

DOCKET NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

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HAROLD BLAKE,

Petitioner,

vs.

MARK S. INCH, Secretary,  
Florida Department of  
Corrections, et al.,

Respondents.

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

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## **CAPITAL CASE**

### **QUESTIONS PRESENTED**

1. Whether the petitioner has demonstrated that jurists of reason could disagree with the federal courts' resolution of his constitutional claims or that such jurists could conclude that the issues presented are adequate to deserve encouragement to proceed further, thereby entitling petitioner to the issuance of a COA?

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Petitioner, **HAROLD BLAKE**, is a prisoner in the State of Florida. Petitioner respectfully urges that this Honorable Court issue its writ of certiorari to review the decision of the Eleventh Circuit Court of Appeals.

### **CITATION TO OPINION BELOW**

The Eleventh Circuit's March 29, 2019, order denying Blake's Application for COA is Attachment A to this petition. The Eleventh Circuit's May 30, 2019, Order denying Blake's motion for reconsideration is Attachment B to this petition. The district court's order dismissing Blake's petition and denying his application for COA is Attachment C to this petition.

### **STATEMENT OF JURISDICTION**

Petitioner invokes this Court's jurisdiction to grant the Petition for a Writ of Certiorari to the Eleventh Circuit Court of Appeals on the basis of 28 U.S.C. Section 1254(1). The Eleventh Circuit entered its opinion denying Blake's Application for COA on March 29, 2019, and denied his motion for reconsideration on May 30, 2019.

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fifth Amendment to the Constitution of the United States provides in relevant part:

No persons . . . shall . . . be deprived of life, liberty or property, without due process of law.

The Sixth Amendment to the Constitution of the United States provides in relevant part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him.

The Fourteenth Amendment to the Constitution of the United States provides in relevant part:

No State shall . . . deprive any person of life, liberty, or property, without due process of law.

#### **PROCEDURAL HISTORY**

On September 19, 2002, Blake was indicted with one count of first degree murder and one count of attempted armed robbery in Polk County, Florida.

Blake's trial commenced on February 9, 2004. During deliberations, after hearing the evidence, the jury was deadlocked, 11 - 1 in favor of acquittal. The trial judge declared a mistrial on February 12, 2004.

On March 3, 2004, Blake's second trial commenced. However, the next day, the Court granted a motion for mistrial.

Blake's third trial commenced on June 14, 2004. On June 17, 2004, the jury found Blake guilty of both counts.

On June 25, 2004, Blake was sentenced to life in prison.

Blake's conviction was used as an aggravator in another case, see *State v. Blake*, Polk County Case No. CF02-5203, where the State sought the death penalty.<sup>1</sup>

Blake's conviction and sentence were affirmed on February 23, 2007. *Blake v. State*, 950 So. 2d 419 (Fla. 2<sup>nd</sup> DCA 2007).

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<sup>1</sup>Blake was convicted and sentenced to death in Case No. CF02-5203. However, Blake's sentence of death was vacated and he was resentenced to life in prison without the possibility of parole.

In January, 2008, Blake filed a *pro se* motion for postconviction relief. The state circuit court granted Blake an evidentiary hearing as to one issue and appointed counsel. However, Blake later withdrew that issue and court-appointed counsel did not appeal the other issues.

On April 6, 2012, Blake filed a motion to vacate judgment of convictions and sentences that included three claims for relief.

On April 29, 2013, the state circuit court denied Blake's motion as "successive, untimely and procedurally barred".

Blake timely filed a notice of appeal.

Also, on May 29, 2013, Blake filed another successive Rule 3.850 motion based on the testimony provided by witnesses at his capital postconviction evidentiary hearing.

On July 18, 2013, the state circuit court struck Blake's motion without prejudice with leave to amend within thirty (30) days due to Blake's misnumbering his claims for relief.

On August 15, 2013, Blake filed an amended motion to vacate judgment of convictions and sentence.

On June 17, 2014, this Court struck Mr. Blake's motion to vacate citing a lack of jurisdiction to entertain the motion.

Blake timely filed his notice of appeal.

On November 19, 2014, Florida's Second District Court of Appeal reversed, in part, the state circuit court's order



denying Blake's April 6, 2013, motion to vacate. Specifically, the court held that it was error to "summarily deny ground three" of the motion. In addition, the district court indicted that "Mr. Blake's counsel is authorized on remand to file an amended claim of newly discovered evidence" related to the claims raised in his August 15, 2013, amended motion to vacate. *See Blake v. State*, 152 So. 3d 66 (Fla. 2d DCA 2014).

On February 28, 2015, Blake filed his Second Amended Motion to Vacate Judgment of Convictions and Sentences with Special Request for Leave to Amend.

On October 22, 2015, the state circuit court struck Blake's Rule 3.850 and provided sixty days to amend.

On December 7, 2015, Blake filed his Third Amended Rule 3.850 motion with his appendix containing testimony from the evidentiary hearing in his capital case.

On January 19, 2016, the state circuit court entered a Final Order Denying Defendant's Third Amended Motion to Vacate Judgement of Convictions and Sentenced with Special Request for Leave to Amend.

Blake timely filed his notice of appeal.

Florida's Second District Court of Appeal affirmed the state circuit court's denial of Mr. Blake's claims. *See Blake v. State*, 205 So. 3d 597 (Fla. 2d DCA 2016).

On November 1, 2017, Blake, through *pro bono* counsel filed a petition for writ of habeas corpus.

On August 9, 2018, the district court entered its order dismissing Blake's petition for writ of habeas corpus as time-barred under the AEDPA and without merit (Doc. 24). At the conclusion of the order, the court stated that a certificate of appealability was denied (Doc. 25). Judgment was entered the following day (Doc. 25).

Blake timely filed a notice of appeal (Doc. 26).

On October 9, 2018, Blake filed an application for COA with the Eleventh Circuit Court of Appeals. On March 29, 2019, the Eleventh Circuit denied Blake's application. Blake filed a motion for reconsideration, which was denied on May 30, 2019.

## **FACTS RELEVANT TO QUESTIONS PRESENTED**

### **A. The Prosecution's Case at Trial**

Blake was charged with first degree murder and an attempted armed robbery that occurred in Lakeland on August 1, 2002. Blake was tried twice without the jury reaching a verdict. One of the trials resulted in a hung jury, with eleven votes for acquittal and one for guilt. At the third trial, which commenced on June 14, 2004, the prosecution was allowed to introduce a plethora of evidence regarding the criminal case in which Blake was charged with a separate homicide; the prosecution was seeking the death penalty in that case. Evidence relating to the death case had not previously been introduced. Blake had not yet been convicted of that crime.

The prosecution's case was based entirely on Richard Green, Vanbossell Preston and Melinda Watson.<sup>2</sup> Green testified at the

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<sup>2</sup>The prosecution also introduced evidence relating to the August 12, 2002, shooting at Del's Go Shop, for which Blake had been arrested and charged, though not convicted. Demetrius Jones was a key prosecution witness as to the charges stemming from the August 12<sup>th</sup> shooting and he testified in Blake's non-capital trial.

Jones helped the prosecution establish that Blake had participated in planning the attempted robbery, shot Mr. Patel and retrieved incriminating evidence from the stolen vehicle after the crimes.

According to Jones' trial testimony, he was present when Blake, Green and "Key" plotted the robbery. Jones testified that he later saw Blake who asked him to get rid of a gun.

Later, Jones saw Green and Teresa Jones in the same place, and Green gave him a chrome 9mm, but he was unable to sell it so gave it back to Green. Still later that night, Jones accompanied  
(continued...)

first trial that he and Blake borrowed his sister's car on the night of July 31, 2002, and drove to Lakeland. At some point, Blake, who according to Green, was driving, drove by a group of people and stopped. Blake told the people to give him money and when the individuals ran, Blake fired the gun. Kelvin Young was shot and killed.

Green later refused to testify at Blake's third trial, but the prosecution was allowed to introduce his previous testimony along with evidence relating to Blake's death case.

In addition to Green, Melinda Watson stepped forward and told law enforcement that she had information pertaining to the case against Blake. She offered her assistance and the assistance of her cousin, Vanbossell Preston, and in return was seeking favors for Preston and others on pending criminal charges. Watson told the police that she overheard Blake confess the shooting to Preston hours after it occurred. Preston fell into line after being offered a generous plea on his own criminal charges and said that Blake and Green arrived at Preston's residence in the early morning hours of August 1, 2002. Preston, Watson, and others, including William Mitchell were playing video games. Blake summoned Preston outside and confessed to shooting Young.

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<sup>2</sup>(...continued)  
Green to a lake where Green disposed of the gun.

## **B. The Postconviction Proceedings - Vanbossell Preston**

In late 2008, Blake's brother, James Blake ran into Vanbossell Preston at a bowling alley. During the conversation between James Blake and Preston, Preston admitted that he had lied at Blake's trial. He also confessed that he was given benefits relating to his pending criminal charges and activities in exchange for his testimony against Harold Blake.

James Blake attended a hearing relating to his brother's capital case the following year. Harold Blake's capital investigator was present for the hearing and spoke to James Blake, who conveyed the substance of the conversation he had with Preston at the bowling alley.

Following the conversation with James Blake, Harold Blake's investigator sought to locate and speak to Vanbossell Preston. However, Preston could not be located.

Furthermore, in November, 2009, Harold Blake's investigator spoke to Rosalind Mitchell. Mitchell had been named by Melinda Watson as an individual who could corroborate Blake's presence at Preston's residence on the night of the crime. Indeed, a document from the Department of Corrections was included in the prosecution's files and related to Mitchell's probation status at the time of Blake's prosecution. Handwriting on the document also reflected the name of Mitchell's probation office.

Mitchell informed Blake's investigator that Melinda Watson had lied about Blake's presence at Preston's residence on the night of the crime. First, Mitchell said that she could not corroborate Watson's information because she wasn't there. Second, Mitchell told the investigator that she had been questioned about whether she could corroborate Watson by a prosecutor and she had told him that she could not. The prosecutor made comments, which she perceived as threats about her probation being revoked. Third, Mitchell told the investigator that she had spoken to her probation officer because she was afraid that the prosecutor would have her probation revoked because she refused to lie. Fourth, Mitchell told the investigator that when she confronted Watson about the lie Watson confessed that she had made up the whole story about Blake being at Preston's residence on the night of the crime in order to help her cousin and others with criminal prosecutions.

The following year, on June 2, 2010, still having not located Vanbossell Preston, Blake's investigator sought to interview Sanchez Preston, to determine if he knew the whereabouts of his brother, Vanbossell. Unexpectedly, Sanchez Preston knew much about Watson and Vanbossell Preston's untruthful testimony against Blake. Sanchez Preston confirmed that the entire story of Blake's presence at Vanbossell Preston's residence on the night/early morning hours of August

1, 2002, was fabricated. Both Watson and Vanbossell Preston had admitted this to Sanchez Preston and both had explained the motive behind the story was to protect themselves and others facing criminal prosecution at that time.

Once again, Blake's investigator sought to locate and interview Vanbossell Preston. She used electronic databases, and contacted people who may know him. Once, Preston was located at an address believed to be his residence, but he refused to speak with Blake's investigator.

Then, on June 4, 2012, another investigator retained to assist in Blake's capital case, left a card at what he thought was Preston's residence. Shortly thereafter, Preston contacted the investigator by telephone. Preston stated that he was employed as a long haul truck driver and was currently out of state working. During the conversation, Preston admitted for the first time that he made-up his testimony against Blake and that it was not true. A week later, after arranging to meet with Blake's investigator, Preston confirmed what he had stated on June 4<sup>th</sup> and was served with a subpoena for Blake's evidentiary hearing.

On June 19, 2013, Preston testified at the evidentiary hearing in Blake's capital case.

### **C. The Postconviction Proceedings - Demetrius Jones**

In April, 2009, Blake's investigator interviewed Demetrius Jones at the Polk County Jail. Jones indicated that he knew more about Blake's case than his trial testimony reflected. He provided some details, including that Blake did not request Jones' assistance in getting rid of a gun and that Key had told him after the crime that Green was the shooter. However, after the April, 2009, interview, Jones refused to speak to Blake's investigators.

After being subpoenaed to testify at the June, 2012, evidentiary hearing in Blake's capital case, Demetrius Jones, for the first time, testified that his testimony at Blake's non-capital trial was false.

In fact, Jones testified that Blake was not present when Green and Key discussed committing a robbery. And, Jones testified that when he saw Blake following the crimes, Blake did not say anything about shooting anyone as he testified at trial. Blake did not ask him to assist him in getting rid of the gun. However, on the day of the crimes, after the crimes, Green came to Jones' house and was really scared and asked for Jones' advice.

Later, Green told Jones that he (Green) threw the gun in the lake.



Jones has also revealed that "Key", or Kevin Key-Herrington, told him that Green shot and killed Mr. Patel, not Blake. Key described the events as they unfolded the morning of August 12, 2002, stating specifically that Green ran up to the door but the man inside pushed the door closed and Green shot him through the window. Key told Jones that Green was the only person to get out of the car that morning. Likewise, Teresa Jones also told others that Green was "the one that pulled the trigger".

Further corroborating Jones' post-trial disclosures is the fact that Demetrius Jones appears to have obtained much consideration for his testimony in Blake's cases. At the time of the crimes in Blake's case, Jones was being prosecuted for possession of cocaine. He was granted pre-trial release in December, 2003, because of Blake's trial prosecutor's intervention in Jones' case to which he was not assigned as the prosecutor.

The following month, after picking up more new charges, representatives at the Office of the State Attorney made clear that the trial prosecutor in Blake's cases was to be kept apprised of the dealings with Jones and in fact, had possession of Jones' VOP file. And after allowing Jones to plead shortly before Blake's trial, it was noted that Jones received a below guidelines sentence.

And, apparently, even after Blake's conviction and sentence, Jones still received consideration for his testimony against Blake. Indeed, in 2007, after picking up additional charges and violations of community control, the trial prosecutor from Blake's case approved a below guidelines sentence for Jones, and referenced one of Blake's non-capital case numbers.

### **THE FEDERAL COURTS' RULINGS**

In its order denying Blake's claims, the district court determined that Blake's petition was untimely:

In ground one, Blake asserts that the State withheld statements by Rosalind Mitchell; failed to disclose the State's conversations with Vanbossell Preston about potential benefits to Preston for his testimony against Blake; failed to disclose the extent of the assistance given to Demetrious Jones for his testimony; and presented false evidence through the testimony of Vanbossell Preston and Demetrious Jones.

In ground two, Blake asserts that the allegedly withheld statements and the recantation of trial testimony by Vanbossell Preston and Demetrious Jones demonstrate his actual innocence. Each claim is untimely under § 2244(d)(1)(D).

According to Blake's petition, the defense spoke to Rosalind Mitchell in November, 2009, and discovered the information Blake alleges the State withheld related to Ms. Mitchell. Thus, under § 2244(d)(1)(D), Blake would have had one year from November 2009, absent any tolling, to file a timely federal habeas petition raising his claim related to Rosalind Mitchell. In November 2009, Blake's June 13, 2008, Rule 3.850 postconviction motion was pending and remained pending until Blake withdrew the motion July 27, 2010. Blake then had one year, absent any further tolling, within which to file a federal petition raising his claim related to Rosalind Mitchell, making the federal petition due on or before July 27, 2011. Blake did not file any further postconviction motions until April 6, 2012. Thus, the time for filing a federal petition raising his claim that the

State withheld Rosalind Mitchell's statements expires on July 27, 2011 and Blake's federal petition, filed November 1, 2017, is untimely with regard to that portion of his claims.

With regard to Blake's claim that the State failed to disclose the prosecutor's conversations with Vanbossell Preston, and failed to disclose the extent of the assistance given to Demetrious Jones, with due diligence, the defense could have discovered the facts upon which these claims are based prior to trial by deposing Preston and Jones. Thus, the federal petition is untimely with regard to these claims.

Finally, with regard to Blake's claims that the State presented false evidence through the testimony of Vanbossell Preston and Demetrious Jones, and his claim that he is actually innocent, Blake relies on the fact that Preston and Jones have stated that their trial testimony was false. This fact was known to Blake in 2009.

In his petition, Blake asserts that his brother, James Blake, spoke to Petitioner Blake's investigator in 2009 and told the investigator that Preston told him in 2008 that he had lied at Blake's trial. (Doc. 1, pp. 8-9). Blake further asserts that Demetrious Jones told Blake's investigator in April, 2009, that Blake did not request his assistance in getting rid of a gun, as he had testified at trial, and that another person, "Key", told him after that Richard Green was the shooter. (Doc. 1, p. 12). Thus, the factual basis of Blake's claims of false testimony and actual innocence, that Preston and Jones have disavowed their trial testimony, was known to Blake in 2009.

Because Blake had no tolling postconviction motions pending between July 27, 2010, when he withdrew his June 13, 2008, postconviction motion, and April 6, 2012, when he filed his second amended motion, more than one year of untolled time elapsed after Blake became aware of the factual basis for his claim and his federal petition is untimely.

\* \* \*

Although Blake claims in ground two of his petition that he is actually innocent, he is not entitled on that basis to avoid the time bar of his claims. A petitioner can avoid the one year time bar by making a credible showing of actual innocence. *McQuiggen v. Perkins*, 569 U.S. 386 (2013). A credible showing of actual innocence requires a petitioner to identify new evidence and "Show that it is more likely than not that no reasonable juror would have

convicted him in light of the new evidence. *Id.* 569 U.S. at 397 (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)). Blake has failed to make such a showing.

As evidence of his actual innocence, Blake points to the testimony of Vanbossell Preston and Demetrious Jones at a June 19, 2012, evidentiary hearing in Blake's other homicide case, Polk County, Florida, case number CF02-5203, related to the August 12, 2002, shooting of Maheshkumar Patel. At that hearing, Preston and Jones testified that they lied at Blake's trial in the present case. In denying relief on Blake's newly discovered evidence claim, the state trial court found that Preston's and Jones' evidentiary hearing testimony was not credible and that Blake therefore failed to prove that the newly discovered evidence would probably produce an acquittal on retrial. The state court's finding that the recantations were not credible is supported by the record. (See Ex. 38, pp. 19-24, 33, and 37-42.)

The state trial court agreed with the state's arguments and found that the recantations by Preston and Jones were inherently incredible and did not entitle Blake to a new trial. (Ex. 42). For the same reasons, the recantations do not establish a credible claim of actual innocence and do not provide Blake with an exception to AEDPA's time bar.

As further evidence of his actual innocence, Blake points to statements by Rosalind Mitchell. (Ex. 38, pp. 25, 28-29). Ms. Mitchell's statements do not establish a credible claim of actual innocence.

In addition to the evidence and testimony mentioned in the state's response to Blake's second amended postconviction motion, there was testimony at the trial that Blake made statements to law enforcement indicating that he was with Richard Green at the time of the August 12, 2002, Patel murder, and originally told law enforcement that he fired a shot on that date. (Ex. 2, p. 279).

For the reasons set forth in the state's response to Blake's second amended postconviction motion (Ex. 38), Blake has failed to meet his burden of establishing a credible claim of actual innocence. Based on Richard Green's testimony as read at trial, Blake's statement to law enforcement admitting his presence at and/or participation in the Patel robbery and homicide; evidence connecting the Young homicide and the Patel Homicide; and the fact that the recantations by Preston and Jones were not credible, Blake cannot demonstrate that it is more likely than not that no reasonable juror would have convicted him had they been aware of Preston's and Jones' recantations, or of

Rosalind Mitchell's statements. Therefore, he is not entitled to an actual innocence exception to AEDPA's time bar and his petition will be dismissed as untimely.

Furthermore, Blake's claims are procedurally barred and/or without merit.

*Blake v. Secretary, Dept. of Corrs.*, Case No. 8:17-cv-02576-EAK-CPT, Order, August 9, 2018 (Doc. 24, pp. 4-8).

In its order denying Blake a COA, the district court simply stated:

Petitioner is not entitled to a certificate of appealability (COA). ... Petitioner has not made the requisite showing.

*Id.* (Doc. 24, p. 25).

In its order denying Blake's application for COA, the Eleventh Circuit Court of Appeals stated:

Here, reasonable jurists would not debate the district court's determination that Blake's § 2254 petition was untimely. Blake learned about all of the facts underlying his claims by November 2009. Because the AEDPA limitations period begins to run on "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence," Blake would have had until November 2010 - at the latest - to file his § 2254 petition. See 28 U.S.C. § 2244(d)(1)(D). In November, 2009, however, a state, post-conviction motion that Blake already filed was still pending and remained pending until July 2010. After that, the limitations period ran for a year, and Blake had until July 2011, absent any further tolling, to file a § 2254 petition. Because he did not file any other tolling motions until April 6, 2012, after the AEDPA limitations period expired, his petition was untimely.

Blake argues that he was entitled to the actual innocence exception to the time-bar because two witnesses at his trial later recanted their testimonies during a state evidentiary hearing, and another person, Rosalind Mitchell, knew that the testimony of one of the witnesses was false. However, the state court that heard the witnesses' recantations found that they were not credible,

and Mitchell admitted that she had merely been told that the testimony was untrue. Additionally, Blake failed to show that his codefendant's inculpatory testimony was false. As a result, he failed to show that no reasonable juror would have found him guilty beyond a reasonable doubt. See *McQuiggen*, 569 U.S. at 386. Accordingly, he did not qualify for the "exceedingly narrow" actual innocence exception. *Johnson*, 256 F.3d at 1171.

*Blake v. Secretary, Dept. of Corrs.*, Eleventh Circuit Case No. 18-13739, Order, March 29, 2019.

### **REASONS FOR GRANTING THE WRIT**

#### **I. THIS COURT SHOULD GRANT CERTIORARI TO REVIEW WHETHER BLAKE WAS ENTITLED TO A CERTIFICATE OF APPEALABILITY ON THE ISSUES HE RAISED.**

##### **A. Denial of a constitutional right**

As this Court has explained, a state prisoner whose habeas petition has been denied by a federal district court meets the standard for a COA if he shows that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented [are] 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). That is, a COA must issue where the petitioner "demonstrate[s] that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* Given that the Eleventh Circuit failed to conduct an appropriate overview of the claims and a general assessment of their merits, *Miller-El v. Dretke*, 537 U.S. 322, 336 (2005), Blake submits that this

Court should grant certiorari to address whether on the record in this case, he has established his entitlement to a COA.

Blake submits that jurists of reason could find that his petition states a valid claim of the denial of a constitutional right. Blake asserted in his petition that his constitutional rights to due process was violated and that he is actually innocent of the crimes. Blake focused on the fact that the prosecution was driven by Melinda Watson who contacted law enforcement and fabricated a story about Blake arriving at Vanbossell Preston's house on the night of the crime and proceeded to confess to Preston that he (Blake) had shot Young. In her statement, Watson provided the names of two individuals who were also present at Preston's house when Blake arrived - Rosalind Mitchell and William Mitchell.<sup>3</sup> Unbeknownst to Blake, his trial prosecutor contacted Rosalind Mitchell and learned that she was not at Preston's house on the night of the crime.<sup>4</sup> In addition, Rosalind Mitchell knew that Watson had made up the story in order to help Preston with his outstanding criminal charges. However, it was not until Blake's state court

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<sup>3</sup>Rosalind Mitchell and William Mitchell are not related to one another though they share the same surname.

<sup>4</sup>Mitchell contacted her probation officer after her conversation with the prosecutor because she interpreted the prosecutor to have threatened her if she did not corroborate Watson. At the state court evidentiary hearing, Mitchell's probation officer testified that she had contacted him and explained that the prosecution may attempt to have her probation violated.

evidentiary hearing, that he learned that the trial prosecutor had not presented the testimony of Mitchell at his third trial because he believed that Watson was being less than truthful. This information was not disclosed to Blake. But, the prosecution's case rested largely upon Watson's story. Because the prosecutor was clearly aware of the information, Blake alleged a violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

Likewise, at the state court evidentiary hearing on Blake's capital case, Preston confirmed that Watson's story and his testimony were false. Preston explained that the prosecution had promised him lenient treatment on his criminal charges. The prosecution had not disclosed its promises to Preston so, his testimony also establishes a due process violation.

Demetrious Jones was also promised benefits for his testimony against Blake. Many of the benefits extended to Jones were not disclosed and establish a due process violation.

Blake also raised a claim that he was actually innocent of the crime. Based upon *Herrera v. Collins*, 506 U.S. 390 (1993), *Schlup v. Delo*, 513 U.S. 298 (1995), and *House v. Bell*, 547 U.S. 518 (2006), he is entitled to relief.

#### **B. Procedural ruling is debatable**

Blake also submits that jurists of reason would find it debatable as to whether the Eleventh Circuit was correct in its procedural ruling dismissing his petition. Relying on 28 U.S.C.



§2254(d)(1)(B) and (D), Blake raised his claims that due process had been violated at his capital trial by the withholding of exculpatory and false evidence and that he was actually innocent.

Specifically, under §2254(d)(1)(B), a petition is timely as long as it is filed within a year from the removal of an impediment created by State action. Blake submits that the false testimony and inaccurate representations presented at his trial, with full knowledge of the prosecution, created an impediment to filing his state postconviction motion. It was only in March, 2011, when evidence and testimony was submitted to the state circuit court in Blake's capital case concerning the prosecutor's knowledge of Watson's false statements, and June, 2012, when evidence and testimony from Preston and Jones was offered in which they explained that their trial testimony was false that the impediment to Blake's postconviction claims ripened.

Likewise, pursuant to §2254(d)(1)(D), the factual predicate of Blake's claims was discovered in March, 2011, when the trial prosecutor explained his knowledge of Rosalind Mitchell's statement which discredited Watson and in June, 2012, when Preston and Jones first revealed the specific information, substantiating Blake's claim that his right to due process was violated at his trial. *See Banks v. Dretke*, 540 U.S. 668, 696

(2004) ("A rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process.").

Furthermore, specifically, as to the information concerning Rosalind Mitchell, it was not until, March, 2011, when trial prosecutor Cass Castillo testified at Blake's evidentiary hearing relating to the capital case that Blake learned that the prosecutor had deemed Mitchell's statement credible and based upon that determination did not present the testimony of Watson at the third trial of Blake for Young's homicide. Thus, while Blake suspected that Watson had lied and fabricated the entire story about him confessing to Preston in the early morning hours of August 1, 2002, his claim did not ripen in 2009. Rather, it was not until March, 2011, during Castillo's testimony that Blake learned of Castillo's knowledge of Mitchell, that he had interviewed Mitchell and learned that she made a statement contradicting Watson's statements to law enforcement and testimony **and that Castillo credited Mitchell's statement;** he credited Mitchell's statement so much so that he did not present the testimony of Watson at Blake's third trial. But, he did not disclose Mitchell's statements to trial counsel.<sup>5</sup>

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<sup>5</sup>When Blake raised his claim regarding Mitchell in the state circuit court it was summarily denied. While Blake was improperly denied the opportunity to develop his claim, he did present evidence that trial counsel was not provided with Mitchell's

(continued...)

Furthermore, the determination that Blake learned of or could have learned of Preston and Jones' inconsistent statements in 2009 is refuted by the record. It was the prosecution's obligation to disclose all exculpatory evidence to Blake. See *Banks v. Dretke*, 540 U.S. 668, 696 (2004).

It was not until 2009 that Blake's investigator in his capital case was informed that Preston had made an inconsistent statement about his trial testimony. And, as Blake averred throughout his state postconviction proceedings, he was unable to locate Preston to confirm the statements, though extensive efforts were made.<sup>6</sup> Indeed, it was not until June, 2012, that Preston spoke to Blake's investigator and made several inconsistent statements about his knowledge of the Young homicide. There is no doubt that Blake timely filed his state postconviction motion and tolled the statute of limitations as to the due process violation relating to Preston.

As to Jones, in 2009, while incarcerated, he made a vague reference to Blake's investigator that there was more to the story than he conveyed at Blake's trial. During the interview he

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<sup>5</sup>(...continued)  
statements to Castillo.

<sup>6</sup>It is important to note that it was Blake's brother who alleged that Preston had made inconsistent statements to him in 2009. Blake certainly wanted to confirm those statements from Preston himself as his brother's testimony was likely inadmissible hearsay and surely would have been impeached due to his relationship with Blake.

also refused to speak to Blake's investigator about several areas relating to his trial testimony. Again, it was not until June, 2012, that Blake had an opportunity to discover all of the inconsistencies between his trial testimony and what really occurred in the early morning hours of August 12, 2002. There is no doubt that Blake timely filed his state postconviction motion and tolled the statute of limitations as to the due process violation relating to Jones.

Further, if Blake's petition was untimely, a credible showing of actual innocence may provide an opportunity for his claims to be heard. See *McQuiggin v. Perkins*, 569 U.S. 383 (2013). However, the Eleventh Circuit erroneously linked Blake's claim of innocence to Preston and Jones' 2012 state evidentiary hearing testimony and Green's testimony at Blake's first trial - a trial at which the jury voted 11-1 for acquittal. This myopic view of the case relies on evidence that has been shown to be false and unreliable.

Numerous witnesses corroborate Preston's 2012 testimony. Sanchez Preston, William Mitchell, Kenny Blake, as well as the records introduced about the prosecution of Vanbossel Preston corroborate his postconviction testimony and establish that his trial testimony was patently false. There is simply no doubt that Preston was provided significant benefits for his testimony against Blake. Benefits that were not revealed to trial counsel.

And, most importantly, the fact that trial prosecutor Cass Castillo credited Rosalind Mitchell's statements to him weighs heavily against the credibility of Preston's testimony at Blake's multiple trials. Mitchell was offered as a witness who could corroborate Watson's story that Blake had arrived at Preston's home on the early morning of August 1, 2002, and confided in Preston that he had shot Young. However, not only could Mitchell not corroborate Watson's story, she also knew that Watson had manufactured the story to assist a friend and Preston with outstanding charges.

Also, William Mitchell and Sanchez Preston corroborate Rosalind Mitchell's credible statements to Castillo as well as Vanbossell Preston's postconviction statements that he had made up the entire story to obtain assistance on his pending charges.

The Eleventh Circuit also ignored the eyewitness testimony from the scene of the crime. Leroy Canady had the best view of the inside of the vehicle and its occupants on the morning of August 1, 2002. Canady provided a statement to law enforcement and would have testified that the driver, and shooter, appeared to have braids hanging over his forehead. Blake did not have braids on August 1, 2002.

Likewise, the Eleventh Circuit held that Jones' June, 2012, testimony is not credible. But, the Eleventh Circuit ignored the plethora of evidence that was presented at Blake's

postconviction evidentiary hearing in his capital case which undermined Jones' testimony, including his own statements to law enforcement and the records showing the substantial benefits he received from the prosecution.

And, Jones' testimony from Blake's trials simply cannot be true in light of the credible and compelling evidence of Kelly Govia and Terrell Smith from Blake's postconviction hearing as well as Kevie Hall's statement which contradicts Jones' testimony. Even Jones' own statements to law enforcement conflict with his trial testimony. Indeed, this evidence completely undermines the prosecution's theory and evidence while also corroborating Blake's trial testimony that he did not participate in the planning of the robbery, had no idea that a robbery would be attempted at Del's Go Shop on August 12, 2002, and did not shoot anyone.

Blake has presented extensive, compelling evidence that he was not present and had nothing to do with the murder of Young. He has met his burden to overcome any issue relating to the statute of limitations, should this Court determine that he did not comply with §2244(d)(1).

### **CONCLUSION**

Based on the foregoing, Petitioner submits that certiorari review is warranted to review the decision of the Eleventh Circuit in this cause.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States Mail, first class, postage prepaid to Sonya Roebuck Holt, Assistant Attorney General, Office of the Attorney General, 3507 East Frontage Rd, Suite 200, Tampa, FL 33607-7013, on this 10<sup>th</sup> day of September, 2019.

Respectfully submitted,

/s/. Linda McDermott  
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