

(Signature)

No.                                 

**18-9065**

IN THE

**ORIGINAL**

SUPREME COURT OF THE UNITED STATES

Charlene Terry-Ann Walker Rosa PETITIONER  
(Your Name)

vs.

State of Florida — RESPONDENT(S)

FILED

APR 12 2019

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

US Eleventh Circuit & District Court Southern Dist, FL.  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Charlene Terry-Ann Walker Rosa DC# L06814  
(Your Name)

Lowell Correctional Institution  
11120 NW Gainesville Rd

(Address)

Ocala, FL 34482

(City, State, Zip Code)

N/A

(Phone Number)

**QUESTION(S) PRESENTED**

- whether the United States District Court Southern District of Florida
- 1) whether the US Court of Appeals decision is contrary to the Federal rule set out by the US Supreme Court— As they failed to review counsel's action under reasonableness before the court found that defense counsel's action was a strategic decision
  - 2) whether strategic decision of defense counsel was unconstitutional in proceeding, as it waived Petitioner's fundamental constitutional rights guaranteed by due process clause which protects an accused during a criminal proceeding
  - 3) whether Petitioner's claim of ineffective counsel is governed by applied text of Strickland or by dicta en cronic
  - 4) whether Petitioner is entitled to affirmative, explicit acceptance of defense counsel's strategy

## LIST OF PARTIES

☒ 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:

## TABLE OF CONTENTS

### OPINIONS

BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE WRIT .....	5-6
CONCLUSION.....	7

## INDEX TO APPENDIXES

APPENDIX A	ORDER FROM THE US COURT OF APPEALS - ELEVENTH CIRCUIT DENYING CERTIFICATE OF APPEALABILITY
APPENDIX B	ORDER FROM US DISTRICT COURT - SOUTHERN DISTRICT, ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
APPENDIX C	ORDER DENYING PETITIONER'S SUCCESSIVE MOTION FOR POST CONVICTION RELIEF, RULE 3.850, 3/2/17
APPENDIX D	ORDER DENYING PETITIONER'S MOTION FOR POST CONVICTION RELIEF, RULE 3.853 Aug. 25, 2016 <i>ch</i>
APPENDIX E	<i>Granting</i> ORDER <del>DENYING</del> PETITIONER'S WRIT OF MANDAMUS Feb. 12, 2016 <i>ch</i>
APPENDIX F	ORDER DENYING PETITIONER'S MOTION FOR POST CONVICTION RELIEF, RULE 3.850 1/25/12
APPENDIX G	ORDER DISMISSING DEFENDANT'S MOTION TO DISCHARGE COUNSEL Trial Transcripts pages 3-6 and 9-10. <i>ch</i>
APPENDIX H <i>ch</i>	<i>Amended Petition for Relief from a Conviction or Sentence</i>

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

Brookhart v. Janis, 86 S.Ct. 1245

5

STATUTES AND RULES

777.011, Principal in first degree.

777.04 (2) (3) (b) Attempts, solicitation, and conspiracy.

s. 775.082, s 775.083, or s 775.084, and,

782.04 (2) (d) murder.

OTHER Fifth, Sixth, Fourteenth Amendment

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

☒ For cases from federal courts:

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

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or, ☐

☒ unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_ ; or,  
☐ has been designated for publication but is not yet reported; or, [  
] 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  
court \_\_\_\_\_ to the petition and is appears  
at Appendix \_\_\_\_\_ ; or,

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

1.  
**JURISDICTION**

☒ For cases from **federal courts**:

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

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of  
Appeals on the following date: , and a copy of the order denying rehearing  
appears at Appendix . \_\_\_\_\_

☐ An extension of time to file the petition for a writ of certiorari was granted  
to and including (date) on \_\_\_\_\_ (date) in Application No.  
— A —.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_ .  
A copy of that decision appears at Appendix \_\_\_\_\_ .

☐ A timely petition for rehearing was thereafter denied on the following date:  
\_\_\_\_\_, and a copy of the order denying rehearing  
appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to  
and including (date) on \_\_\_\_\_ (date) in  
Application No. —A—\_\_\_\_\_.

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

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> Amendment

### STATEMENT OF THE CASE

Defendant was found guilty of First Degree Premeditated Murder on July 5, 2007 in the Circuit Court of the Seventeenth Judicial Circuit in and for Brevard County, Florida. Defendant was sentenced to Natural Life in prison . Defendant filed original motion for Post-Conviction Relief Rule 3.850 on April 22, 2011; April 28, 2011; January 9, 2013; April 10, 2013; February 24, 2014; January 2, 2015; January 28, 2015; and October 7, 2015.

The trial court summarily denied Defendant's original 3.850 Motion on August 31, 2011 and other amendments supplemented April 12, 2016.

The Petitioner/Appellant Charlene Terry-Ann Walker Rosa has properly exhausted her ineffective assistance claims. See LT Docket Case No: 04-10827-CF-10A, United States District Court, Southern District of Florida docket no.16-CV-62332-BB, and United States Court of Appeals 11th Circuit Appeal Number 18-12339-C.

The United States District Court of Florida denied Rosa Writ of Habeas Corpus and Application of Certificate of Appealability stating that, defense counsel's errors were a strategic decision, and even if Rosa did not agree and or consent to counsels strategy and even if defense counsel was wrong. Counsel will not be deemed unconstitutional for a strategic decision.

Rosa filed a timely Notice of Appeal and Application for a Certificate of Appealability in the united states court of Appeals, Eleventh Circuit. The United States Court of Appeals, Eleventh Circuit denied Rosa's Motion for COA stating that because Rosa did not make a substantial showing of the denial of her constitutional rights.

Rosa received Order Denying Motion for COA on ~~September 26, 2018~~ <sup>ek</sup> January 07, 2019

Petitioner/Appellant Charlene Terry-Ann Walker Rosa pro se in proper person re-files this timely motion for a Writ of Certiorari.



## REASONS FOR GRANTING THE PETITION

1. Rosa argues that she is entitled to Certiorari review for this Honorable United States Supreme Court to inspect the trial proceeding record regarding the strategic decision made by defense counsel for errors and irregularities.
2. Rosa is relying on *Brookhart v. Janis* where the supreme court extended the requirement of affirmative, explicit acceptance to proceedings surrendering the right to contest the prosecutions "factual" case on the issue of guilt or innocence.
3. Defense Counsel in *Brookhart* had agreed to a prima facie bench trial at which the state would be relieved of its obligation to prove guilt or to persuade a jury of the Defendant's guilt beyond a reasonable doubt. 384 U.S. at 5-6, 86 S.Ct. 1245, shorn of the need to persuade the trier "beyond a reasonable doubt" the prima facie trial in *Brookhart* was fairly characterized as the equivalent of a guilty plea; *id* at 7, 86, 86 S.Ct. 1245, Rosa's case was the same in the alternative as *Brookhart*, and her case should be reviewed by dicta in *cronic*. She should not be required to establish the requisite prejudice, because prejudice is presumed.
4. Where even thought Rosa's trial was a jury instead of a bench trial as in *Brookhart*, the defense counsel presentation to the Jury in Rosa's criminal trial mirrored *Brookhart* prima facie trial. The United States District Court, Southern District of Florida finds that defense counsel prima facie trial proceeding in Rosa's criminal case was to gain credibility from the jury.
5. Rosa assents that she was entitled to the Supreme Court rule in *Brookhart*. The requirement of affirmative, explicit acceptance to proceedings surrendering her right to contest the prosecutions "factual case" on the issue of guilt or innocence.
6. That the defense counsel prima facie trial proceeding was the functional equivalent of a guilty plea for the crime change of First Degree Murder, that was convicted, to which the trial judge and the assistant state attorney conceded in sidebar conversations with the defense counsel.
7. The conversations is as follows: The State Prosecutor, Mr. Frankel "The circumstantial evidence we have which the defense has created, is that Charlene Rosa went to go get Dutch to help her collect a debt" Trial Transcript, Page 1227, line 14-17. "I mean they have created this scenario of First Degree Felony Murder". Trial Transcript, page 1227, line 24-25 and Page 1228, Line 1.
8. The prosecutor continued, "unfortunately the defense has raised the specter of it, so now it's in the proof. So none of this would be in if we were just going with my theory". Trial Transcript, Page 1240, Line 9-13.
9. The prosecutors theory was that, Rosa worked for Mrs. Salzman, the alleged victim who refused to pay Rosa's wages, telling her to come back next week for payment. Rosa then went into a rage and stabbed Mrs. Salzman multiple times to her death.
10. The prosecutor continued, "Mr. Frankel; right? If we were talking about the lesser included... I'm sorry, not the lesser included, but the "alternative" theory which the defense has created for Felony Murder, that assuming Dutch was there". Trial Transcript, Page 1241, Line 1-5.
11. The Court, "Well, they can say she did it, but assuming the Dutch was there..." Trial Transcript, Page 1242, Line 3-4.
12. The prosecutor, Mr. Frankel, "Assuming that they believe the defenses theory that he (Dutch) was there, she (Rosa) is still guilty of first degree murder". Trial Transcript, 1242, Line 6-8.
13. The defense, Mr. Williams, "So either they're saying that she did it premeditated or she did it as a part of an attempted robbery, but they can't say". Trial Transcript, 1242, Line 18-20.
14. The court, "Is it your position that they can't say the states position is that she was there, she committed the crime, and she bears responsibility, or the "alternative" based on the defense's argument". Page 1242, Line 21-25, "that assuming that Dutch was there and committed these offenses, she (Rosa) was the principal and she participated in it therefore, she is responsible under the circumstances? I think they can do that." Trial Transcript, Page 1243. Line 1-5.
15. Dutch was not charged in this case, Rosa was not charged with a co-conspirator, neither was she charged under the Florida Principal Law. She was not charged with felony murder as the review courts insinuated in their decision. The state prosecution informed the jury that Dutch was not a suspect nor was he involved in the crime. If Dutch was involved according to the defense alternative theory, under the Florida Principal Law, Rosa would be held responsible for the entire criminal act that defense counsel informed the jury that Dutch committed, and Rosa shall be charged and prosecuted as if she was the person who committed the criminal act of First Degree Murder that defense counsel insinuated the Dutch committed. Based on the foregoing, neither the state nor the courts can find beyond a reasonable doubt that defense counsel errors did not contribute to the Verdict of First Degree Murder.

## REASONS FOR GRANTING THE PETITION [CONT'D]

16. Defense counsel, Mr. Williams, "I haven't looked at it yet, yes it would, cause that's our theory, Dutch killed her, she (Rosa) set this course of action in motion by asking Dutch to get her money." Trial Transcript, Page 1244, Line 22-25. Defense counsel further presented to the Jury that Rosa's DNA that was allegedly found on a wall picture in Mrs. Salzman's apartment was blood. He further demonstrated to the Jury how science teaches him as to how Rosa's blood got on the alleged wall picture in that she is the right height for that kind of thing. And that she made incriminating statements to the arresting officers and showed them a scar on her hand. And that the neighbor saw Rosa spray painting two white tables on July 4, 2002. That Rosa made phone calls from Mrs. Salzman's apartment to the state's essential witness Maxine Hylton complaining that she was not getting paid, and that Mrs. Salzman, was killed at 10:41 a.m., the second time that Rosa's cell phone activated Cell Tower 109 in Hallandale, and that the Jury should ignore the date, time, place, cause, and manner of the murder in this case because that is not in dispute, they should not concern themselves with that because originally the neighbor told police that he saw Rosa spray painting two white tables on July 6, 2002 but airline tickets show that Rosa left on July 4, 2002. However, the neighbor made a mistake with the date and time because the time had changed because of daylight savings time. What they need to concern themselves with is the sequence of events that the neighbor saw Rosa doing. And that Mrs. Salzman's primary care doctor made a mistake and signed the victims death certificate as a natural cause of death, but the State Medical Examiner who did the autopsy found that Mrs. Salzman died as a result of 43 stab wounds, so they must not concern themselves with that. Counsel further stipulated to the result of the examination of Rosa's hands, that would have established that she had no scar on any of her hands, and the result of the examination of the F150 truck that establish that there was no blood evidence or foal play to proof that Rosa's F150 truck was involved in a bloody murder.
17. The Trial Judge made a statement that, "I think we all agree that this is not a Jury instruction case, all the evidence are agreed upon by both sides, its only the alternative theory each side is drawing from it."
18. Rosa assents that based on the foregoing, establishes that she was entirely deprived of her presumption of innocence, her not guilty plea, meaningful adversarial testing of the Governments case against her, effective representation that guarantees the accused due process and her right against self incrimination during the criminal trial proceeding. She was not seen

as innocent until proven guilty. She did not have an impartial jury, she did not have a fair trial according to her constitutional rights, and the state was not held to its complete burden of proof beyond a reasonable doubt, and prejudice is presumed in this case.

19. Rosa was entirely deprived of her Fifth and Sixth Amendment rights guaranteed by the due process of the Fourteenth Amendment of the Constitution to an accused during a criminal trial proceeding. U.S.C.A. Const. Amend. 5, 6, and 14.
20. Therefore for the interest of justice, Certiorari is necessary and the United States District Court finding that defense counsel made a strategic decision, and that even if Rosa did not agree, and defense counsel was wrong, it will not be held unconstitutional for strategic decision, cannot stand and should be reversed.
21. Rosa assents that she is entitled to relief relying on the Supreme Court Decision in Brookhart v. Janis. Where the Supreme Court extended the requirement of affirmative, explicit acceptance to proceedings surrendering the right to contest the prosecutions factual case on the issue of guilt or innocence.
22. Rosa asserts that she did not give affirmative, explicit acceptance of defense counsel prima facie trial proceeding, she did not sign a waiver of constitutional rights, nor give counsel consent to proceed in a jury trial proceeding surrendering her right to contest the prosecutions factual case on the issue of guilt on innocence. Therefore, strategic decision is unconstitutional in Rosa's case, the Jury cannot be credited for the verdict and the conviction should be reversed for constitutionally fair trial.
23. Rosa assents that based on Federal Constitutional right set out the the United States Supreme Court, defense counsel lacks authority to consent to Rosa's guilt and involvement in the prosecutions case against her without her affirmatively explicit acceptance on her own behalf, and, or to persuade a prima facie Jury Trial with an alternative theory under the Florida Principal Law that is equivalent to and bolster the First Degree Murder charge against her deprived her of her presumption of innocence right, meaningful adversarial testing, and for the state to entirely carry it's burden of proof.
24. Prior to trial, Rosa filed a motion to discharge defense counsel because she was not in agreement with defense counsel trying to misinform her, and or coerced her to surrender her right to contest the prosecutions factual case in the issue of guilt or innocence. The Trial Court dismissed Rosa's motion on October 19, 2006.
25. At the start of the 2007 trial, out of the presence of the jury, Rosa again protested/objected to defense counsels decision which should be treated as a Motion to renew her Motion to

Discharge Counsel, and an objection to his decision to surrender Rosa's right to contest the prosecutions "factual" case in the issue of guilt or innocence. See Trial Transcript, Page 3-6 and 9-10.

26. Rosa assents that counsel did not adequately discuss and disclose his alleged strategy with her, and neither would she agree and, or, surrender her fundamental constitutional right guaranteed to an accused by the due process during a criminal trial proceeding, defense counsel representation waived Rosa's fifth, and six amendment rights. Trial Court, "What I was supposed to do is ask Ms. Rosa about your tactics of conceding in your closing argument. Have you discussed that with her?"
27. Mr. Williams, Defense Counsel, "Judge that's a strategic move the client doesn't have to agree." Trial Transcript, Page 1367, Line 1-2.
28. The Court, "It's been my practice at the end of the case to discuss with the Defendant a decision made by Mr. Williams or any other defense attorney, to either concede the crime or the lesser included and he says that's a tactical decision and he doesn't have to do that. That's not what they teach me in Judge's School, Mr. Williams, Line 11-14. It's a little late anyway, so it really is some what pointless. I, normally do that, if, and I emphasize "if" if there is a conviction and there is a 3.850, I guess we'll have to evaluate that." Page 1367, Line 11-14.
29. The Court, "You went over with your client her elect for lesser included is that correct? She wanted the lesser included? Was that something you discussed or was that something the state asked for?" Trial Transcript, Page 1411, Line 19-25.
30. The Prosecutor, Mr. Frankel, "Listen Judge, this is what it boils down to. I know how Mr. Williams thinks. I think that at some point he realized what was best thing to do for his client. I think he understands that if he ever tried to ask his client before Trial that is my theory of the case and I want to know if the Defendant is going to agree or not agree, all you were going to get was it's all lies, and she would never agree." Trial Transcripts, Page 1412, Line 1-8.
31. The Court, "That was certainly demonstrated."
32. The Prosecutor, Mr. Frankel, "Let me put it to you this was, even if you were to ask her (Rosa) now, you'll get same, ultimately she'd say no, but you'd get a lot of, you know, it's all lies, and I believe in God anyway, which would only confuse things." Trial Transcripts, Page 1413, Line 20-24.
33. The Court, "It is what it is". Trial Transcripts, Page 1413 Line 25. "If there's a problem with it we'll have to deal with it at a later time." Trial Transcripts, Page 1414, Line 1-3.
34. Rosa assents that the above side bar conversations out of her's and the Jury's presence establish

that the state and the trial court conceded that defense counsel deliberately choose not to adequately discuss and disclose his alleged strategy with Rosa, because he knew that she did not and would not agree. He took her through a trial by ambush, a star chamber trial, establish that strategic decision is unconstitutional in this case. Such particular errors at trial caused a break down in the adversarial system and this justifies invocation of Cronic Dictum, no matter what the facts of a given case may be, this sort of conduct will almost always result in prejudice, a complete denial of the Sixth Amendment where it is apparent on the record that Rosa had a trial by ambush, a star chamber trial.

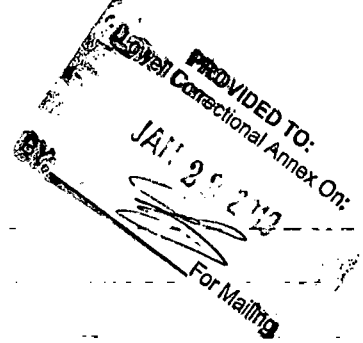
35. The foregoing motion shows specific errors of defense counsel that undermined the reliability of the finding of guilt, and a case by case inquiry is unnecessary, prejudice is presumed, counsel failed to oppose the prosecution case against Rosa in any meaningful way, pursuing an alternative theory of the charged crime constitutes a guilty plea. Rosa was deprived of her right to put the Governments case through a meaningful adversarial testing resulting in the verdict presumably unreliable see *id* at 659, 104 S.Ct. At 2047, and a violation of the Sixth Amendment *id* at 659 n.26, 104 S.Ct. At 2047.n26 Invoking cronic dictum.
36. The record establishes that Rosa plead not guilty and consistently informed defense counsel and the court that she is innocent and knew nothing about the charged crime to which she was on trial, she did not kill Mrs. Salzman nor does she know who did. All of the states evidence is fabricated, and the witnesses are liars. Based on the record affirmatively and explicitly invoked her Fifth and Sixth Amendment rights to a fair and impartial jury trial and guarantee to an accused by the Fourteenth Amendment, due process. Therefore, strategic decision is unconstitutional in Rosa's case as she was entirely deprived of the sixth amendment, and cronic standard applies prejudice is presumed. She was entitled to the Supreme Court decision in Brookhart v. Janis U.S.C.A. Const.Amend 5,6 and 14.
37. Wherefore, the legal issue for this court to review the record on this case to see whether Rosa's claims of ineffective assistance of counsel, and the courts finding that defense counsel's errors included strategic decision and should be governed by the aft applied test of Strickland or by dicta in cronic, which suggests that an attorney, in remote instances, may act so detrimentally to his client's case as to result in a breakdown of the adversarial process and will be deemed prejudice per se. If this court finds that cronic applies rather than Strickland, then correct legal analysis dictates that the trial judge and the review courts should be reversed because Rosa does not have to establish the requisite prejudice, prejudice is presumed. The foregoing establishes a substantial showing of the denial of the Fifth and Sixth Amendments of the Constitution,

USCA Const. Amend 6.

38. Rosa assents that defense counsels ineffective assistance is apparent from the face of the appellate record, the resulting prejudice is indisputable, and there is no conceivable strategic explanation for counsel's conduct. Defense counsels alternative theory to the Jury under the Florida Principal Law constitutes the crime charged that was convicted and established a

substantial showing of the denial of  
the 6th Amendment, USCA Const. Amend.  
6

United States Supreme Court  
Washington D.C.



Charlene Terry-Ann Walker Rosa

Vs.

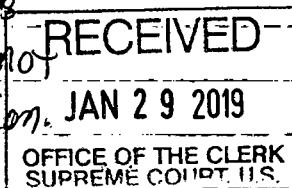
case no \_\_\_\_\_

State of Florida et al

Writ of Certiorari

Strategic Decision is unconstitutional in Rosa Criminal proceeding as it Waived her Fundamental Constitutional rights guaranteed by the due process to an accused, during a criminal trial proceeding, and the legal is before this court now is to decide whether Rosa claims of ineffective assistance of counsel is Govern by the applied Test of Strickland or by dicta in Cronis, and if Rosa was Entitled to Affirmative, explicit acceptance of counsel's strategy.

1. Petitioner/Appellant Charlene Terry-Ann Walker Rosa pro-se in proper person filed this instant timely motion for a writ of Certiorari.
2. Rosa as properly exhausted her Ineffective Assistance of Counsel's claims. see 27. docket case NO: 04-10877 CF104, United State District Court, Southern District of Florida docket no: 16-cv-62332-BB, and, United States Court of Appeals 11th Circuit Appeal Number: 18-12339-L.
3. The United States District Court of Florida denied Rosa writ of Habeas Corpus and Application of Certificate of Appealability stating that, defense counsel's errors were a Strategic Decision, and even if Rosa did not agree and or consent to counsel's strategy, and if defense counsel was wrong. counsel will not be deemed Unconstitutionally for a Strategic Decision.



4. Rosa filed a Timely Notice of Appeal and Application for a Certificate of Appealability in the United States Court of Appeals, Eleventh Circuit.

The United States Court of Appeals, Eleventh Circuit denied Rosa motion for COA stating that, because Rosa did not make a substantial showing of the denial of a Constitutional right.

5. Rosa file a timely motion to reconsider, vacate, or modify order denying motion for COA, and;

6. File this Instant Timely motion for writ of Certiorari.

Reasons  
7. Rosa argue that she is Entitled to Certiorari review for this Honorable United States Supreme Court to inspect the trial proceeding record on strategic decision for errors, and Irregularities.

8. Rosa is relying on Brookhart v. Janis where the Supreme Court extended the requirement of Affirmative, explicit, acceptance "to proceedings surrendering the right to contest the prosecution's 'Factual' case on the issue of guilt or innocence."

9. Defense Counsel in Brookhart had agreed to a prima facie bench trial at which the state would be relieve of its obligation to put on a complete proof of guilt or persuade a jury of the defendant's guilt beyond a reasonable doubt. 384 U.S. at 5-6, 86 S. Ct. 1245, shorn of the need to persuade the trier beyond a reasonable doubt. The prima facie trial in Brookhart was fairly characterized as the equivalent of a guilty plea; id at 7, 86, 86 S. Ct. 1245, Rosa case was the same in the alternatively as Brookhart, and her case should be review by dicta in Chronic. She should not be



require to establish the requisite prejudice, because prejudice is presume.

10. Where even though Rosa Trial was a Jury 'instead' of a bench trial as Brookhart, defense counsel presentation to the jury in Rosa criminal trial mirrored Brookhart prima facie trial.

The United States District Court, Southern District of Florida finds that defense counsel prima facie trial proceeding in Rosa criminal case was to gain credibility from the Jury.

11. Rosa asserts that she was entitled to the Supreme Court rule in Brookhart, the requirement of Affirmative, explicit acceptance to proceedings surrendering her right to contest the prosecution's 'Factual case' on the issue of guilt or innocence, and

12. That the defense counsel prima facie trial proceeding was the functional equivalent of a guilty plea for the crime charge of First Degree murder, that was convicted, to which the trial Judge and the assistant State attorney conceded in side bar conversations with the defense counsel.

13. The conversations is as follow;  
The State prosecutor, Mr. Frankel; The circumstantial evidence we have which the defense has created, is that Charlene Rosa went to go get Dutch to help her collect a debt.  
Transcript Page 1277 line 14-17. I mean they have created this scenario of First degree Felony murder. trial transcript Page 1277 line 24-25 and Page 1278 line 1.

14. The prosecutor continued, unfortunately the defense has raised the specter of it, so now it's in the proof. So none of this

Would be in if we were just going with my theory. Trial Transcript page 1240 line 9-13.

15. The prosecutor theory was that, Rosa worked for Mrs. Salzman, the alleged victim who refused to pay Rosa wages, by telling her to come back next week for payment, and that Rosa went into rage and stabbed Mrs. Salzman multiple times to her death.

16. The prosecutor continued; Mr. Frankel; Right. If we were talking about the lesser included — I'm sorry, not the lesser included, but the "Alternative" theory which the defense has created for Felony murder, that assuming Dutch was there. Trial Transcript page 1241 line 1-5.

17. The Court: Well, they can say she did it but assuming that Dutch was there — Page 1242 line 3-4.

18. The prosecutor, Mr. Frankel; assuming that they believe that defense theory that he (Dutch) was there, she (Rosa) still guilty of First degree murder Page 1242 line 6-8.

19. The defense, Mr. Williams; So either they're saying that she did it premeditated or she did it as a part of an attempted robbery, but they can't say line 18-20.

20. The Court: Is it your position that they can't say the State position is that she was there, she committed the crime, and she bears responsibility, or the "Alternative" base on the defense argument Page 1242 line 21-25, that assuming that Dutch was there and he committed these offenses, she (Rosa) was the principal and she participated in it therefore, she responsible under the circumstances? I think they can

do that. Transcript Page 1243 line 1-5.

21. In this Defendant Rosa Criminal case Dutch was not charge, she was not charge with a Co conspirator, neither was she charge under the Florida principal law. She was not charge with felony murder as the review courts insinuated in their decision. The state prosecution informed the jury that Dutch was not a suspect nor was he involved in this crime to which Rosa was on trial, and if Dutch was involved according to the defense alternative theory, under the Florida principal law Rosa would be held responsible for all the criminal act that defense counsel informed the jury that Dutch committed, and Rosa shall be charge, and prosecute as if she was the person committed the criminal act of First degree murder that defense counsel insinuates that Dutch committed.

base on the foregoing neither the state nor the courts can find beyond a reasonable doubt that defense counsel errors did not contribute to the verdict of First Degree murder.

22. Defense Counsel, Mr. Williams; I haven't look at it yet, yes it would, cause that's our theory, Dutch killed her, the (Rosa) set this course of action in motion by asking Dutch to get her money. Transcript Page 1244 line 22-25.

Defense Counsel further present to the jury that Rosa DNA that was allegedly found on a wall picture in Mrs. Salzman apartment was blood. he further demonstrate to the jury how science teaches him as to how Rosa blood got on the alleged wall picture in that she is the right height for that kind of thing. And that she made incriminating statement to the arresting officers and show them a scar in her hand. That the Neighbor saw Rosa spray painting 2 white tables on July 4, 2002. That Rosa made phone call from Mrs. Salzman Apartment to the State Essential witness Markene Hyllton

complaining that she was not getting paid, and that Mrs. Salzman was killed at 10:41 the second time that Rosa cell phone activate cell tower 109 in Hallandale. and that the Jury should ignore the date, Time, place, cause, and manner of the murder in this case because that is not in dispute, they should not concern themselves with that because originally the Neighbor told police that he saw Rosa spray painting 2 white Trucks on July 6, 2002 but airline Ticket shows that Rosa left on July 4, 2002 however, the Neighbor made mistake with the date and time because of the South Florida Sun, what they need to concern themselves with is the Sequence, Sequence, Sequence event that the Neighbor saw Rosa doing, and that Mrs. Salzman primary care doctor made a mistake and sign the victim's death as a natural cause death, but the State medical Examiner who did the autopsy found that Mrs. Salzman died as a result of 43 stabbed wounds, so they must not concern themselves with that. Counsel further stipulated to the result of the examination of Rosa hands, that would have established that she had no scar in any of her hands, and the result of the examination of her F150 truck that establish that there were no blood evidence or foul play to prove that Rosa F150 truck was involved in a bloody murder.

23. The Trial judge made Statement that; I think we all agree that this is not a Jury instruction case, all the evidence are agreed upon by both sides, it's only the 'Alternative' Theory each sides drawing from it.

24. Rosa assents that base on the foregoing establish that she was Entirely deprived of her presumption of Innocence, her not guilty plea, meaningful Adversarial Testing of the Government case against her, effective representative that guaranteed to an accused by the due process during a Criminal Trial proceeding, her right against self incrimination during the Criminal Trial proceeding. She was not seen as

innocent until proven guilty, she did not have impartial jury, she did not have a fair trial in according to her constitutional rights, and the state was not held to its complete burden of proof beyond a reasonable doubt, and prejudice is presume in this case.

25. Rosa was Entirely deprived of her Fifth and Sixth Amendment rights guaranteed by the due process of the Fourteenth Amendment of the Constitution, to an accuse during a Criminal trial proceeding. U.S.C.A Const. Amend. 5, 6 and 14.
26. Therefore for the interest of Justice Certiorari is necessary and the United States District Court finding that defense counsel made a Strategic Decision, and that even if Rosa did not agree, and defense counsel was wrong, he will not be held unconstitutional for Strategic Decision, cannot stand and should be reverse.
27. Rosa asserts that she is Entitled to relief relying on the Supreme Court Decision in Brookhart v. Janis where the Supreme Court extended the requirement of Affirmative, explicit acceptance "to proceedings Surrendering the right to Contest the prosecutions 'Factual' case on the issue of guilt or innocence.
28. Rosa asserts that she did not Affirmative, explicit acceptance of defense counsel prima facie trial proceeding, she did not sign a waiver of Constitutional rights, nor give counsel consent to proceed in a jury trial proceeding Surrendering her right to contest the prosecutions 'Factual' case on the issue of guilt or innocence. Therefore Strategic Decision is unconstitutional in Rosa case, the jury cannot be credited for the verdict Conviction should be reverse for a Constitutionally fair trial.

29. Rosa asserts that base on Federal Constitutional right set out by the United States Supreme Court, defense counsel lacks authority to consent to Rosa's guilt and involvement in the prosecution case against her without her Affirmatively explicit acceptance <sup>her own</sup> on behalf, and, or to persuade a prima facie Jury Trial with an alternative theory under the Florida principal law that is Equivalent to and Bolster the First degree murder charge against her. deprived her of her presumption of innocence right, meaningful Adversarial Testing, and for the State To Entirely Carry its burden of proof.

30. Prior to Trial Rosa file motion to discharge counsel because she was not in agreement with defense counsel trying to misinform her, and or coerced her to Surrender her right to contest the prosecution 'Factual' case in the issue of guilt or innocence. Trial Court dismissed Rosa motion on October 19, 2006.

31. At the start of the 2007 Trial, out of the presence of the Jury Rosa again protest/object to defense counsel's decision which should be treated as motion to renew her motion to discharge counsel, and a objection to his decision to Surrender Rosa right to contest the prosecution 'Factual' case in the issue of guilt or innocence. See trial transcript Page 3-6 and 9-10.

32. Rosa asserts that Counsel did not adequately discuss and disclose his alleged strategy with her, and neither would she agree and, or Surrender her Fundamental Constitutional right guaranteed to an accused by the due process during a criminal trial proceeding. defense counsel representation Waived Rosa Sixth, and Fifth Amendment right.

Prove is of follow;

the Court; what I was suppose to do is ask Ms. Rosa about your tactical<sup>it</sup> of conceding in your closing argument. have you discuss that with her?

33. Mr. Williams, Defense Counsel; Judge that's a Strategic move the client don't have to agree. Trial transcript Page 1367 line 1-2.
34. The Court: It's been my practice at the end of the case to discuss with the defendant a decision, a tactical decision, made by Mr. Williams or any other defense attorney, to either concede the crime or the lesser included and he says that's a tactical decision and he doesn't have to do that. That's not what they teach me in Judge's School, Mr. Williams line 11-14. It's a little late anyway, said really is somewhat pointless. I, normally do that, I, and I emphasize 'if' if there is a conviction and there is a 3.850, I guess we'll have to evaluate that. Page 1367 line 11-14.
35. The Court: you went over with your client her elect for the lesser included's, is that correct? She wanted the lesser's included's? was that something you discussed or was that something the State ask for? Page 1411 line 19-25.
36. The prosecutor, Mr. Frankel; Listen Judge, this is the way it boils down to. I know how Mr. Williams (defense counsel) thinks. I think that at some point he realized what was best to do for his client. I think he understand that if he ever tried to ask his client before trial that this is my theory of the case and I want to know if the defendant is going to agree or not agree, all you were going to get was it's all lies, and she would never agree Page 1412 line 1-8.
37. The Court: that was certainly demonstrated.  
Page 9 of 13<sup>en</sup>

38. the prosecutor, Mr. Frankel; Let me put it to you this way even if you were to ask her (Rosa) now, you'll get same -- ultimately she'd say no, but you'd get a lot of, you know, it's all lies, and I believe in God anyway, which would only confuse things Page 1413 line 20-24.

39. the Court; It is what it is Page 1413 line 25. If there's a problem with it we'll have to deal with it at a later time. Page 1414 line 1-3.

40. Rosa asserts that the above side Bar conversations out of her, and the Surg's presence establish that the State and the Trial Court conceded that defense counsel did not and deliberately choose not to adequately discuss and disclose his alleged strategy with Rosa, because he knows that she did not and would not agree. He took her through a trial by ambush, a star chamber trial, established that Strategic Decision is unconstitutional in this case. Such particular errors at trial cause a break down in the adversarial system and thus justify invocation of cronic dictum. No matter what the facts of a given case may be, this sort of conduct will almost always result in prejudice, a complete denial of the Sixth Amendment where it is apparent on the record that Rosa had a trial by ambush, a star chamber trial.

41. The foregoing motion shows specific errors of defense counsel that under mined the reliability of the finding of guilt, and a case by case inquiry is unnecessary, prejudice is presumed, counsel failed to oppose the prosecution case against Rosa in any meaningful way, pursuing an alternative theory of the charge crime constitutes a guilty plea and Rosa was deprived of her right to put the Government case through meaningful adversarial testing  
Page 10 of 13<sup>cm</sup>



result in the verdict presuming unreliable *see id.*  
at 659, 104 S. Ct. at 2047, and a violation of the  
Sixth Amendment *id.* at 659 n. 26, 104 S. Ct. at  
2047. n 26 Invoking *Cronic* dictum.

42. The record establish that Rosa plead not guilty and  
consistently informing defense counsel and the court that  
she is innocent and know nothing about the charge crime to  
which she was on trial, she did not kill Mrs. Salzman nor  
did she know who did. all the state evidence are fabricated,  
and the witnesses are liars. base on the record Affirmatively  
and Explicitly Invoke her Sixth Amendment, and her Fifth  
Amendment right to a fair and impartial jury trial  
guaranteed to an accused by the Fourteenth Amendment,  
due process. There for Strategic Decision is unconstitutional  
in Rosa case and she was entirely deprived of the Sixth  
Amendment, and *Cronic* Standard applies, prejudice is presumed.  
She was entitle to the Supreme Court decision in Brookhart  
v. Janis U.S.C.A Const. Amends 5, 6, and 14.

43. Wherefore the legal issue for this Court to review the  
record on this case is whether Rosa claims of ineffective  
assistance of counsel, and the courts finding that defense  
counsel errors are Strategic Decision should be governed by  
the oft applied test of Strickland or by dicta in *Cronic*, which suggest  
that an attorney, in remote instances, may act so detrimentally  
to his client's case as to result in a breakdown of the  
adversarial process and will deemed prejudice *per se*. If this  
Court finds that *Cronic* Applies rather than Strickland, then correct  
legal analysis dictates that the trial judge and the review  
courts should be reverse, because Rosa does not have to establish  
the requisite prejudice. prejudice is presume.  
The foregoing establish a substantial showing of the denial of  
the Fifth and Sixth Amendment of the Constitution. USCA Const. Amend 6

44 Rosa asserts that defense counsel's ineffective assistance is apparent from the face of the appellate record, the resulting prejudice is indisputable, and there is no conceivable strategic explanation for counsel's conduct. Defense Counsel alternative theory to the jury under the Florida principal Law constitutes the crime charged that was convicted and establish a substantial showing of a denial of the Sixth Amendment right. USCA Const. Amend. 6.

Respectfully Submitted

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## Certificate of Service

I, hereby certify that I have place this motion for writ of Certiorari<sup>on</sup> in the hands of a prison mail room personnel to be mail through prison legal mail channel to:

Supreme Court of the United States  
One First Street N.E.  
Washington, DC 20543

and to;

Office of the Attorney General  
Criminal Appeal Division  
1515 N. Flagler Drive, 9th Floor  
West Palm Beach, Florida 33401

on this 22<sup>nd</sup> day of January 2019.

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