19-6201

No. 19247

IN THE

SUPREME COURT OF THE UNITED STATES

RONN DARNELL STERLING, pro se,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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June 25, 2019

QUESTION(S) PRESENTED

1. Could reasonable jurists disagree with the District Court's rejection of Petitioner's claim within his 28 U.S.C. § 2255 motion that pre-trial, trial, and Appellate counsel was constitutionally ineffective for allowing the Prosecution to present false material DNA evidence, and false material evidence into his trial that misrepresented the evidence of the case; for failure to properly cross-examine witnesses; for failure to call alibi witness; for failure to object when Petitioner did not understand concerning testifying; for agreeing and stipulating to the admission of Petitioner's prior 1995 bank robbery conviction (that was repeatedly mentioned on six occasions throughout the trial), when Petitioner did not take the stand to testify in the 2010 bank robbery trial, as such admission of Petitioner's criminal history was improper and highly prejudicial; for failure to effectively argue on direct appeal and point-out to the Eleventh Circuit that the District Court stated on the record that to admit Petitioner's 1995 bank robbery conviction to the jury would be "pretty prejudicial" and that "the probative value is substantially outweighed by undue prejudice;" for failure to argue on appeal that the evidence was insufficient to sustain a conviction, and to explain in detail why such was true; for failure to request a mistrial or to argue on appeal that the Prosecution committed misconduct throughout the trial; and that the cumulative effect of all of counsel's deficiencies were not objective standards of reasonableness under prevailing professional norms and amounted to a violation of due process; or because the District Court refused to grant an evidentiary hearing on Petitioner's claim?

2. Given Petitioner's credible evidence via the record; trial transcripts; and supporting affidavit, did the Eleventh Circuit err in ruling that he failed to make "a substantial showing of the denial of a constitutional right" under 28 U.S.C. § 2253 (c)(2)?

PARTIES TO THE PROCEEDING

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

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PETITION FOR WRIT OF CERTIORARI

RONN DARNELL STERLING, pro se[1], respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The March 27, 2019, and May 22, 2019, Order of the United States Court of Appeals for the Eleventh Circuit, denying Mr. STERLING a Certificate of Appealability (COA) is available at, 2019 U.S. App. LEXIS 9192, and attached as Appendix A. The March 5, 2018, Order of the United States District Court for the Northern District of Georgia, denying Mr. STERLING habeas relief and a COA is available at 2018 U.S. Dist. LEXIS 35767, and attached as Appendix B. The August 17, 2017, Report and Recommendation of the United States Magistrate Judge of the United States District Court for the Northern District of Georgia, is available at 2017 U.S. Dist. LEXIS 218857, and attached as Appendix C. And the November 21, 2013, Panel Opinion of the United States Court of Appeals for the Eleventh Circuit, affirming Mr. STERLING's direct appeal is available at 738 F.3d 228 (11th Cir. 2013), and attached as a Appendix D.

JURISDICTION

The United States Court of Appeals for the Eleventh Circuit entered its judgment denying Petitioner's COA on March 27, 2019. (See Appendix A). This Court has jurisdiction under 28 U.S.C. § 1254(1).

[1]. Petitioner respectfully request to invoke the principals of HAINES v KERNER, 404 U.S. 519 (1972) for liberal consideration of the pleadings, as he is untrained and a layman in the law, and proceeding pro se. // Petitioner would also like to apologize to the Court for his Writ being handwritten and not typed; as he is currently housed at a lockdown prison and is not permitted access to a typewriter.

CONSTITUTIONAL PROVISIONS INVOLVED

This petition invokes the Fifth and Sixth Amendments to the United States Constitution.

The Fifth Amendment provides in pertinent part:

> "No person shall be . . . deprived of life, liberty, or property without due process of law . . ."

The Sixth Amendment provides in pertinent part:

> "In all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defense."

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2253 provides in pertinent part:

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from–

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

28 U.S.C. § 2255 provides in pertinent part:

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States . . . or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside, or correct the sentence.

STATEMENT OF THE CASE

A. Introduction And Pre-Trial

On January 14, 2010, in Smyrna, GA, a bank robbery occurred at the Regions Bank (Appendix E., Trial Transcript, page (hereinafter "T.T. p.") 55). A dark skinned, black male (T.T. p. 90), wearing a brown suit (T.T. p. 102), a FREDDY KRUGER mask (T.T. p. 58); a greyish, bluish hat (T.T. p. 75); "black" or "blue" gloves (T.T. p. 75, 90, 114); carrying a silver LORCIN 9mm (T.T. p. 74). (See also, Appendix (hereinafter "App.") F. the sworn affidavit, arrest warrant of Detective K. HARRISON); and a black duffle bag (T.T. p. 103). The robber was 6'0 feet tall (T.T. p. 129), and took money and dye packs from the tellers (T.T. p. 85, 109). The robber exited the bank and a pink mist was coming from him, as the witnesses lost sight of him (T.T. p. 145).

Based on racial profiling, CORNELL BRUMFIELD (the codefendant of Mr. STERLING) was pulled over in his Silver Dodge. A search of the Silver Dodge revealed that Mr. BRUMFIELD and his daughter were the only occupants in the car. (T.T. p. 224, 225, 226), and Officer DAVIS observed that nothing inventoried indicated a bank robber. (T.T. p. 175, 176). (Subsequent to Officer DAVIS leaving the traffic scene, he found a "black" glove down the road from the Regions Bank, in the parking lot of Sun Trust Bank. (T.T. p. 180)).

Mr. BRUMFIELD's vehicle was towed to the impound lot of the Smyrna Police Department. Upon arriving at the impound lot, DAVID HERBERT, the tow truck driver began the process of unhooking the vehicle when he saw a "dark" black male (App. E. p. 73, of Suppression Hearing Transcripts of Mr. BRUMFIELD). The black man was middle aged, with scruffy hair, kind of afro-ish, wearing a blue pull-over sweatshirt, khakis, and had one duffle bag, and one garbage bag (T.T. p. 191). And the unidentified individual walked away from Mr. HERBERT (T.T. p. 193). In the trunk of the Silver Dodge, Officer MARONEY, and Forensic Specialist LARRY WOOD found a bag of miscellaneous clothing. Among other things they found one BRYCO JENNINGS 9mm, one brown floppy hat; one walkie talkie; two "brown" gloves (T.T. p. 232, 251, 259, 349, 350) (See also, App. F., the Smyrna Police Department Property & Evidence sheet). [No LORCIN 9mm; no greyish, bluish hat; no "black" or "blue" gloves; no FREDDY KRUGER mask;

no brown suit; and no black duffle bag]. The Silver Dodge was held in police custody undergoing examination from January 14, 2010 (the day of the bank robbery), until January 19, 2010, when it was returned to ROSE HANSFORD (Mr. BRUMFIELD's wife at the time) (T.T. p. 274). During the entire time that the Silver Dodge was in police custody no red dye was found in the trunk, entire, or extire. (T.T. p. 256, 257, 258). It wasn't until 17 days subsequent to the Silver Dodge being back in the possession of ROSE HANSFORD, and 21 days subsequent to the bank robbery when on February 5, 2010, Ms. HANSFORD noticed dye on the seat of her car. (T.T. p. 274). RONN STERLING and CORNELL BRUMFIELD were indicted and charged with violations of 18 U.S.C. 2113 (A) and (d) (bank robbery); 18 U.S.C. § 924 (c)(1)(using a firearm in the commission of a crime of violence); and 18 U.S.C. § 922 (g)(1)(being a felon in possession of a firearm).

During the Pre-Trial Hearing, the Prosecution sought to introduce Mr. STERLING's prior 1995 bank robbery conviction as 404(b) evidence. The Trial Court, expressed on the record that "It's pretty prejudicial, I'll give you that."... and "I find the probative value is substantially outweighed by undue prejudice." (App. E. p. 11, from Pre-Trial Hearing). Even further, on the day trial commenced, prior to the jury being empaneled, Defense Counsel, VERNON SMITH (hereinafter "Counsel SMITH"), conceded and agreed to the admission of Mr. STERLING's 1995 bank robbery conviction. (T.T. p. 12, 13)

B. The Trial

On January 17, 2012, Mr. STERLING's trial commenced. During Opening Statements, the Prosecution directed the jury to "accept my word," and repeatedly directed the jury that RONN STERLING was the bank robber. (T.T. p. 36, 41, 42, 44, 46). The Prosecution admitted into evidence the "brown" gloves that had been confiscated from the trunk of the Silver Dodge (T.T. p. 115, 232, 254), as if they were the "black" or "blue" gloves worn by the robber; the Prosecution even stated during closing arguments that they were "black" gloves. [Such misrepresented the evidence of the case, and mislead and confused the jury]. The Prosecution even brought in a DNA Expert witness to testify that Mr. STERLING's DNA was inside of such "brown" gloves. (T.T. p. 408). [This further misrepresented the evidence of the case, and mislead and confused the jury. This is also how the Prosecution established DNA evidence against Mr. STERLING; by admitting false and misleading evidence]. The Prosecution also admitted into evidence the BRYCO JENNINGS 9mm, that was confiscated from the trunk of the Silver Dodge (T.T.p. 349, 350), and the "brown" hat (T.T.p. 258). [This was more false and misleading evidence that confused the jury, as the bank was robbed with a LORCIN 9mm, and the robber was wearing a bluish, greyish hat]

Mr. STERLING explained to Counsel SMITH that he was in Foxworth, MS at a junkyard during the date and time the bank robbery occurred; and a junkyard employee telephoned Counsel SMITH, and wrote him a letter explaining such and that he was willing to testify to such. But Counsel SMITH failed to call him as a witness.

On six different occasions throughout the trial, the Prosecution made mention of the nature of Mr. STERLING's prior 1995 bank robbery conviction. (T.T.p. 25, 310, 468, 477, 488, 510). [The nature of Mr. STERLING's criminal history is evidence that the jury should never have been exposed to, being so Mr. STERLING did not take the stand to testify].

The Prosecution rested its case, and Counsel SMITH filed a Rule 29 Motion, requesting a Judgment of Acquittal, based on the evidence was insufficient to prove that RONN STERLING was the bank robber. (T.T.p. 447; 448). The Motion was denied.

The Court addressed Mr. STERLING, regarding testifying, and Mr. STERLING responded that he "did not understand." (T.T.p. 451, 452). [Counsel SMITH failed to raise any type of objection to this]. [Counsel SMITH did not put on a defense].

[No evidence was presented during the trial that connected Mr. STERLING to the robbery, and no one identified Mr. STERLING as the robber]. [STERLING is 5'5" (App. F)]

The jury deliberated for 1½ days, and returned a verdict of guilty on all counts. Mr. STERLING was sentenced to 562 months.

C. The Appeal

On Appeal Counsel SMITH argued that the Trial Court committed err for

Admitting the 404(b) evidence of Mr. STERLING's prior 1995 bank robbery conviction. However, in Counsel SMITH's argument, he failed to point-out to the Eleventh Circuit that the Trial Court stated on the record during the Pre-Trial Hearing that such Admission was "pretty prejudicial," and that the "probative value is substantially outweighed by the undue prejudice." (App. E. p. 11, from Pre-Trial Hearing). And Counsel SMITH also failed to explain to the Eleventh Circuit that this could not be harmless error because the Prosecution presented no evidence at trial that Mr. STERLING:

was wearing "black" or "blue" gloves that connected to the robbery;
was wearing a FREDDY KRUGER mask;
was wearing a hat;
was wearing a jacket/or tan or brown suit;
was carrying a square dark colored duffle bag;
stole money and dye packs; nor possessed bank money;
carried a silver gun;
STERLING's thumb print did not connect to the robbery;
STERLING's palm print did not connect to the robbery;
no fingerprints of STERLING was found inside of the bank;
no shoeprints of STERLING was found inside of the bank;
no DNA of STERLING was found inside of the bank;
no bank camera footage of STERLING;
no confession from STERLING;
no confession from codefendant;
no bank employee identification of STERLING;
no one identified STERLING as being the robber;
and absolutely no evidence connected STERLING to the robbery.

[Had Counsel SMITH litigated and demonstrated the 404(b) claim on appeal as shown above, the Eleventh Circuit would have reversed the Petitioner's conviction. Rather, the Eleventh Circuit ruled that the Petitioner's claim was harmless, because "There was otherwise overwhelming evidence of guilt to support STERLING's conviction, including the physical evidence found in the vehicle, the eyewitness's descriptions, and STERLING's unexplained behavior." (App. D. p. 18)

Also on direct appeal, Counsel SMITH failed to raise the insufficiency of evidence claim, after having preserved it during trial in his Rule 29 Motion, in which had he raised such claim Counsel SMITH would have been able to break-down and explain to the Eleventh Circuit, that contrary to the Prosecutions theory of the case, that the facts of the case show that absolutely no evidence connected Mr. STERLING to the robbery].

Subsequent to oral arguments, on November 12, 2013, the Eleventh Circuit affirmed Mr. STERLING's conviction, in UNITED STATES v. STERLING, 738 F.3d 228 (11th Cir. 2013) [published opinion] (App. D.).

On April 18, 2014, Mr. STERLING filed a Petition for Writ of Certiorari with this Court. On May 27, 2014, Mr. STERLING's Writ of Certiorari was denied by this Court in STERLING v. UNITED STATES, Case No. 13-9836.

D. The Habeas 28 U.S.C. § 2255 Proceedings

On May 21, 2015, Mr. STERLING filed his initial 28 U.S.C. § 2255 habeas petition in the United States District Court for the Northern District of Georgia, in case no. 1:15-CV-1969-CAP-CMS. Mr. STERLING detailed fifteen facts and circumstances demonstrating that his pre-trial, trial, and appellate counsel provided ineffective assistance, thus violating his Sixth Amendment Constitutional Right, as described in STRICKLAND v. WASHINGTON, 466 U.S. 668 (1984), and EVITTS v. LUCEY, 469 U.S. 387 (1985), which are summarized as follows:

Ground One: During Pre-Trial, Trial, And Appeal, Counsel SMITH Provided Ineffective Assistance For Failure To Suppress Or To Object To The Admission Of The "Brown Gloves" Into Evidence That Contained RONN STERLING'S DNA, As Such Gloves Did Not Connect To The Bank Robbery, Bolstered The Prosecution's Case, Misrepresented The Evidence Of The Case, Was Highly Prejudicial To STERLING, And Should Have Been Inadmissible In The Trial, Nor Misrepresented

During Closing Arguments As Being "Black Gloves."

Ground Two: During Pre-Trial, Trial, And Appeal Counsel SMITH Provided Ineffective Assistance For Failure To Suppress, Or To Object To The Admission Of The Testimony Of The DNA Expert JEANETTE WENTWORTH, Concerning The "Brown Gloves" As Such Testimony Depicted Gloves That Did Not Connect To The Bank Robbery, Bolstered The Prosecutions Case, Misrepresented The Evidence Of The Case, Was Highly Prejudicial To STERLING, And Should Have Been Inadmissible In The Trial, Nor Misrepresented During Closing Arguments As Being "Black Gloves."

Ground Three: During Trial Counsel SMITH Provided Ineffective Assistance For Failure To Cross Examine The Witnesses Concerning Identifying The Black Glove, And To Request/Or Secure DNA And Forensic Testing On The Black Glove.

Ground Four: During Pre-Trial, And Trial, Counsel SMITH Provided Ineffective Assistance For Failure To Secure An Expert Witness Whom Would Have Testified That STERLING Did Not Wear The Hat That Was Confiscated From The Silver Dodge.

Ground Five: During Pre-Trial, And Trial, Counsel SMITH Provided Ineffective Assistance For Failure To Investigate And To Put On A Defense, And For Failure To Secure Expert Witnesses Whom Would Have Re-Examined And Refuted The Prosecution's Evidence In STERLING's Favor.

Ground Six: During Trial Counsel SMITH Provided Ineffective Assistance For Failure To Cross Examine RONALD CASTON As To The Type Of Blue Shirt That He Saw STERLING Wearing, As Such Blue Shirt Was Completely Different From The Color And Type Of Blue Shirt That DAVID HERBERT Saw The Unidentified

Individual Wearing In The Impound Lot. Counsel SMITH Also Failed To Cross Examine DAVID HERBERT As To The Color Of Blue Shirt That He Saw The Unidentified Individual Wearing.

Ground Seven: During Trial Counsel SMITH Provided Ineffective Assistance For Failure To Use The F.B.I. 302 Report And The Suppression Hearing Testimony To Discredit DAVID HERBERT Concerning The Fact That STERLING Did Not Fit The Discription Of The Individual He Saw In The Impound Lot.

Ground Eight: During Appeal Counsel SMITH Provided Ineffective Assistance For Failure To Argue That The Evidence Was Insufficient To Sustain A Conviction After Having Preserved The Issue In His Rule 29 Motion During Trial.

Ground Nine: During Trial Counsel SMITH Provided Ineffective Assistance For Failure To Cross Examine JAMES KENNA FERRLL (A.K.A. "KEN FERRELL"), As To Whether Or Not Did STERLING Even Know That An Arrest Warrant Was Out For Him, Did KEN FERRELL Contact STERLING To Inform Him Of An Arrest Warrant, And Whether Or Not Did STERLING Try To Flee After Being Informed Of An Arrest Warrant.

Ground Ten: During Pre-Trial, And Trial, Counsel SMITH Provided Ineffective Assistance For Failure To Investigate And To Call Alibi Witness To Testify In STERLING's Defense.

Ground Eleven: During Trial And Appeal Counsel SMITH Provided Ineffective Assistance For Failure To Object And Argue That STERLING Was Denied His Right To Testify.

Ground Twelve: During Trial Counsel SMITH Provided Ineffective Assistance For Failure To Cross Examine SMYRNA Police Officer's REGINALD DAVIS, DAVID MARONEY, And Forensic Specialist LARRY WOOD, And ROSE HANSFORD, Concerning Whether Or Not Was Any Red Dye Stains On The Seat Of The Silver Dodge On 1/14/10, The Day Of The

Bank Robbery.

Ground Thirteen: During Pre-Trial, Trial, And Appeal Counsel SMITH Provided Ineffective Assistance For Failure To Suppress Or Object To The Admission Of The Silver BRYCO JENNINGS 9mm Handgun Into Evidence, As Such Handgun Did Not Connect To The Bank Robbery, Bolstered The Prosecution's Case, Misrepresented The Evidence Of The Case, Was Highly Prejudicial To STERLING And Should Have Been Inadmissible In The Trial, Nor Mentioned During Opening Statements, Nor Closing Arguments.

Ground Fourteen: During Pre-Trial, Trial, And Appeal Counsel SMITH Provided Ineffective Assistance For Stipulating To The Admission Of The Nature Of STERLING's Prior 1995 Bank Robbery Conviction When STERLING Did Not Testify, And Was Repeatedly Mentioned During Closing Argument And Thus Improperly Influenced The Jury, And For Failure To Argue On Appeal That The Court Conceded That The Probative Value Was Substantially Outweighed By Undue Prejudice.

Ground Fifteen: During Trial Counsel SMITH Provided Ineffective Assistance For Failure To Object And Request A Mistrial Due To The Prosecution Committed Prosecutorial Misconduct Throughout The Trial; Nor Did Counsel SMITH Argue Such On Appeal.

- During Opening Statements, The Prosecution Vouched, And Repeatedly Directs The Jury That STERLING Is The Robber;
- During Closing Arguments The Prosecution Vouched For And Bolstered The Testimony Of DAVID HERBERT;
- The Brown Gloves [False evidence; misrepresenting the facts of the case];
- During Closing Arguments The Prosecution Repeatedly Directs The Jury That STERLING Is The Bank Robber;
- The Red Dye Stain In The Silver Dodge [Misleading as if the red dye was found in the Silver Dodge on January 14, 2010, the day of the robbery];

- During Closing Arguments, The Misstatement That STERLING Was Arrested In Car;
- During Closing Arguments, The Improper Comment That STERLING Was A Thief.
- During Closing Arguments, The Prosecution Bolstered It's Case By Repeatedly Making Mention Of STERLING's Prior 1995 Bank Robbery Conviction;
- During Closing Arguments, The Prosecution Directed The Jury That STERLING Is Guilty Beyond A Reasonable Doubt;
- The Prosecution Used False And Misleading Evidence In STERLING's Trial. The Silver Handgun.

For Ground Sixteen Mr. STERLING brought forth "The Accumulation Of Errors In This Case Violated STERLING's Right To Due Process."

Mr. STERLING clearly demonstrated within his habeas § 2255 Motion that his claim was substantial and had merit, that Counsel SMITH did not perform with sound trial or appeal strategy and thus prejudiced Mr. STERLING; and that a reasonable probability that had it not been for Counsel SMITH's deficiencies that the outcome of the proceedings would have been different. Mr. STERLING even demonstrated that Counsel SMITH failed to call a readily available alibi witness whom would have sufficiently undermined the confidence in the Prosecutions case; especially when Counsel SMITH presented no other form of defense.

No competent attorney would have presented such a lack of investigation throughout the entire case, and failure to exclude or object to evidence that had no right to be admitted into Mr. STERLING's trial such as the "brown gloves," "brown hat," and "BRYCO JENNINGS 9mm," failure to properly cross examine witnesses to further show the jury that Mr. STERLING did not fit the height or clothing description of the robber; or to argue properly on appeal and to point-out to the Eleventh Circuit that even the Trial Court understood that the admission of the 404(b) evidence was "pretty prejudicial"... [and] "the probative value is substantially outweighed by undue prejudice"; or to argue on appeal that "the evidence was insufficient to support the conviction" when no evidence connected Mr. STERLING to the robbery. Thus, Mr. STERLING clearly demonstrated in his habeas § 2255 Motion that Counsel SMITH's "representation fell below an objective standard of reasonableness as measured by prevailing professional norms" as required by this Court's precedent in STRICKLAND, Id. And "that there is a reasonable probability that, but for Counsel SMITH's unprofessional errors, the result of the proceeding would have been different." STRICKLAND, Id.

On March 6, 2018, the District Court denied Mr. STERLING's § 2255 Motion, and District Court also denied Mr. STERLING a Certificate of Appealability (COA) stating that "the movant has failed to carry his burden with respect to the first prong of STRICKLAND. Therefore, the movant's... claims of ineffective assistance of counsel (Grounds 1 through 15) are DENIED." (App. B., p. 7). And concerning the COA, the District Court stated "the movant's claims raised in his § 2255 are wholly without merit. Accordingly, the movant is denied a COA." (App. B. p. 11).

E. The COA In The Eleventh Circuit

On March 14, 2018, Mr. STERLING filed an application for a COA in the Eleventh Circuit and demonstrated that jurists of reason could find it debatable that the District Court's denial of Mr. STERLING's § 2255 Motion was in err because Mr. STERLING clearly demonstrated both "cause" and "prejudice" required by STRICKLAND Id, due to Counsel SMITH provided ineffective assistance, [as shown above], in violation of Mr. STERLING's Sixth Amendment.

Despite Mr. STERLING's showing of both "cause" and "prejudice" in his case, on March 27, 2019, the Eleventh Circuit denied Mr. STERLING's application for COA, and held that "To merit a COA, STERLING must make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253 (c)(2). He has not met this standard, and his motion for a COA is DENIED." (App. A.).

On April 11, 2019, Mr. STERLING filed a Motion For Reconsideration Of COA, requesting of the Eleventh Circuit to review the facts of the claim via the trial transcript page numbers, and also presenting an "affidavit" to support his claim.

And on May 22, 2019, the Eleventh Circuit denied Mr. STERLING's Motion For Reconsideration Of COA, And held that "Upon review, STERLING's motion for reconsideration is DENIED because he has offered no new evidence or Arguments to warrant relief."

REASONS FOR GRANTING THE WRIT

The Eleventh Circuit's decision conflicts with clearly established federal statute And this Court's precedent. This case presents an important opportunity for this Court to clarify the standard of granting federal prisoner's certificate of Appealability's (COA) in furtherance, subsequent to the denial's of habeas 28 U.S.C. § 2255 claims of ineffective Assistance of counsel (IAC) in the federal District Court's And Court's of Appeal, As they Are in the habit of deciding the merits of the IAC claim, rather than deciding whether jurists of reason could find the claim debatable, As is required by 28 U.S.C. § 2253 (c)(2) and this Court's precedent in MILLER v. COCKRELL, 537 U.S. 322 (2003).

If left uncorrected this case will result in A continuous cycle of fundamental error And miscarriage of justice that implicates confidence in the even handed Administration of justice.

For All these reasons, And those discussed more fully herein, certiorari should be granted.

ARGUMENT

I Certiorari Should Be Granted Because Reasonable Jurists Could Unquestionably Debate Whether Mr. STERLING Demonstrated, Both "Cause" And "Prejudice" In That He Was Provided With Ineffective Assistance Of Counsel, In Violation Of His Sixth Amendment, And Also That He Met The Required Standards Of This Court's Precedent And Federal Statute To Be Granted A COA.

This Court's precedent is clear: A COA involves only A threshold Analysis And preserves full AppellAte review of potentiAlly meritorious claims. Thus, "A prisoner seeking A COA need only demonstrAte 'A substAntiAl showing'" thAt the District Court erred in denying relief. MILLER-EL, 537 U.S. At 327 (quoting SLACK v. McDANIEL, 529 U.S. At 473, 484 (2000), And 28 U.S.C. § 2253 (c)(2)). This "threshold inquiry" is sAtisfied so long As reAsonAble jurists could either disAgree with the District Court's decision or "conclude the issues presented Are AdequAte to deserve encourAgement to proceed further." Id. At 327, 336. A COA is not contingent upon proof "thAt some jurists, would grAnt the petition for hAbeAs corpus. Indeed, A clAim cAn be debAtAble even though every jurists of reAson might Agree, After the COA hAs been grAnted And the cAse hAs received full considerAtion, thAt petitioner will not prevAil." Id. At 338.

In sum, the touchstone is "the debAtAbility of the underlying constitutionAl clAim, not the resolution of thAt debAte." Id. At 342; see Also Id. At 348 (SCALIA, J., concurring) (recognizing thAt A COA is required when the District Court's deniAl of relief is not "undebAtAble.") Applying this stAndArd in MILLER EL, this Court reversed the Fifth Circuit's deniAl of A COA in A jury discriminAtion cAse And explAined thAt "A COA cAn be supported by Any evidence demonstrAting thAt, despite the neutrAl explAnAtion of the prosecution, the peremptory strikes in the finAl AnAlysis were rAce bAsed." Id. At 240 (emphAsis Added).

II. ReAsonAble Jurists Could UnquestionAbly DebAte Whether The Eleventh Circuit's Conclusion ThAt Mr. STERLING FAiled To MAke A SubstAntiAl Showing Of The DeniAl Of A ConstitutionAl Right WAs Err, And In Conflict With This Court's Precedent And FederAl StAtute.

A) The Eleventh Circuit concluded thAt Mr. STERLING hAd not "mAde A substAntiAl showing of the deniAl of A constitutionAl right."

MILLER-EL defines A "substAntiAl" clAim, As A clAim thAt "hAs some merit."

MILLER-EL, 537 U.S. 322.

As shown above in "D. The Habeas 28 U.S.C. § 2255 Proceedings," Mr. STERLING clearly demonstrated both "cause" and "prejudice" in that he was denied effective assistance of counsel, in violation of his Sixth Amendment as described in STRICKLAND, and Mr. STERLING states that had Counsel SMITH been performing competently that at least one juror would have harbored reasonable doubt as to his innocence. In addition Mr. STERLING would like to ask this Court that if his IAC claim in the District Court was not "substantial" and "had no merit," and was not at least "debatable among jurists of reason," would the District Court have debated on rendering its decision for three years? Thus, Mr. STERLING's IAC claim had to at least be debatable among jurists of reason.

b) In his COA to the Eleventh Circuit, Mr. STERLING demonstrated that the District Court's denial of his IAC claim was err, because he clearly demonstrated to the District Court that his Sixth Amendment right to effective assistance of counsel had been violated.

In BUCK v. DAVIS, 137 S.Ct. 759 (2017), this Court held "We reiterate what we have said before: A "court of appeals should limit its examination [at the COA stage] to a threshold inquiry into the underlying merit of [the] claims," and ask "only if the District Court's decision was debatable." BUCK, Id (quoting MILLER-EL, 537 U.S., at 327, 348, 123 S.Ct. 1029, 154 L.Ed.2d 931.)" This Court's precedent is clear: a COA involves only a threshold analysis and preserves full appellate review of potentially meritorious claims. Thus, "a prisoner seeking a COA need only demonstrate a substantial showing" that the district court erred in denying relief." MILLER-EL, 537 U.S. at 327 (quoting SLACK v. McDANIEL, 529 U.S. at 473, 484 (2000)).

As explained in detail above in "D.", Mr. STERLING's habeas § 2255 Motion pled fifteen grounds within his IAC claim in the District Court, and Mr. STERLING summerized those same fifteen grounds within his application for COA in the

Eleventh Circuit, claiming that jurists of reason could find the District Court's denial of his IAC claim debatable, and the only way that the Eleventh Circuit could have reached an incorrect conclusion in denying Mr. STERLING's COA is by disregarding the facts at heart of Mr. STERLING's case.

Even after the Eleventh Circuit denied Mr. STERLING a COA on March 27, 2019, Mr. STERLING filed a Motion for Reconsideration of his COA Pursuant to Eleventh Circuit Rule 27-2, which states that the Petitioner was required to submit "new" evidence to be granted a COA. Thus, Mr. STERLING additionally submitted a sworn affidavit in support of his claim, as "new" evidence that had not been included in his initial COA. (App. E). On May 22, 2019, the Eleventh Circuit denied Mr. STERLING's Motion for Reconsideration of COA stating "STERLING's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief."

As stated by this Court in MILLER-EL, "a COA can be supported by any evidence," Id at 240. Thus, Mr. STERLING would like to ask this Court, whether the submitting of a sworn affidavit be considered as evidence? And additionally would an unrefuted and uncontested sworn affidavit have some merit?

Squarely, Mr. STERLING has unquestionably made a showing that his case has "some merit," and thus Mr. STERLING has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); that such is debatable, that Mr. STERLING deserve encouragement to proceed further, and thus the Eleventh Circuit should have issued a COA. Mr. STERLING respectfully submits that this Court should grant certiorari, vacate the Eleventh Circuit's judgment, and either take this case up for full consideration, or remand with instructions to the Eleventh Circuit to grant a certificate of appealability to address Mr. STERLING's claim that should be granted relief from judgment.

CONCLUSION

For all of the foregoing reasons, and because jurists of reason could debate whether the District Court was in err for denying Mr. STERLING's IAC claim, and that because Mr. STERLING did in fact make a substantial showing of the denial of a constitutional right to the Eleventh Circuit, this means that a COA must issue. The petition for a writ of certiorari should be granted.

Dated this 25th day of June, 2019.

Respectfully Submitted
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