell below a reasonable objective standard and counsel's failure resulted in a miscarriage of justice and a violation of the Petitioner's Sixth and Fourteenth Amendment right to a fair and impartial hearing and Due Process were violated. The Petitioner has met all prongs of **Strickland**.

This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

VIII. WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO TESTIMONY FROM ANOTHER TRIAL, VIOLATING HER FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

During the Petitioner's sentencing hearing the judge wanted to make some statements that he would use in determining the sentence for the Petitioner. One statement was testimony that was used in co-defendant's trial by a witness for the State, Kineshia Williams against Petitioner's co-defendant, which should not have been allowed.

[T-pg. 74 (lines 10-21)-plea colloquy]

> **"The Court: On the other hand, there is more than a grain of truth in the degree to which she was minimizing her own involvement in the case. And the particular point that stuck out – I didn't even have to refer to my notes – but listening to the trial – there was a witness, Kineshia Williams I believe her name was. She was the woman from Eastern Europe. She lived in Fort Pierce. She made an observation of the Defendant in the vehicle backing up with the doors open which shows the degree of her cooperation. It was a stark contrast between the testimony of this Defendant in the regard."**

The judge erroneously referred to this witness's testimony without the benefit of actually having this witness present so the defense counsel could question the witness and put her statements to adversarial testing.

As the Report of the Magistrate cited in **Crawford v. Washington**, 541 U.S. 36, 38, the Confrontation clause does not permit the admission at trial of "...testimonial statements of a witness who does not appear at the trial unless the witness is unavailable and the defendant has had prior opportunity to cross-examine him." The Report states that this is a "trial right", however, the Plea Colloquy represented the Petitioner's "trial" per se and she received her judgment and sentence after the trial judge, who was the fact-finder in these proceedings,

heard both sides of this case. The Petitioner was still entitled to confront this witness and subject this witness's statements to adversarial testing.

The trial judge also referred to notes pertaining to the trials of the co-defendants and inferred, by the following statements, that this helped him in his decision making process:

[T-pg. 56 (lines 2-19)-plea colloquy]

> "The Court: **And I think at this time, we're just ready for the arguments. I – when you do make your argument, I should let you know *I've reviewed by notes from both of the trials which are really, really extensive notes.* I'm glad I took those notes. It puts me in a very good position today as far as the recall of what happened.**
>
> **In fact, *on that one point in my notes*, one of the defense attorneys – I can't, you know – looking at my notes, which trial was which, it's hard to immediately recognize. But one of the them in the cross-examination focused right on that point when their car was pulled over, you had the opportunity to tell the police at that moment, you know, something awful happened. You didn't do that. I was one of the main points in that regard.**
>
> **But you can argue from that starting point realizing that *I've reviewed the notes from both trials* and I just heard her part of the situation."** (emphasis added)

Continued reference to these notes and the testimony given by a witness in one of the co-defendant's trial, prejudiced the Petitioner in the regard that the Petitioner never have the benefit of questioning the witness or questioning the veracity and accuracy of her testimony.

Counsel's deficient performance fell well below a reasonable object standard and allowed the Petitioner's Sixth and Fourteenth Amendment right to a fair and

impartial trial and Due Process to be violated. The Petitioner has met all prongs of Strickland.

This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

IX. WAS COUNSEL INEFFECTIVE FOR FAILING TO PROVIDE THE TRIAL COURT WITH PROPER DOCUMENTATION FOR MITIGATION, VIOLATING HER FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

Counsel asked Petitioner to sign multiple medical release forms to present at sentencing as one of the Petitioner's mitigating facts. Counsel had no intention of using it as a mitigating factor due to the statement she made, which was against the Petitioner's wishes. This rendered counsel ineffective because any factor for mitigation would have been favorable for the Petitioner.

The trial court had the sole discretion to consider everything that was placed before it when rendering its decision:

[T-pg. 8 (lines 6-15)-plea colloquy]

> **"The Court: And – all right. Because I do have discretion with regard to your sentence, I'll consider everything placed before me as far as evidence and argument in deciding what an appropriate sentence is. No one knows exactly what I'm going to do as far as splitting the time with regard to your sentence or deciding your sentence. Part of the calculation as far as part of my decision, I could consider anything that you – or questions, rather, that you're asked during the sentencing proceeding..."**

Counsel had a constitutional duty to submit any and all mitigating documents for the court to review. Counsel's performance fell below an objective standard of reasonableness and the Petitioner's Sixth and Fourteenth Amendment rights were violated. The Petitioner has met all prongs of **Strickland**.

This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

XI. WAS COUNSEL'S ASSISTANCE RENDERED EFFECTIVE FOR LACK OF EXPERIENCE, VIOLATING HER FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

Counsel made references, on her own, that she had never been involved in a case such as the Petitioner's since working for the Public Defender's Office, which was the first time the Petitioner, learned of this matter:

[T-pg. 59 (lines 19-22)-plea colloquy]

> **"Ms. Celidonio: Judge, like I said right from the get-go, my involvement in this was just different than anything I've ever been involved with for fifteen years at the Public Defender's Office...."**

Counsel also stated she was just trying to get the Petitioner to cooperate, even though counsel knew she was not qualified to try such a case. Counsel repeatedly cross-referenced the drug cases she was so familiar with, with the Petitioner's trial:

[T-pg. 60 (lines 24-25); pg. 61 (lines 1-3)-plea colloquy]

"Ms. Celidonio:...It usually comes down to bite the defendant that's doing the initial talking or the substantial assistance, so to speak, in drug cases at the end of the day they get them out and then they end up committing new crimes or whatever."

[T-pg. 69 (lines 2-22)-plea colloquy]

"Ms. Celidonio: It's been my experience – and it's *been mostly my experience with drug trafficking* – when people get twenty-five-year mandatory minimum sentences thrown at them and, you know, the State and (Indiscernibles) are more than welcome to throw these people out on the street to work and then they come back before the Court and they get treated – you know, they get probation. And I'm looking at them in my first meeting at the jail saying, Buddy, you just sealed a twenty-five-year mandatory minimum sentence.

And, you know, to me a drug trafficker is a pretty bad criminal, especially when you get to those high quantities. And I think that in order for justice to work, in order to get the really bad guys, that there's people that have to – the State has to give up some of the – let's day the principals and some of the lower people on the totem pole if they are to make sure that justice is served.

And in this case I think that's really that the Court needs to look at as far as what Mahogany Alexander did..."

Because of counsel's inexperience with cases such as the Petitioner's, this inexperience severely prejudiced the Petitioner. Moreover, counsel's continued reference to her representation of drug trafficking cases, caused the court to look at her and the Petitioner disfavorably and minimized the gravity of what effective representation meant in this case:

[T-pg. 75 (lines 10-14)-plea colloquy

> **"The Court: Ms. Celidonio made reference to drug cases. And we have cases here where people sell drugs. And then they implicate others. They walk out with probation. Drug dealing is a widespread problem. It's serious but it's nowhere near what this case is."**

The trial court made it abundantly clear the difference between the Petitioner's case is and a drug trafficking case; an apparent breakdown in communication and understanding about the Petitioner's case on the part of counsel. **Hill v. Lockhart**, 474 U.S. 52, 58, 106 S. Ct. 366, 370, 88 L. Ed. 203 (1985)

The United States Court of Appeals of the Fifth and Eleventh Circuits held in **Frank v. United States**, 522 Fed. Appx. 779 (2013) that:

> **"The Sixth Amendment right to effective assistance of counsel extends to plea negotiations. Thus, criminal defendants are entitled to the effective assistance of competent counsel during plea negotiations."**

Counsel had a constitutional duty to either remove herself from the Petitioner's case due to her inexperience or diligently prepare for the Petitioner's case. All of which she failed to do. Counsel's performance fell below an objective standard of reasonableness and the Petitioner's Sixth and Fourteenth Amendment rights were violated. The Petitioner has met all prongs of **Strickland**.

This Honorable Court should issue a writ of certiorari for the compelling reasons listed herein where the United States Court of Appeals has entered a decision in conflict with decisions made in its court and other courts of appeals on the same important matters.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

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Respectfully Submitted,

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