18-8421

IN THE SUPREME COURT OF THE UNITED STATES
CASE NO: USCA11 17-11357

TIMOTHY M. THOMAS, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

ORIGINAL

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

Timothy M. Thomas #959921
Wakulla Corr. Inst.
110 Melaleuca Drive
Crawfordville, FL. 32327

QUESTIONS PRESENTED

I) DID THE CIRCUIT COURT OF APPEALS ERR WHEN IT DENIED (COA) STATUS ON THE POINT RAISED THAT THE U.S. DISTRICT COURT ABUSED IT'S DISCRETION BY NOT ALLOWING MR. THOMAS TO *AMEND HIS 28 U.S.C. 2254*, IN CONFLICT WITH THIS COURT'S DECISION OF SLACK V. MCDANIEL, 529 U.S. 473, 484 (2000).

II) DID THE CIRCUIT COURT OF APPEALS ERR WHEN IT DENIED (COA) STATUS ON THE POINT RAISED THAT THE U.S. DISTRICT COURT ERRED IN ITS DETERMINATION AS OF EXHAUSTION AND MERITS OF *GROUNDS ONE OF HIS 28 U.S.C. 2254*, IN CONFLICT WITH THIS COURT'S DECISION OF SLACK V. MCDANIEL 529 U.S. 473, 484 (2000).

III) DID THE CIRCUIT COURT OF APPEALS ERR WHEN IT DENIED (COA) STATUS ON THE POINT RAISED THAT THE U.S. DISTRICT COURT ERRED IN ITS DETERMINATION AS OF LAW OF THE CASE DOCTRINE AND MERITS OF *GROUND TWO OF HIS 28 U.S.C. 2254*, IN CONFLICT WITH THIS COURT'S DECISION OF SLACK V. MCDANIEL, 529 U.S. 473, 484 (2000).

LIST OF PARTIES

A) Trial defense counsel; Mr. Jonathan Bull

B) Motion to withdraw plea and hearing, and direct appeal of such; Fla.R.Crim.P. 3.850 motion and appeal of such, Mr. Michael Hill.

C) State of Florida's Attorney General; Pamela Jo Bondi, and (AAG) Rebecca Roark-Wall.

D) State of Florida as on caption.

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IN THIS SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Mr. Thomas respectfully prays that a Writ of Certiorari be issued to review the judgment of the opinion of the U.S. 11th Circuit Court of Appeals appearing at appendix (D) which is unpublished.

JURISDICTION

The date which the U.S. Court of Appeal of the 11th Circuit decided my case. Petitioner M. Thomas timely filed a motion for rehearing and was denied by the 11th Circuit Court judge on Oct. 31st 2018. The jurisdiction of this Honorable Court is invoked under 28 U.S.C. 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution's 14th Amendment's Due Process Clause

United States Constitution's 6th Amendment right to effective counsel.

United States Code 28 U.S.C. 2254, 2253 (c)(2)

STATEMENT OF CASE AND FACTS

Search and Arrest

In this cause before this Honorable Court, in that Petitioner Mr. Thomas was illegally stopped upon a non-descriptive (BOLO) in 2008, and through such illegal stop and the ensuing search of his vehicle, Mr. Thomas was arrested on seven different cases of: 2008-CF-69232, CT. I, Possession of a Firearm by a Convicted Felon, and CT. II, Possession of Drug Paraphernalia; 2009-CF-032591, CT. I

Aggravated Battery of (LEO); 2009-CF-09617, Burglary of a Dwelling; 2009-CF-039619, CT. I, Attempted Burglary of a Dwelling.

Pre-trial and Change of Plea:

Then on or about November 3rd, 2009, Mr. Thomas proceeded to trial with Defense Counsel Mr. Jonathan Bull, and on this date Mr. Thomas was clearly upset with Counsel by telling him that he has not properly investigated, nor prepared for trial, and when the State and the Trial Court started to forcefully push for a scheduled trial date of today, Mr. Thomas became very scared that he was going to be railroaded by Defense Counsel Mr. Bull, and at that time Mr. Bull, along with the State and the Trial Court, started to push Mr. Thomas into taking a plea deal on all cases, and based upon a misconception as to the length of time he would receive, and by the Court pressuring Mr. Thomas by saying, "time is running out because we are starting trial on this one today." Then the Court gave Mr. Thomas less than (5) minutes to confer with Trial Counsel, and this conversation lasted less then (5) minutes. Mr. Bull stated that he could get a life sentenced if convicted, but this was contrary to what was previously said by Mr. Bull before today, the first day of trial. Mr. Bull only told him before that he was facing (30) years maximum which is that same amount of time of said plea offer. Thus, all of a sudden this charge brought by Trial Counsel Mr. Bull put the

intended pressure on and the Trial Court made its own confusing statement about what was about to transpire.

Motion to Withdraw Plea (MWP):

With that being said, Mr. Thomas involuntarily entered in to said plea in exchange for (30) years as a Habitual Offender and with a (15) year minimum mandatory under (PRR) on the above cases as charged, with one exception, which is the Aggravated Battery of a (LEO) being reduced to Aggravated Assault of a (LEO). After all the dust settled, Mr. Thomas hired Private Counsel Michael Hill, and he informed Mr. Thomas that based upon the facts of the aforementioned change of plea hearing, he needs to file a Motion to Withdraw Plea, based upon the involuntarily entered plea, and Ineffective Assistance of Trial Counsel claims as follows: 1) Trial Counsel didn't communicate with Mr. Thomas. 2) Trial Counsel didn't adequately prepare Mr. Thomas for trial, in that he told him a new statutory maximum he was facing in prison was LIFE. 3) Trial Counsel failed and refused to conduct depositions of witnesses. 4) Trial Counsel failed to allow Mr. Thomas to review his discovery. 5) Trial Counsel failed to look into specific defenses, including a Motion to Suppress evidence, which would have excluded all evidence used to tie him to any and all charges at hand. 6) Involuntary plea, in which he told Counsel that he would rather go to trial, then take the (30) year deal, but Trial Counsel returned and said the deal was for (15) years. 7) Involuntary plea as he

was being rushed by Trial Counsel and the Trial Court. 8) Understanding of the plea offer, as a deal of (15) years as Trial Counsel told him. 9) Involuntary plea as he as previously told by Trial Counsel that he was receiving a (15) year sentence of this plea. Further, this Motion was clearly argued under the U.S. Constitution's 14th Amendment's Due Process Clause, and Boykin v. Alabama, 395 U.S. 238 (1969). Mr. Thomas states that once he was faced with an *unprepared and unscheduled immediate trial of today*, and with Trial Counsel that was *totally unprepared without any defenses*, he had no option but to formally accept the ensuing plea offer.

Order Denying (MWP):

The State Trial Court denied the Motion to Withdraw Plea based upon the *plea colloquy and plea form and didn't adjudicate the ineffectiveness Trial Counsel claims, but only addressed the two (2) Involuntary Plea issues before the Court.*

Direct Review Order Denying (MWP):

On appeal of the Motion to Withdraw Plea (MWP), Petitioner's attorney Mr. Michael Hill, which is the same attorney that did same motion, argued again to the Appellate Court that it was a due process concern, and the *State in it's Answer Brief* clearly alerted the State Appellate Court that it was allegedly a violation of the U.S. Constitution's Due Process Clause and a direct violation of Boykin v.

Alabama, 395 U.S. 238 (1969). The Fifth DCA *per curiam* affirmed without an opinion. The Fifth District Court of Appeal *per curiam* affirmed without an opinion on April 27th, 2011.

Fla.R.Crim.P. 3.850:

The same attorney above, Mr. Hill, filed a Motion for Post-Conviction Relief 3.850 claiming Ineffective Assistance of Trial Counsel, Mr. Bull, for his failure to: 1) Compel Law Enforcement to attend depositions and failing to depo other crucial witnesses. 2) Investigate the Amended charge of Aggravated Assault on Law Enforcement (LEO) with serious injury. 3) Failing to investigate promises by Agent Holiday that if he gave a confession he would only get (10) years imprisonment, and the suppression of such crucial statements. 4) Refusal to give Petitioner Discovery. 5) Lying to Petitioner by saying he was ready for trial. 6) Failing to communicate regarding the true extent of the State's plea offer. 7) Failing to investigate the (GPS) monitoring device which would clearly show he was not even in the area of said crimes as alleged. 8) The illegal stop, arrest and search of Mr. Thomas's vehicle which resulted in the seizure of the only evidence of criminal activity, which was based upon a *vague* (BOLO) and which was clearly suppressible.

Order Denying 3.850:

The State Trial Court denied said 3.850 by asserting a Procedural Bar of Law of the Case Doctrine, in that the claims presented have been heard and ruled upon by this Court in Petitioner's prior Motion to Withdraw Plea, and base upon said responses at the hearing on such.

Collateral Review of 3.850:

On appeal of above mention, Petitioner did not file a brief as Florida does not require such, and the State didn't either, and the Court *per curiam* affirmed without an opinion.

28 U.S.C. 2254 Petition:

On February 27th, 2015, Petitioner filed his 2254, and raised on Claim One that the State of Florida secured its convictions by way on an Involuntary Plea in violation of the U.S. Constitution's 14th Amendment Due Process Clause, and Boykin supra. Then in Claim Two, the State of Florida secured its conviction by way of Ineffective Assistance of Trial Counsel, in violation of the U.S. Constitution's 6th Amendment as announced in Strickland v. Washington, 104 S. Ct. 2052 (1984). (Appx. A)

Furthermore, these two claims were based on the two motions that were denied in the State proceeding, to wit: Motion to Withdraw Plea, and Fla.R.Crim.P. 3.850.

Order to Show Cause:

Then on March 30th, 2015, the District Court ordered the State to respond to said Petition. Then the Assistant Attorney General (AAG) Rebecca Rockwall filed her Notice of Appearance.

First Motion for Leave to Amend (MLA):

Before the State's Response, Petitioner sought leave to amend his 2254 on May 19th, 2015, with New supporting facts to support these underlying claims of Ineffective Assistance of Trial Counsel that were insufficiently plead by Post-Conviction Counsel in his 3.850, and thereby pled in his 2254, as these claims were lacking the prejudice prong of the Strickland standard.

Order to Show Cause on (MLA) and the State's Response:

The Magistrate Judge ordered the State to show cause on the (MLA), and the (AAG) responded by saying that in Claim One, it has **been fully exhausted in State Court**. Then also in Claim Two, all of the specific facts which were presented by Post-Conviction Counsel to the State Court were properly raised and *fully exhausted in State Court.*

Further, the (AAG) stated in her response, "Clearly, since Post-Conviction Counsel actually raised each of the claims raised in the instant petition, there is *no procedurally defaulted claim in the instant petition.* Put simply, each of

Petitioner's claims were raised and exhausted in State Court, so there is no procedurally defaulted claim for Petitioner to amend."

Order Denying First Motion for Leave to Amend:

On June 8th, 2015, the Magistrate Judge Thomas B. Smith, denied said Motion for Leave to Amend by saying, essentially, Petitioner wishes to amend his petition to demonstrate cause and prejudice for an alleged procedural default, and Respondent contends that Petitioner's claims were Exhausted in the State court and *therefore, the amendment is unnecessary because the petition does not contain any procedurally defaulted claims.*

Respondent's Response to 2254:

On June 29th, 2015, the (AAG) responded by flipping the script by saying that Petitioner never raised or argued in State court that his plea was *Involuntary based upon a Due Process violation by the State or the Trial Court.* Further, the (AAG) went on to claim that he never invoked any federal or U.S. Constitution, thus he has defaulted this first claim.

Second Motion for Leave to Amend:

Then on August 21st, 2015, Petitioner filed his *Second* Motion for Leave to Amend his 2254, in the first point that he needs to give a more factual support to his 3.850 claims as they are lacking in the First and Second Prongs of Strickland supra. Further, in the Second Point, ask for leave to amend with new claims never

been heard or ruled on by the State Court under Martinez v. Ryan, 132 S.Ct. 130. Then the magistrate Judge ordered the (AAG) to respond.

State's Response to Second Motion for Leave to Amend:

The (AAG) asserted that this *Second* Leave to Amend was an attempt to rehear his first one, but then goes on to say that in her first response she did a cursory review of the State documents and argued that both claims were exhausted in State court. But she made a full response she changes her mind, that Claim One of the 2254 is *not exhausted, by saying that Petitioner never raised a Federal Due Process argument in State court.* She erroneously states, that his State court claim rested solely on State law and rules, in that he never relied on federal statutes, case law, or constitutional provisions when arguing in his involuntary plea claim.

Further, the (AAG) stated on the second claim of his 2254 Ineffective Assistance of Trial Counsel, she stands by her previous assertion that these claims were fully exhausted and no defaulted claims and there is no Martinez issues.

Order Denying His Second Motion for Leave to Amend 2254:

On October 22nd, 2015, the Magistrate Judge Thomas R. Smith denied the second Motion on the basis that Petitioner raised several grounds of Ineffective Assistance of Trial Counsel in his State 3.850, and now he contends that he wants to more artfully argue the crucial omission and prejudice prongs, but the Court

held that Petitioner has not presented these additional arguments in his original petition. Thus, he denied it without reaching the Martinez claims.

Reply State's Response to 2254:

On December 21st, 2015, Petitioner filed his Reply to the State's Response in his 2254, and countered the Procedural Bar asserted by the State of Exhaustion as to Claim One of his 2254, by showing the District Court that the State previously contended that he in fact exhausted this in her response to his First and Second Motion for Leave to Amend.

But when she argued that he had never raised that it was a Due Process violation under the U.S. Constitution, he clearly showed her to be wrong, as the Motion to Withdraw Plea filed in State Court clearly shows that in the beginning of said motion, quote "Comes Now, Defendant Timothy M. Thomas by and through his undersigned Counsel respectfully requests this Honorable Court to vacate the judgment imposed in the above captioned matter pursuant to Fla.R.Crim.P. 3.170(f)(j)(k) and the **Due Process Clause** of the Florida Declaration of Rights, *and United States Constitution's Bill of Rights*. Further, Petitioner clearly argued in his Motion to Withdraw Plea, that it was a violation of the U.S. Supreme Court's landmark decision of Boykin v. Alabama, 395 U.S. 238 (1969).

Petitioner asserted that pursuant to 2254(d)(2) and Parker v. Head, 244 F.3d 1831 (11th Cir. 2001) the State's adjudication resulted in an unreasonable

determination of the facts in light of the evidence presented in the State Court proceedings. Then in Claim Two of his 2254, which is the State 3.850 Motion, he contended that there was on two points heard by the Court system, which was voluntariness of said plea hearing and she stood on this hearing testimony to conclusively refute this claim. But Petitioner points out that he never fully argues independent Ineffective Assistance claims.

Further, in the alternative, Petitioner asked the District Court to allow him under the dictates of Martinez v. Ryan, 132 S.Ct. 1309 (2012), that he be allowed to raise the New and Independent claims as previously asked for in his Second Notice of Inquiry and Motion to Rule:

On January 17th, 2017 some (13) months after Petitioner's Reply he filed the Notice of Inquiry, and then on February 8th, 2017, some (14) months after the last pleading, a Motion for Ruling, and the District Court ruled upon said 2254 motion without any Magistrate's Report and Recommendation.

Order Denying 2254:

Then on February 28th, 2017, the District Court made its final ruling by asserting a Procedural Bar of Non-Exhaustion, in that as to his **First Claim**, by stating that Mr. Thomas did not in his motion that it was a violation under the 14th Amendment pursuant to Boykins supra. However, Petitioner is alleged to have failed to cite this in his Initial Brief of Direct Appeal of the Motion to Withdraw

Plea (MWP). Thus, this claim is unexhausted and cannot be heard by the Court. (DOC. #28 at 5-6). Then, in the alternative, the District Court goes to the merits anyway. The Court contends that Mr. Thomas's claims of involuntariness is not credible because the plea form and the plea colloquy show that he was facing life in prison, and thru this plea offer he received a (30) year sentence with a minimum mandatory of (15) years instead. Then the District Court goes into the hearing on the (MWP) that after Mr. Thomas's testimony that he did not understand that he could be sentenced to (30) years imprisonment that counsel assured him he would only receive (15) years, and that he felt his plea was coerced because counsel had not investigated his case or filed any motions. Further, that the Trial Court made a finding that based on his statements during the plea colloquy his testimony was not credible, and the Appellate Court affirmed. The District Court went on to say that the decision to deny that the plea was knowingly and voluntarily entered was not contrary to nor an unreasonable application of clearly established federal law, accordingly Claim One is denied pursuant to 2254(d).

As to the Second Claim of his 2254, the District Court held that Petitioner raised (11) grounds of Ineffective Assistance of Trial Counsel claims, and that these claims were raised and heard in his (MWP) and the hearing on such and thus was procedurally barred by law of the case doctrine.

Furthermore, the District Court held on *procedural grounds* that the plea was a waiver of all non-jurisdictional defects in the proceeding, and are thereby barred. The District Court goes on to the reasoning of said procedural bar by contending that he signed the plea form which states the usual contentions that he understands his rights that he is giving up, which is his right to a jury, to confront witnesses, to present defenses, to a speedy trial, and that he has reviewed the discovery and that he was satisfied with the service of Trial Counsel. The District Court then goes into the (MWP) hearing and avers that Mr. Thomas testified that his Trial Counsel's lack of investigation of the case, and failure to schedule depositions, and that Counsel told him that depositions were not warranted, and there was no grounds to file a Motion to Suppress on and based upon such knowledge Mr. Thomas felt he had no alternative but to enter the plea because counsel was totally unprepared, and the Trial Court concluded that Petitioner's testimony was not credible.

Then the District Court relied on the representations at the plea colloquy hearing and the Trial Court's determination at the (MWP) hearing, in that but for Counsel's actions, he would have not sought trial, but because he was facing a Life sentence, and thus received a (30) year sentence instead, as such this was not a violation of 2254(d).

Then the District Court denied Certificate of Appealability, pursuant to 2253(c)(2) and Slack supra. Then the District Court denied said petition, and dismissed it with prejudice. (Appx. B).

Notice of Appeal and Record:

Petitioner timely filed his Notice of Appeal (NOA) on March 24th, 2014, then the clerk of the U.S. District Court prepared the record with only the (NOA), the Order of Denial, and the Final Judgment. (See Record in DKT. #17-1137-B).

Petitioner's Motion for Certificate of Appealability to the Eleventh Circuit Court of Appeals:

Petitioner Mr. Thomas asserted the following points for (COA) status:

One: Did the District Court abuse its discretion in denying Petitioner's *First* Motion for Leave to Amend as announced in this Court's decisions of Thomas v. Farmville,, 705 F.2d 1307 (11th Cir. 1983), Bowers v. U.S. Parole Commission, 760 F.3d 1177 (11th Cir. 2014), Johnson v. Williams, 617 Fed.Appx. 293 (11th Cir. 2015), and Ramos v. Davis, LEXIS 12091 (11th Cir. 2016)?

Two: Did the District Court abuse its discretion in denying Petitioner's *Second* Motion for Leave to Amend as announced in Thomas, Bowers, Johnson, and Ramos supras?

Three: Did the District Court abuse its discretion in Claim One of his 2254 by asserting a Procedural Bar of Failure to Exhaust, based upon Castille v. Peoples, 489 U.S. 346 (1989), and Snowden v. Singletary, 135 F.3d 732 (11th Cir. 1988)?

Four: Did the District Court err in denying *Claim One* of his 2254 on the merits, as another reasonable jurist would debate whether Petitioner states a valid claim as a denial of his constitutional right, and that jurist of reason would find debatable whether the District Court was correct? Slack v. McDaniel, 120 S.Ct. 1595 (2000), and Miller v. Cockrell, 537 U.S. 322 (2003)

Five: Did the District Court err in denying *Claim Two* of his 2254 on another Procedural Bar because of entry of his plea? Tollett v. Henderson, 411 U.S. 258 (1973); Slack and Miller supras.

Six: Did the District Court err in denying *Claim Two* by asserting a Procedural Bar of Law of the Case Doctrine, as they are *alleged* to have been already agued and ruled upon in the prior state motion to withdraw plea hearing? Hill v. Lockhart, 474 U.S. 52 (1985); Slack and Miller supras. (App. C)

Order Denying (COA) Status by 11th Circuit:

The 11th Circuit Court held that the same determination as the lower court, and denied (COA) status of appeal. (App. D)

Petitioner's Motion to Reconsider:

Mr. Thomas timely filed his motion to reconsider based upon specific facts that has overlooked and law. (App. E).

Order of 11th Circuit of Denial of Motion for Reconsideration:

The Circuit Court denied Mr. Thomas's reconsideration because he raises no new evidence of arguments of merits to warrant relief, on Oct. 31st 2018. (App. F).

REASONS FOR GRANTING THE PETITION

QUESTION ONE

"DID THE CIRCUIT COURT OF APPEALS ERR WHEN IT DENIED (COA) STATUS ON THE POINT RAISED THAT THE U.S. DISTRICT COURT ABUSED IT'S DISCRETION BY NOT ALLOWING MR. THOMAS TO *AMEND HIS 28 U.S.C. 2254*, IN CONFLICT WITH THIS COURT'S DECISIONS OF SLACK V. MCDANIEL, 529 U.S. 473, 484 (2000)?"

ARGUMENT

The Circuit Court erred when it determined that the District Court did not abuse its discretion when it denied Petitioner's first and second motion for leave to amend his 2254 Federal Habeas Corpus on the basis because he moved (82) days after docketing his 2254 petition with **in part** that Petitioner based it upon this court's decision of Martinez v. Ryan, 132 S. Ct. 1309 (2012), as Martinez does not provide any basis to amend his petition. Thus, the circuit court stated that Petitioner has not shown that reasonable jurist would find it debatable the denial of his motion for leave to amend was a abuse of discretion and it denied (COA) status on this point.

Petitioner M. Thomas avers that when he properly asked for **leave** to amend his 2254 petition after the (82) days of filing, but **before** the State filed its answer, he done so timely and properly. Furthermore, when the district court denied him

the chance to amend his 2254 petition with new independent claims of ineffective assistance of trial counsel claims that have never been heard before in State or Federal Court, it clearly abused its discretion in violation of Thomas v. Farmville, 705 F.2d 1307 (11th Cir. 1983), and Bowers v. U.S. Parole Commission, 760 F.3d 1177 (11th Cir. 2014).

Thus, when the 11th Circuit Court refused to allow Petitioner Mr. Thomas his (COA) status on this point it clearly violated the tenets of Slack supra. And as such, the 11th Circuit's opinion is in direct and apparent conflict with this court's opinion. Mr. Thomas pray's that this Honorable Court will quash the order on review as to this point, and remand it back to the 11th Circuit to revisit.

QUESTION TWO

"DID THE CIRCUIT COURT OF APPEALS ERR WHEN IT DENIED (COA) STATUS ON THE POINT RAISED THAT THE U.S. DISTRICT COURT ERRED IN ITS DETERMINATION AS OF EXHAUSTION AND MERITS OF *GROUNDS ONE OF HIS 28 U.S.C. 2254*, IN CONFLICT WITH THIS COURT'S DECISIONS OF SLACK V. MCDANIEL 529 U.S. 473, 484 (2000)?"

ARGUMENT

In this point raised was that he is due (COA) status on the denial by procedural bar and merits of ground one of his 2254 petition.

To start with, Petitioner raised a claim in the State Trial Court all the way through the appellate process, that he Mr. Thomas pled to the State Trial Court and

it was involuntarily entered in violation of the due process clause of the 14th Amendment of the United States Constitution, and Boykins v. Alabama, 395 U.S. 238 (1969). The District Court appealed a procedural bar of exhaustion, by contending that Mr. Thoma's counsel wholly failed to mention the constitution provision, and this court decision of Boykins supra, in his Initial Brief in State Court Appeal.

But Mr. Thomas contends that he has continually put before the State Courts that his claim was in violation of the U.S. Constitution's Due Process Clause as announced in Boykins, as when this Honorable Court looks at the pleadings that started the claim, it will clearly see that it contains exactly such, and was fully argued as such at the state evidentiary hearing. Furthermore, on appeal the State Attorney General argued to the State court of appeal that this claim was crouched under such. Thus, exhaustion.

Next we have the merits of the claim, Mr. Thomas avers that the U.S. District Court erred in denying his point that his State trial court plea was involuntarily entered because he signed and understood the plea form and the plea colloquy. Further, that at his motion to withdraw plea hearing Mr. Thomas stated that he did not understand that he could be sentenced to (30) years imprisonment, as counsel promised him that he would only receive (15) years, and that the fact

that trial counsel failed to investigate and file a motion to suppress, he felt coerced into pleading no contest to the charges.

Mr. Thomas asserted that on the merits, it was clearly shown throughout the State proceedings that Mr. Thomas was under extreme duress, and involuntarily entered the plea based on the dictates of Boykins, supra. Being as such the District Court's ruling was unreasonable determination of the facts in light of the evidence presented in State court.

Thus, when the 11th Circuit Court of Appeals reviewed this claim for (COA) status it erred in determining that reasonable jurist would not find the District Court's ruling incorrect.

QUESTION THREE

III) "DID THE CIRCUIT COURT OF APPEALS ERR WHEN IT DENIED (COA) STATUS ON THE POINT RAISED THAT THE U.S. DISTRICT COURT ERRED IN ITS DETERMINATION AS OF LAW OF THE CASE DOCTRINE AND MERITS OF *GROUND TWO OF HIS 28 U.S.C. 2254*, IN CONFLICT WITH THIS COURT'S DECISIONS OF SLACK V. MCDANIEL, 529 U.S. 473, 484 (2000)?"

ARGUMENT

In this question, Mr. Thomas ask this Honorable Court to review the asserted procedural bar by the U.S. District Court on Mr. Thomas's 3.850 motion alleging (11) eleven new and independent grounds of ineffective assistance of counsel

claims, on law of the case doctrine. The U.S. District Court contended that since Mr. Thomas had already argued these claims of his motion to withdraw plea, and at the ensuing evidentiary hearing in the State court, that the facts and law in which emanated from such fully litigated these claims.

Mr. Thomas asserts that the claims he raised in his State 3.850 motion are not the exact claims he raised in his motion to withdraw plea. As in the motion to withdraw plea Mr. Thomas only raised that his plea was involuntarily entered by the confusion of the trial court and counsel not being prepared to go to trial on the merits. When this court reviews the record it will glean that Mr. Thomas raised (11) eleven independent claims of ineffective assistance of trial counsel claims in his 3.850 motion and only (3) three of the claims were raised and ruled upon at the evidentiary hearings, which was failing to do depositions, file a motion to suppress, and as such the remaining (8) eight have never been heard before, and the law of the case doctrine can not be used on these claims as procedural bar.

We now turn to that a reasonable jurist would find that the U.S. District Court erred on this point and he should been afforded (COA) status on his appeal pursuant to Slack, supra.

We now turn to the merits portion of question three, the U.S. District and the Circuit Court contended that Mr. Thomas did not demonstrate that but for counsel's actions, he would not have entered the plea and instead would have

insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). But Mr. Thomas asserts that at the beginning stages of his motion to withdraw hearing Mr. Thomas testified that he unequivocally stated that he would have proceeded to trial if counsel would have been prepared. Furthermore, the District and Circuit Court relied on a point that that at Mr. Thomas's change of plea hearing, that he testified that he understood all the rights that he was giving up, such as a trial, to call witnesses, present defenses, and that he and counsel reviewed the discovery and that he was satisfied with counsel services. Also, that he signed a plea form to that effect. But Mr. Thomas alleges that these boiler plate responses do not refute the specific allegations raised in his 3.850 motion as held in Blackledge v. Allison, 97 S. Ct. 1621 (1977).

As such Mr. Thomas asserts that under Hill v. Lockhart, he must assert and prove that he would have not pled, but would have proceeded to trial, and Mr. Thomas contends that he did such at the motion to withdraw plea hearing, but there was never a hearing as to the 3.850 motion, and since the State trial court used the (MWP) hearing and the change of plea hearing, it could be said that he has proven that he would have not pled but would have proceeded to trial with a properly prepared attorney.

We now turn to the point that the 11th Circuit would not grant (COA) status for Mr. Thomas's appeal, and he will contend that they erred, as it was held that

Mr. Thomas testified at the (MWP) hearing that trial counsel said he would not do depositions because they were not warranted, and there was no grounds to file a motion to suppress. Thus, he testified that he felt the only option was to enter the plea as the trial court was pushing for trial on that day. But since the State Trial court concluded that Mr. Thomas's testimony was not credible, and they must defer its factual findings to the State court's finding, and the ensuing presumption of correctness. 2254 (e)(1), and Devier v. Zant F.3d 1445 (11th Cir. 1993).

In closing the Circuit Appellate Court held that Mr. Thomas received a much lesser sentence than life, being that he received (30) years imprisonment. Thus, reasonable jurist would not find debatable the District Court's determination that his claim two should be denied because Mr. Thomas did not show that the State Court's determination of his claim involved an unreasonable application of Strickland or that it was based on an unreasonable determination of the facts. Cullen, 563 U.S. at 189, 28 U.S.C. 2254 (d).

But Mr. Thomas asserts to this Honorable Court that the 11th Circuit's determination of the denial of (COA) status should have been denied, is clearly erroneous, as it should have granted (COA) status on this point raised in the appellate court pursuant to Slack supra.

CONCLUSION

Petitioner Mr. Thomas asserts that the Circuit Appellate Court of the 11th Circuit issued its opinion in direct conflict with the decision of this Honorable Court in Slack v. McDaniel, 529 U.S. 473 (2000), on all points raised herein, and he humbly pray's that this court will grant certiorari review based upon the facts and law present to this court. Further, to remand this cause back to the 11th Circuit for a full briefing on appeal and on the points raised in his motion for certificate of appealability.

/s/ Timothy M. Thomas

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