

No. _____

19-7055

IN THE

SUPREME COURT OF THE UNITED STATES

Office of the Clerk

In re Charlene Rosa

(Your Name)

PETITIONER

vs.

Department of Correction et al

RESPONDENT(S)

ON PETITION FOR A WRIT OF ~~CERTIORARI~~ Habeas Corpus TO

ORIGINAL

FILED

DEC 10 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

United States Court of Appeals 11th Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF ~~CERTIORARI~~ Habeas Corpus

Charlene Rosa

(Your Name)

Florida Women's Reception Center

(Address)

3700 NW 11th Place
Ocala, Florida 34482

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Whether newly Discovered Evidence From the American Society of Crime Laboratory Advise to the State Scientific and Reliable DNA Evidence that there was an appropriate use of the DNA Evidence during trial, that was Excluded as procedurally barred or presented in another post conviction proceeding shows a probability of an acquittal.
2. Whether there exist a Brady Violation Relying on notice pursuant to Rule 3.220(b)(4) filed by the State Necessitate DNA Testing and or a New Trial.
3. Whether Evidence of newly Discovered DNA Evidence based on 1. Advise from the American Society of Crime Laboratory and; 2. Notice pursuant to Rule 3.220(b)(4) filed by the State constitute reliable Evidence necessary to review DNA Evidence claim under Brady v. Maryland 1963.
4. Whether newly Discovered Evidence case no. 05-014414 CF10A shows Felony murder Evidence presented to the Jury by the defense counsel against his client constitute a principal in the First degree under Florida Law, Laws of Florida section 774.011, chapter 54-310 Laws of Florida establish a significant impact on the Voluntariness of the Plea result in a Manifest Injustice. and;
5. Whether defense counsel insinuation to the Jury, alleging that his client is a principal to a third degree murder alleging that his client committed a third degree murder by enlist an individual name Rutch to get her money from the victim and that . . .

Question(s) Presented Continued

Dutch killed the Victim is 'Contrary' to the legislature intent, wherein the legislature abolish all distinction between first and second degree and accessory before the fact and make all principal Equally Culpable in the First degree and;

6. Whether newly Discovered Evidence cured defects in pleading and shows double prosecution by both an adversarial defense Public Defender in Case No: 05-01441CF10A and the State prosecutor in Case No: 05-01441CF10A a double jeopardy and Violation of the Single homicide rule wherein defense counsel's principal felony murder theory did not constitute a lesser included offense of First degree murder to which the defendant was sentence.
7. Whether Amended information presented to the jury by the State Case No: 05-01441CF10A; Statute 782.04-2 supersede the indictment Case No: 04-010827CF10A to which the defendant was sentence on the capital indictment and did not preserve the felony and premeditated murder allegation and therefore indictment to which the defendant was sentence is so defective that a judgment on conviction cannot stand.
8. Whether Case No: 05-01441CF10A that shows Evidence presented to the jury by defense counsel allegation that his client enlist an individual name Dutch to extort payment from the Victim and that Dutch allegedly killed the Victim was not the prosequi by the State at the time that defense counsel used this Evidence to obtain a conviction establish defense counsel as an Adversarial defense Counsel that Violate defendant Sixth Amendment

Question(s) Presented Continued

right to Counsel.

9. Whether the record indicates that defense Counsel conducted a reasonable investigation in his line of principal felony murder theory before inappropriately use case No: 05-014414 CF10A (notice prosequi by the State after a State due diligent) to obtain a conviction.
10. Whether the conviction was based on defense Counsel's allegation to the Jury alleging that the defendant 'Cause' the death of the Victim by Series of her action that shows Case No: 05-014414 CF10A under Fla. Principal Law;
- 10(b) Whether the State case presented to the Jury Case No: 05-014414 CF10A Fla. Stat. 782-04(2) charge and on accuse the defendant of 'Cause' the death of the Victim and on was sufficient Evidence to establish that defendant 'Cause' the death of the Victim and on
- 10(c) Whether the State action/decision to notice prosequi Case No: 05-014414 CF10A (presented as a defense by defense Counsel during trial to obtain a conviction) prior to trial establish that the State evidence was insufficient to establish that the defendant 'Cause' the death of the Victim.
11. Whether Newly discovered Evidence or Memorandum from defense Counsel to defendant establish that the defense Counsel decision of failure to challenge the alleged taped telephone conversation(s) was not a Strategic Decision, but it is because he is claiming that he recognizes the voice to be that of his client; and;
- 11(b) Whether the Inappropriate use that the adversarial defense Counsel use this Evidence to vitiate the conviction Exceed his Authority as a defense Counsel

Question(s) Presented

to the defendant which violate her Sixth Amendment right to counsel.

12. Whether the cumulative impact of defense counsel's unconstitutionality could be called a reasonable trial strategy and;
- 12(b) Whether defendant was prejudice from defense counsel's deficient performance result in an unreliable jury determination in violation of defendant constitutional right and result in a fundamentally unfair trial and;
- 12(c) Whether defense counsel should be deemed unconstitutional for his alleged strategic decision in this case at hand, for failure to obtain defendant knowingly voluntarily and explicitly and affirmatively acceptance to his alleged strategy that has a significant impact on the voluntariness of the plea,
13. Whether there is sufficient showing of the denial of the Sixth Amendment necessitate the grant of a writ of habeas corpus.
14. Whether there is a denial of due process necessitate the grant of a writ of habeas corpus.
15. Whether there is a denial of Equal Protection under the 14th Amendment of the Constitution to be treated fairly in a Judicial Circuit in Broward County, the State of Florida and, the United States necessitate the grant of a writ of habeas corpus and or to give an opinion of some substantial reason why she should be treated differently.

Question(s) Presented Continued

16. Whether the Newly Discovered Evidence(s) in this Petition related Back to Initial Pleading and present New Evidence of Facts that would Enhance and Substantiate previous claims and prove defendant case of actual innocence and substantial showing of the denial of the Sixth Amendment right to counsel which has a significant impact on the Voluntariness of the Plea and constitute a guilty plea of the allegation to which the defendant was convicted and sentence in a Fundamentally unfair trial, a denial of the Fourteenth Amendment.
17. Whether there exist a Fundamental Miscarriage of Justice Took place during the Jury trial and all other proceeding in this case necessitate a Extraordinary writ of habeas Corpus in the Supreme Court of the United States where the lower Courts improperly denied the defendant the relief to which she seeks and is Entitled and all previous rulings is 'Contrary' to the legislative Intent of a defense Counsel's performance on Strategic Decision
18. Whether defense Counsel's statement to the defendant that he ~~could~~ could not present to a Jury in America that as a Jamaican she is innocent because Jamaicans are known drugs slinger and murderers and therefore the Jury would not believe that she is innocent establish the reason for his deficient performance and his presentation to the Jury that he had never from the start of the trial indicates to them that his client is innocent he would have lose his credibility with them establish sufficient Evidence of prejudice that deem defense counsel per se ineffective and constitute a denial of the Sixth Amendment right to Counsel. Therefore defendant conviction and present confinement Violated Sixth Amendment right to Counsel.

Question(s) Presented Continued

19. Whether the new claims of action relate back to the original pleading where the claims arises out of the conduct, transaction, and occurrences as the original necessary to be considered for the purpose of setting aside conviction and relate back to original pleading.

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:

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IN THE
SUPREME COURT OF THE UNITED STATES

Habeas Corpus
PETITION FOR WRIT OF ~~CERTIORARI~~

Habeas Corpus
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 A to the petition and is

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

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

[] reported at N/A; 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 appears at Appendix _____ to the petition and is

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

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was October 22, 2019.

☐ 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: pending, and a copy of the order denying rehearing appears at Appendix N/A.

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

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), *properly Exhaust newly discovered evidence from previous mixed petition to Enhance and substance under the standard of "Relation Back and Where District should hold" Newly Discovered Evidence mixed initial petition in Abeyance until Newly Discovered Evidence properly Exhaust in State Court, and for dismissal without prejudice until Exhausted instead of deny entire petition*

☐ For cases from state courts: *to not prevent petitioner from properly Exhaust and present the claims in a new petition timely filed.*

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

1. 5th Amendment of the Constitution
2. 6th Amendment of the Constitution
3. 14th Amendment of the Constitution
4. 4th Amendment of the Constitution
5. Section 777.01 Chapter 57-310 Laws of Florida
6. 782.04 (1)
7. 782.04 (2)
8. Double prosecution under the double Jeopardy clause and single homicide rule.
9. Florida criminal procedure 3.850(b)
10. Florida criminal procedure 3.853
11. Relation Back
12. Trial Strategy

STATEMENT OF THE CASE

1. Petitioner was indicted for first degree murder on June 30, 2004 case no: 04-010827CF10A, see appendix h Relation Back.
2. The state filed amended information case no: 05-01441CF10A on 8/25/2005 see inmate summary chrg no: 1 at appendix J Relation Back, and;
3. Also filed amended information case no: 05-014414CF10A on 8/25/2005 and case nolle prosequi on 6/20/2007 then amend/Disposition entered on 8/23/2007 after the adversarial defense counsel inappropriately use this case to obtain a conviction, see appendix I.
4. The trial court sentence the defendant on the Capital Indictment case no: 04-010827CF10A Appendix h. See also Appendix J charge no: 3
5. Direct appeal was affirmed after 4th DCA finds in its opinion that; because the defense in this case was based on felony murder and the state indicted the defendant for Both felony and Premeditated murder there was no need to reverse conviction and life sentence for first degree murder. See appendix g. Appeal no: 4D07-2778; LT case no: 04-010827CF10A.
6. Timely filed motion for post conviction relief was denied by the 17th judicial circuit based on the state response. see Appendix E and F. Appeal no: 4D16-1943 dated March 2, 2017.
7. Likewise motion for post conviction relief DNA testing 3.-853 was denied by the 17th judicial circuit. see appendix d, appeal no: 4D16-1510 August 25, 2016
8. After a show cause by the state the 4th DCA affirmed appeal no: 4D16-1510 and case no: 4D16-1943. see appendix d.
9. A timely filed Petition for a writ of habeas Corpus was denied by the United States district court on May 31, 2018 district court case no: 16-cv-62332, see appendix C related Back. also reconsideration dated September 12, 2019 and state response 3-16-2017.
10. United States Court of appeals denied application for COA on Jan. 07, 2019 and rehearing on March 07, 2019. Appeal no: 18-12339.
11. Supreme court of the United States denied writ of certiorari on June 24th, 2019 and rehearing on August 23, 2019. case no: 18-9065.
12. Timely filed newly discovered evidence denied in the 17th judicial circuit case no: 05-014414CF10A and case no: 04-010827CF10A.
13. Timely filed appeal in the 4th DCA was affirmed on October 25, 2019.
14. United States District court magistrate Report and Recommendation on 28 USC entered on 9-30-2019 case no: 19-cv-62335-RS.
15. Timely filed Rehearing en banc is pending in the 11th circuit. case no: 19-13909.
16. Application to file a second and/or successive writ of habeas corpus was denied Oct. 22, 2019 case no: 19-13909 in the 11th circuit Court of appeals.
17. Supreme Court of the United States order September 30, 2019 case no: 19-5514.
18. Supreme court of Florida denied habeas Corpus case no: SC 19-1759 and writ of prohibition case no: SC 19-1839 on October 29, 2019.

REASONS FOR GRANTING THE PETITION

New and Reliable evidence establish that the fundamental constitutional violation of the sixth amendment right to counsel committed upon petitioner during trial give rise for petitioner Rosa to have a new trial with the new document and/or for the grant of a writ of habeas corpus, Const. Amend 6. Petitioner asserts that (1) Notice Filed by the state pursuant to rule 3.220 (b)(4) see appendix R ; case no: 05-014414CF10A; see appendix I; (2) memorandum mailed to defendant by defense counsel see appendix I and (3) Intellectual Disability retro-active by the Supreme court in Hall document is new and reliable evidence to prove her case in initial timely filed motion(s) that was properly exhausted and ~~where~~ in the principle purpose of the statute of limitation or rules of procedure permitting amendment of pleadings for the Interest of Justice, see relation Back. Petitioner asserts that the newly discovered evidence presented would likely produce an acquittal on retrial where (a) The record indicates that the states evidence presented to the jury by the state case no: 05-14414CF10A murder dangerous depraved mind statute 782.04-(2) was insufficient to establish that the defendant killed the victim. (B) Likewise, evidence presented to the jury by the adversarial public defender case no: 05-014414CF10A first degree murder solicit to commit armed robbery (solicitation), newly discovered reliable scientific DNA evidence, and case no: 05-14414CF10A that was Nolle prosequi by the prosecutor at the time of trial after due diligent administrative step was taken by the state prove that defendant did not cause the victim's death, she was not the perpetrator of the alleged murder and therefore, the new documents would establish that the defense counsel principal felony murder allegation against the defendant was not a reasonable trial strategy (c) constitute double prosecution and a guilty plea of first degree ~~premeditated~~ murder to which defendant was sentenced to natural life in case no: 04-10824CF10A, relying on Florida principal law on the legislative intent is grounds necessary for the grant of writ of habeas corpus where; (1) Newly discovered evidence case no: 04-14414CF10A charge description 1. murder 2. the first degree 3. solicit to commit armed robbery (solicitation) establish that the evidence presented establish at trial by adversarial counsel showed that the defendant was a principal of the first degree under section 777.011 and/or 777.04(2) Sub-section (4)(3). see chapter 37-310 Laws of Florida, where in the legislative abolished all distinctions between ~~principals~~ principals in the first and second degrees and accessories.

Reasons for Granting Petition Continued...

...before the fact and make all principals equally culpable regardless of whether they were actually or constructively present at the commission of the offense. 2. The legislative intent could not have been clearer. Therefore, there exist a denial of the Sixth amendment.

U.S.C.A. Const. Amend. 6.

Petitioner, Rosa, asserts that newly discovered evidence case no: 65-014414 C.F.I.D.A. asserting new cause of action of ineffective assistance of Counsel constitute related back to the original pleading where the claim arises out of the same conduct, transaction, or occurrence as the original that she alleged that defense counsel 1. concede her guilt and involvement in the charge crime of First degree murder against her by the State without her knowingly, voluntarily and Intellegently consent and 2. Counsel was ineffective when he informed the jury that the petitioner enlist an individual name Dutch to extort payment from the victim and that Dutch allegedly killed the victim to which the defendant is a principal to a third degree murder. Such argument to the jury by defense counsel is 'contrary' to the legislative intent. Likewise, in the United States decision in Initial Petition for a writ of habeas corpus, the district court finding that defense Counsel principal felony murder theory alleging that his client commit a third degree murder and that she enlist an individual named Dutch to ~~extort~~ payment from the alleged victim and that Dutch

Reasons for Granting the Petition continued...

... allegedly killed the victim was a strategic decision is "contrary" to the legislative intent that stated that; the distinctions between accessory before the fact, principal in the first degree and principal in the second degree serve no useful purpose; and whereas, these distinctions serve only as technicalities which impede the orderly administration of justice for the benefit of those charged with crimes, and as such should be abolished... Ch. 57-310, Laws of Florida

In addition, the 4th District Court in affirming the petitioner conviction finds that the State indicted the defendant for 'both' felony and Premeditated murder and, that the defense in this case was felony murder, therefore it was unnecessary to reverse this petitioner conviction for First Degree Murder and Life Sentence (emphasis added). Petitioner asserts that such finding by the 4th DCA established existence of multiple prosecution in violation of double jeopardy clause where defendant was prosecuted by both 1. The State prosecutor in Case No: 05-01441CF10A; charge description murder dangerous depraved; Florida Statute 782.04(2) and; 2. Defense counsel in case no; 05-014414CF10A; charge description 1. murder in the First Degree 2. Solicit to commit armed robbery (solicitation). The legislature has codified the double Jeopardy bar within section 775.021(4)(a)-(b), Florida Statutes (2015). section 775.021(4)(a)-(b) is, at its core, a recitation of the well-known Blockburger

Reasons for Granting the Petition Continued...

...text, see *Blockburger v. United States*, 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932) (where the same act or transaction constitutes a violation of two distinct statutory provisions, the text to be applied is whether each provision requires proof of a fact which the other does not). The *Blockburger* text is a rule of statutory construction which serves as a means of discerning [legislative] purpose where there is no clear indication of contrary legislative intent. See *Albema v. United States*, 450 U.S. 333, 340, 101 S.Ct. 1137, 67 L.Ed. 2d 275 (1981).

The plain and ordinary language of section 775.021 (4) unambiguously states that it is the legislature's intent to convict and sentence for each criminal offense committed in the course of one criminal episode or transaction and not to allow the principle of lenity to determine legislative intent. Therefore, based on the legislative intent defense counsel felony murder theory to the jury alleging that his client was a principal to third degree murder and or that his client committed a lesser included crime of third degree murder was 1. not a reasonable trial strategy because third degree murder is not a lesser included offense of First degree murder under the Florida principal law. See chapter 57-310 laws of Florida and; 2. Defense counsel principal felony murder allegation presented to the jury against the defendant constitute First degree Premeditated murder under Section 777.011 Chapter 57-310 Laws of Florida.

Reasons for granting the Petition continued...

... Therefore, only the state could have benefited from the adversarial presentation of this adversarial public defender and counsel was per se ineffective and prejudice is presumed.

Petitioner conviction not only violated the double jeopardy clause but also violated the single homicide rule where the state accused and charged the defendant for one homicide but multiple prosecution was allowed. Where the Double Jeopardy clause seeks to prevent courts from allowing multiple prosecutions for a single, legislatively defined offense. Therefore there exist a violation of 1. due process clause 2. Equal protection of the law under the fourteenth amendment and 3. violation of the sixth amendment right to counsel and impartial jury determination on the issue of guilt or innocence.

Petitioner, Rosa, asserts that this adversarial defense counsel cannot claim a reasonable trial strategy for his unconstitutionality because under Section 777.011 Florida Principal Law Chapter 57-310 Laws of Florida, defense counsel adversarial defense theory against the defendant constitute First degree Premeditated murder; the crime to which the defendant was convicted and sentenced on a Capias felony indictment case no: 04-0108210 FLOA, Florida Statute 782.04(1) where based on the 4th DCA opinion the state indicted the defendant for 'both' felony and premeditated murder and; the fact that section 777.011 Chapter 57-310 Laws of Florida establish that the legislative abolished all

Reasons for Granting the Petition continued...

... distinctions between principals in the first and second degrees and accessories before the fact and made all principals equally culpable regardless of whether they were actually or constructively present at the commission of the offense and 2. the legislative intent could not have been clearer.

Therefore, the defense counsel adversarial presentation to the jury allegation, alleging that the defendant solicit an individual named Dutch to extort payment from the victim and his allegation asserting that Dutch allegedly killed the victim constitute third degree murder was deficient performance that serve only as technicalities which impede the orderly administration of justice for the benefit of those charged with crimes, and as such should be abolished see chapter 57-310, Laws of Florida.

Based on the foregoing legislative intent Florida principal law under section 777.01 chapter 57-310 Laws of Florida and; the Blockburger text, Blockburger v. United States 284 U.S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932); Albern v. United States 450 U.S. 333, 340, 101 S. Ct. 1137, 67 L. Ed. 2d 275 (1981) established that the newly discovered evidence amendment case no: 05-014414 CF10A asserting a new cause of action can relate back to the original pleading and cure the defective pleading case no: 04-010827 CF10A to which the defendant was convicted and sentenced in a multiple

Reasons for Granting the Petition continued...

...in a multiple prosecution on both felony and premeditated murder where the two offenses prosecuted (both felony and premeditated murder) is not a lesser offense subsumed by the greater offense and because the newly discovered evidence case no: 05-014414 CFI/DA that constitute evidence presented by adversarial defense counsel that shows that the defendant is a principal in the first degree arises out of the same conduct, transaction, or occurrence as the original claim by the defendant, asserting that this adversarial defense counsel was ineffective when he presented allegation to the jury asserting that she enlist an individual name Dutch to extort payment from the victim and that Dutch allegedly killed the victim and, counsel's insinuation, alleging that the defendant was a principal in the third degree his allegation alleging that she committed a third degree felony murder shows that the grant of a writ of habeas corpus is necessary to correct a manifest injustice because newly discovered evidence case no: 05-014414 CFI/DA enhance and substantiate previous claim that would prove that the defense counsel's unconstitutionality was not a reasonable trial strategy and or could not be called a strategy at all. Based on the legislature intent defense counsel's defense theory constitute first degree premeditated murder, a guilty plea of the crime to which she was convicted and sentence to natural life in prison and not a lesser included offense.

Reasons for Granting the Petition continued "1

"1 of third degree murder.

Petitioner asserts that defense counsel unconstitutionality has a significant impact on the voluntariness of the Plea because it waive her fundamental constitutional rights to a impartial jury determination on her guilt or innocence and prevented her from knowing about her rights or defenses or from having a fair opportunity to present or litigate them at trial and all previous timely filed petition result in a manifest injustice and a fundamental miscarriage of justice and, therefore violate petitioner 1. Sixth amendment right to counsel 2. due process clause of the fourteenth amendment of the Federal Constitution of the United States and the State of Florida and 3. the equal protection clause to be treated fairly in a judicial proceeding in according to the rights accorded to an accuse by the Federal and State Constitution by the United States and the state of Florida under the legislature intent. U.S.C.A Const. Amend. 5, 6, and 14.

Petitioner is requesting that this Honorable U.S. Supreme court finds that double jeopardy principle bar Double prosecution for both, felony murder defense presented by defense counsel and first degree murder by the State for allegedly cause a single death.

Reason for Granting Petition Continued

2. Defense counsel informed the jury that he had no objection to the alleged incriminating telephone recording conversations and that the alleged recording conversations was authentic his client, the defendants own voice incriminating herself and dutch in conversations that lead up to the death of the victim and, that the defendant believe that she was talking to a confidant in conversations with the State witnesses and did not know that the police was taping the alleged conversations exceed his authority as a defense counsel and established him as an adversarial attorney to the defendants defense and prejudice is presume.

In, addition, such argument to the jury by defense counsel constitute a direct and positive proof of a material fact in the state case against petitioner and prejudice is presume and defense counsel is perse ineffective.

It is well-settled in Florida that voice identification is admissible evidence and such argument by defense counsel attesting to the identity of the voice on the alleged recording conversation to be that of his client is a direct and positive prove of a material fact needed to obtain a conviction. See Martin vs. State, 100 Fla. 16, 24 (Fla. 1930); See England vs. State, 940 So. 2d 389, 401 (Fla. 2006), Cert. den'd by England v. Florida,

Reasons for Granting Petition continued ...
549 U.S. 1325 (2007); Cason v. State, 211 So. 2d
604, 604 (Fla. 2d DCA 1968)

Absent defense Council adversarial presentation of the other voice heard on the recording conversations it is a reasonable probability that the jury would have found the defendant not guilty and/or if convicted the conviction would have remained on Direct Appeal for a new trial base on the insufficient of the Evidence, see Hernandez v. State, 919 So. 2d 707 (2006).

Hernandez objected to the Introduction of the tapes, arguing that the state failed to offer any evidence to prove that his voice was the other voice heard on the tape, allegedly discussing a drug transaction. The district court finds that such admission of the tapes was error and Reverse and Remand for a new trial, see also section 90.901, Florida statute (2001) also Holland vs. State, 528 So. 2d 36, 38 (Fla. 4th DCA 1988); also Parnel v. State, 218 So. 2d 535, 541 (Fla. 3d DCA 1969).

Petitioner Rosa asserts that the state witnesses Maxine Hylton and Omar Nunez testimony asserting that they was friends of the defendant for a number of years, was insufficient evidence to prove that they made a direct and positive identification of the defendant's voice. Maxine Hylton and Omar Nunez **did not** admit that the voice on the recording conversation was that of the defendant.

Petitioner Rosa asserts that the recording conversations was fabricated and that the voice on the recording was a imposer to which she constitantly

Reason for Granting Petition continued

informed the defense counsel and the trial court, invoking her fundamental Constitutional right to have the state present evidence to prove beyond a reasonable doubt that the other voice on the alleged recording conversation allegedly from Jamaica is in fact the defendant's taped recorded by detective Ronald Becker in Florida where this detective (A) lacked familiarity with the defendant voice and (B) had no assistance from the Jamaica authority in the alleged tape recording.

Based on the foregoing evidence presented by the State in authentication of the voice was insufficient to establish that defendant Rosa was the voice that the detective Ronald Becker tape recorded that was introduced into the jury trial as evidence. Where neither Maxine Hylton and Omar Nunez, the State witnesses who testified, did not testify that they identify the voice of the conversation with them to be that of the defendant Charlene Walker Rosa.

Therefore, the only evidence presented into the trial as a direct and positive prove of a material fact of identification of the recorded conversation was presented by defense counsel's statement to the jury, alleging that he had no objection to the alleged recording telephone conversation.

Reason for Granting Petition Continued
as to authenticity because the recording conversation is his client own voice making incriminating admission as to what lead up to the death of the victim to her friends that she thought was her confidant.

Petitioner asserts that; she had never spoken to this adversarial defense counsel on a telephone from Jamaica nor in Florida for him to make a positive identification of a telephone recording conversation to be that of her voice. In previous timely filed post conviction motion defendant presented claim that defense counsel was ineffective for failure to challenge the authenticity of the voice on the alleged tape recording conversation.

This claim was denied by the trial court in case NO: 04-10827CF10A after a state response alleging that the witnesses in the conversation in Florida, Maxine Hylton and Omar Nunez did not deny that the other voice in the recording conversation allegedly in Jamaica was the defendant.

Defendant filed a timely notice to appeal and present evidence in initial brief to state response, she argued that Omar Nunez and Maxine Hylton did not agree that the voice on the recording conversations was authentic Rosa's voice either.

The 4th DCA issued a show cause to the state as to why this claim should not remand for further proceeding after a state response alleging that defense

Reason for Granting Petition Continued
Counsel made 'a strategic decision' the 4th DCA affirmed this claim in appeal NO: 4016-1943 without an opinion.

Newly Discovered Evidence

In May 2018 defense counsel mailed to the defendant memorandum and attorney client privilege letter asserting that "he told the client that he recognized the voice on the alleged recording conversations to be hers."

Petitioner asserts that this newly discovered evidence should be considered for the purpose of setting aside conviction and relate back to original pleading see decision in *Kopel v. Kopel*, 117 So. 3d 1147 (Fla. 3d DCA 2013), and approve cases such as *Caduceus Properties, LLC v. Braney*, 137 So. 3d 987, 989 (Fla. 2014), *Fabbiano v. Demings*, 91 So. 3d 893, 895 (Fla. 5th DCA 2012), and *Armiger v. Associated Outdoor Clubs, Inc.*, 48 So. 3d 864, 870 (Fla. 2d DCA 2010), which make clear that an amendment asserting a new case of action can relate back to the original pleading where the claim arises out of the conduct, transaction, or occurrences as the original. Petitioner asserts that new claim enhance and substantiate previous timely filed claim to prove defendant ineffective assistance of counsel's claim, a denial of the Sixth Amendment right to counsel where newly discovered evidence establish that defense counsel failure to challenge

Reason for Granting Petition Continued
the authenticity of the recording conversation was (1) not because maxine Hylton and Omar Nunez did not deny that the voice was authentic as the state insinuated in his response to the trial court on this claim and (2) It was not because defense counsel made a strategic decision not to challenge the voice on the recording conversation, but it was because the defense counsel believe that he 'recognized' the voice the recording conversations to be that of the defendant, his client established defendant claim of ineffective assistance of counsel, ^{or} denial of her Sixth Amendment right to counsel and impartial jury and due process of the fourteenth amendment of the constitution to a fair trial U.S.C.A. Const. Amend 5, 6, and 14

Strategic Decision is unconstitutional
Petitioner asserts that strategic decision is unconstitutional in this particular case where it allow a defense counsel to exceed his authority and became an expert witness in voice authentication against his client and to concede his clients guilt and make incriminating admission where only the state could have benefited from such adversarial representative which constitute a violation of the defendant sixth amendment right to counsel and counsel should be deem perse ineffective.
Strategic decision should be deem unconstitutional in this particular case

Reason for Granting Petition continued
because it admits material facts that
should be left solely to a jury's
determination on the issue of the
defendants guilt or innocence, the
reliability of the evidence and the
weighing of the credibility of the witnesses
and for the state to carry burden of prove
to present evidence to prove beyond a
reasonable doubt the material fact
against the defendant.

Therefore prejudice is presume in this
case at hand because this adversarial
attorney, Public Defense Harry Dohn
Williams Jr. errors at trial cause a break
down in the adversarial system and thus
justify invocation of the CRONIC PICTUM.

See Swanson, 943 F. 2d at 1074 (holding
that knowingly and explicitly conceding
reasonable doubt in closing argument is
per se prejudicial. See also Osborn, 861
F. 2d at 1628-29 finding per se prejudice.

Petitioner Rosa asserts that defense counsel
knowingly and explicitly conceded reasonable
doubt when he presented evidence to the
jury alleging that the voice on the alleged
recording conversations was his clients own
voice and that he had no objection as to
authenticity, defense counsel use the
alleged recording conversation to stress the
defendant involvement into the cause of
death of the victim as a principal which
vitiated the conviction, and finding is
per se prejudice, when counsel intentionally
presented material fact of ~~guilt~~ to the jury

Reason for Granting Petition Continued
adversarial to the defendant, no matter what the facts of a given case may be, this sort of conduct will almost always result in prejudice. See *Cronic*, 466 U.S. at 658-104 S. Ct. at 2046-47.

Petitioner Rosa asserts that this evidence of defense counsel's allegation that he informed the client that he recognized the voice to be hers was unknown to her at the time of the jury trial and all previous timely filed motions. *Jones v. State*, 709 So. 2d 512 (Fla. 1998) To the extent that defendant filed good cause motion to discharge this adversarial defense counsel prior to trial and to appoint conflict free counsel, asserting that defense counsel was trying to coerce her into making incriminating admission that she is the female voice in the alleged taped recording conversations, even though defense counsel made statement to her that he knew that the voice on the recording conversation is not her, but it sound good, because it did not say that she did it, it said that Dutch did it.

In addition, defense counsel made statement to the defendant that he could not tell a jury in America that has a Jamaican, the defendant was innocent of murder, because every American citizen included the jury, trial judge, the state attorney, the detective and himself is all American citizens who believe that Jamaicans are known drug slingers and murderers.

Reason for Granting Petition continued

See hearing on motion denied by the trial judge on October 19, 2006 prior to trial, at this hearing, defense counsel had the opportunity to inform the defendant and the trial court that he is alleging to "recognize" the voice on the recording conversation as the defendant and that his belief that he recognized the alleged voice as the defendant would have adversely affect his presentation of the defense in this case. Further, at the start of the jury trial defendant again seek to review her motion to discharge this adversarial attorney by informed the trial court again that the voice on the recording conversation is not her and she did not have any such conversation, and that he promised her at the hearing on motion to discharge defense counsel on October 19, 2006 that he would get the tapes tested. Defense counsel again had the opportunity to inform the defendant and the court on record that he was claiming to believe that he recognized the voice on the recording conversations to be hers, and that it would adversely affect his presentation of the defendant's defense. Yet he chose to be silent. See trial transcript page 3-6 and 9-10 establish that defendant motion to discharge defense counsel was filed in good faith and the trial court erred ~~and~~ failed to grant defendant motion to discharge this

Reason for Granting Petition Continued adversarial Public defender.

Like wise defendant wrote to the direct appeal counsel and informed her that the voice on the recording conversations that defense counsel presented to the jury allegation against her asserting that it is her own voice discussing what lead up to the death of the victim is not her voice. She did not have the alleged conversation and she need a voice analyst to analize the voice.

Direct appeal public defender responded that she could not add any new evidence such as a voice analyst in the direct appeal. See letter from direct appeal counsel to the defendant dated December 03, 2008.

Based on the foregoing establish good faith showing that newly discovered evidence allegation from defense counsel memorandum to the defendant May 2018 alleging that he told the client that he recognized the voice on the recording conversations to be hers is false allegation in an attempt by defense counsel to prevent the defendant from succeed on her ineffective assistance of counsel claim.

Petitioner asserts that base on the foregoing establish that her motion to discharge this adversarial defense counsel should have been granted because there exist a good faith

Reason for Granting Petition Continued

Showing that she was acting in good faith. See *Wilcox v. State*, 50, 3d

44 F.L.W. D1180 (5th DCA 5/3/2019). The 5th DCA found that the defendant was not acting in bad faith in seeking substitution after jury selection finding that the trial court erred in denying the substitution of counsel and the conviction was reversed.

In denying newly discovered evidence in this instant case, the trial court appointed defendant public defender to represent the defendant on appeal.

The public defender filed adversarial motion to withdraw to the Fourth District Court of Appeal who grant the public defender motion to withdraw, denied defendant appeal on newly discovered evidence and sanction the defendant from filing further pro-se appeal.

Petitioner asserts that there exist in this case a fundamental miscarriage of justice where this particular claim establish that defendant was entirely denied her sixth amendment right to conflict free counsel during her criminal trial proceeding. She was appointed an adversarial counsel and though it is apparent on the record that she saw that she was appointed an adversarial public defender that would adversely affect her fundamental constitutional right to a fair trial.

Reason for Granting Petition Continued
Impartial jury determination and her right to counsel and she took all possible steps to invoke her Fundamental Constitutional right. She was denied that right. Therefore damage to the right of the defendant to an action that result from errors made by the trial court and the adversarial appointed public defender during trial and that is sufficiently substantial to require reversal is apparent on the record. See plain error, where a appellate court is seriously doubtful that without committed errors the result in the case would have been the same, the errors may require a reversal on the grounds of a miscarriage of justice. U.S.C.A. Const. Amend. 5, 6, and 14.

Reason(s) For Granting Petition Continued

3. Defense Counsel failed to challenge the state DNA Analyst Donna Marchese testimony on cross-examination alleging that two speck of the defendant's blood was found on a wall picture found in a hallway in the Victim's Apartment and was submitted to the Broward Crime Lab for DNA testing.

Petitioner asserts that she is entitled to DNA testing of the alleged two specks of blood found on a wall picture in a Hall way at the Victim's Apartment because previous test done by the Broward Sheriff's Office (BSO) DNA Crime Laboratory was inconclusive and subsequent scientific developments in DNA testing techniques likely would produce a definitive result establishing that the defendant is not the person who committed the crime and left the two specks of blood on the wall picture.

Petitioner asserts that she is innocent and the DNA testing requested by this motion will exonerate the defendant of the crime for which the defendant was sentenced, because test result will show that the two speck of blood on the wall picture did not match the defendant, she would be exonerated.

Identification of the defendant is a genuine disputed issue in this case. because the defendant allegedly worked part time for the Victim in this case and also resided in the Hallandale area at or about July 1st to July 4th there is Evidence that could place defendant in contact with the Victim to which both the adversarial defense counsel and the state in-

Reason(s) for Granting Petition Continued

Appropriately use to link the defendant to the murder of the victim.

Petitioner asserts that she is entirely innocent of the murder of her ex-employer and DNA testing result will prove that she is not link to the murder of Mrs. Salzman, because the two speck of blood on the wall picture will not match her, she did not commit the alleged murder and she was not a principal to the alleged murder as defense counsel insinuated to the jury allegation that the defendant was attacked by the victim that resulted in her blood got on the wall picture. defense counsel further became an expert witness in crime scene re-enactment and re-enacted to the jury, how science teaches him that the defendant, his clients blood got on the wall picture.

Petitioner asserts that defense counsel in appropriate adversarial representation of the DNA Evidence violated the conviction because of the technique is widely accepted as scientifically reliable, counsel in appropriate use of the DNA Evidence was a conviction in itself.

Newly Discovered DNA Evidence

Petitioner asserts that Newly Discovered DNA Evidence by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) enhance and substantiate petitioner previous timely filed claim on ineffective assistance of counsel on the DNA Evidence during trial, motions for DNA testing and, previous claims

Reasons for Granting Petition Continued

in past conviction proceeding on DNA Evidence that was previously denied, and therefore, Petitioner is requesting for the interest of Justice for this Court to treat the newly discovered DNA Evidence as new and reliable evidence asserting that there was inappropriate use of the incriminative DNA Evidence during her jury trial proceeding necessary DNA testing as related back to the original pleading where the claim arises out of the same conduct, Transaction, or occurrence as the original. See Flores 35 so. 3d at 147 following relation back over though legal theories of recovery in amended complaints were supplemented and modified).

The fact relied upon to support of the motion is the advice from the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) to the Broward Sheriff's Office Crime Laboratory (BSO) also, notice filed by the state pursuant to rule 3.220(b)(4) conceding that there was inappropriate use of the DNA Evidence during the criminal trial proceeding that Mary Felt under the purview of Brady v. Maryland (1963)

Petitioner asserts that this newly discovered Evidence is material that was not presented at trial to demonstrate her actual innocence that it is more likely than not that the blood on the wall picture do not match the defendant and no reasonable jury acting reasonably would have voted to convict her in light of the new Evidence.

Reason(s) For Granting Petition Continued
quoting the standard provided in Schlup,
in light of the new evidence, no juror, acting
reasonably, would have voted to find the petitioner
guilty beyond a reasonable doubt. Id at 329.

Petitioner^① claim that she actually did not commit
the crime as the state alleged that she committed
the murder and ^② she did not solicit Dutch to
extort payment from the victim as the adversarial
public defender insinuated to the jury allegation
that the victim refused to pay the defendant wages
and that she was attacked by the victim resulted
in the blood on the wall picture and an alleged
Fellow principal killed ~~the~~^{an} victim. See *McChesney*
v. Zant. 499 U.S. 467 (1991).

Petitioner asserts that the alleged wall picture to
be tested last known address is in the custody
of the state attorney of Broward County, see
notice filed by the state at Appendix B.
Said Evidence was originally obtained by detective
David Currie.

The new and reliable Evidence that shows that
the DNA Evidence used in the jury trial proceeding
was inconclusive and was inappropriately used
was found by the American Society of Crime
Laboratory. Evidence that was not presented during
trial Schlup 324. and, Evidence that was arguable
wrongly excluded from the trial and or was un-
available at trial, see *Battle v. Delo*, 64 F.3d
347, 352 (8th Cir. 1995).

Therefore defendant is requesting for this Honorable
Supreme Court of the United States to consider all

Reasons for Granting Retention Continued
the foregoing relevant evidence and as such
evaluation be reviewed with an understanding
that proof beyond a reasonable doubt marks
the legal boundary between guilt and
innocence. Schlup at 328.

Reason(s) for Granting Petition continued

4. New rule of Law - The Fundamental Constitutional right asserted was not established within the two-year period of limitations and has been held to apply retroactive.

Cumulative Impact

As a preliminary matter, in *Walls v. State*, 41 Fla. L. Weekly S466 Fla October 20, 2016 the Supreme Court's decision in *Hall* is retroactive. Therefore, *Hall* is applicable to Rosa. Accordingly, at issue in these cases is whether the Circuit Court should have granted Rosa an Evidentiary hearing on her Intellectual disability claim base upon the holding in *Hall* that where a defendant's IQ score is 75 or below after taking into account the SEM, he must be afforded the opportunity to present evidence of Intellectual disability including deficits in adaptive functioning over her life time, 134 S.C.T. at 7001.

See also *Oats v. State*, 181 So. 3d 457, 467-68 (Fla. 2015) (noting that pursuant to *Hall*, courts must consider all three prongs in determining an intellectual disability as opposed to relying on just one factor as dispositive, because these factors are interdependent, if one of the prongs is relatively less strong, a finding of intellectual disability may still be warranted base on the strength of other prongs').

At Intake in the Department of Correction Rosa obtained a range of full-scale IQ score from qualifying Test Score of 72. See Appendix Test score conducted by the North Broward Bureau Mental Health Facility Jail (NBB) was not requested by defense counsel and on the trial Court.

It is not disputed that during her initial Post Conviction proceeding and trial proceeding that defendant IQ score was above cherry cut off of 70, a fact that might

Reason(s) For Granting Petition Continued

prevent the defendant from present this claim in previous timely filed Direct Appeal and Post Conviction proceedings.

Petitioner asserts that the significantly subaverage general intellectual functioning and deficits in adaptive behavior manifested before the age of eighteen where in, she was diagnose has mental retarded since the age of three.

However, in her initial timely filed motion for Post Conviction, Petitioner claim that defense counsel was ineffective when he informed the jury that she was Schizophrenic.

It appears that defense counsel limit his presentation on the Evidence of defendant intellectual disability due to the fact that none of her scores on the approved Tests was 70 or below.

Counsel for Petitioner Rosa articulated the belief that reaching the second and third prongs of intellectual disability would be futile because of Cherry. see Cherry, 959 So. 2d at 713-14.

Petitioner asserts that she did not offer as complete a presentation on intellectual disability as she might have under the standard articulated in Hall in her previous timely filed motions, because her IQ Test Score was 72 which is above the test score of 70 cut off under the standard articulated in Cherry. Therefore Petitioner did not receive the 'holistic' Evaluation of her claim in previous timely filed motion as she is now entitled to under Hall. Requiring an Evidentiary hearing to afford Rosa a full opportunity to present

Reason(s) for Granting Petition Continued
Evidence in support of her intellectual disability claims.

Actual Innocence

Petitioner asserts that; she was incompetent to stand trial due to hospitalization and treatment for the mental illness of intellectual disability at the time of her jury trial and, therefore she could not knowingly, voluntarily and or intelligently aid in her defense during trial.

She was transfer from the North Broward ^{cor} Sheriff's Jail to the North Broward Bureau Facility Jail for the mental incompetent for the purpose of hospitalization and treatment due to intellectual disability at the time of jury trial and there was no report issued to the trial court by the Administrator of the Facility to asserts that the defendant was competent to proceed to jury trial.

base on the foregoing established that conviction was obtain in violation of Rule 3.212 Competence to Proceed; Hearing and Disposition.

Therefore 'Manifest injustice occurred during the jury trial proceeding because felony murder theory presented to the jury as defense by defense counsel was involuntary plea.' Blackburn, 646 F.2d at 891. Thus, any time that the newly discovered evidence has a significant impact on the voluntariness of the plea, it should be alleged that withdrawal of the plea is necessary to correct the manifest injustice.

Defense counsel felony murder theory to the jury constitute the kind of guilty plea that gave the defendant the worst of all worlds, an admission of guilt plus the devastating evidence put on by both defense counsel and the State

Reason(s) for Granting Petition Continued.

prosecutor in a multiple prosecution trial in violation of the single homicide rule and double jeopardy and, Section 474.01 Florida principal law chapter 37-310 Laws of Florida. Such presentation by defense counsel alone was more prejudicial than a formal guilty plea entered, because at least a formal plea the trial court would have conducted a plea colloquy to ensure that the Guilty plea was knowingly and voluntarily entered, but because this kind of Guilty plea was entered by defense counsel alone to which the court now finds such assault trial to be a Strategic Decision entered by defense counsel result in a manifest injustice because Felony murder defense constitute a Guilty plea an alternative disjunctive denial of the First degree murder disjunctive allegations that charge the defendant with both Felony murder and premeditated murder.

because defendant was committed in a mental facility for the purpose of hospitalization and treatment at the time of her jury trial, defense counsel defense allegation of Felony murder against defendant constitute a Waiver of her not guilty plea without her knowingly voluntarily consent due to hospitalization and treatment in a mental facility that did not declare her competent to proceed to jury trial.

Wherefore Petitioner is requesting Evidentiary hearing on her claim of Intellectual Disability in according to Supreme Court rule retroactive in Hall. See Walls v. State October 20, 2016.

Petitioner filed this claim in a timely filed newly discovered Evidence motion in the trial court August 03, 2017 in the two years exception to which the claim could be discovered.

Cumulative Impact of defense counsel's deficiency
prejudice the defendant during trial
Reasons for Granting Petition Continued

5. Petitioner asserts that all claims in this petition is intertwined base on the fact that all claims has a significant impact on the Voluntariness of the plea. due process required a defendant to be competent to proceed to jury trial in a criminal trial proceeding and newly discovered evidence base on the standard in Hall on defendant claim of intellectual disability requires a Evidentiary hearing for the defendant to present evidence to prove her claim of intellectual disability.

2. It is Apparent on the record that defendant conviction is based on newly discovered evidence case NO: 05-014414 CF10A, charge Description 1. murder in the first degree 2. Solicit to commit Armed Robbery (Solicitation) because even though she was tried in a multiple prosecution case the evidence presented to the jury by the state shows case NO: 05-014414 CF10A, charge Description murder Dangerous Depraved w/o Premeditation that could only result in a conviction without premeditated murder and a second degree murder conviction for a number of years not exceeding life. Therefore base on the newly discovered evidence establish that conviction of First degree Premeditated murder shows Felony murder allegation presented to the jury by defense counsel alleging that defendant was a principal and, that the murder was allegedly committed by a fellow principal. Such theory constitute First Degree Premeditated murder under Section 777.011 chapter 57-310 Laws of Florida. A Guilty Plea of the crime that was convicted, and coupled with the fact that newly discovered evidence

Reason(s) for Granting Relitigation Continued

Case No: 05-014414 CF10A presented to the jury by defense counsel and, case No: 05-014414 CF10A that shows Evidence presented to the jury by ~~def~~^{the State} superseded the Indictment case No: 04-010827 CF10A to which defendant was sentenced and there is no clear indication that the felony murder allegation was presented, also the fact that; at the time of the jury trial case No: 05-014414 CF10A to which shows that defense counsel's allegations against defendant was base was not the prosequi by the State at the time of the jury trial. Therefore only one of those three theories individual can provide the basis for the jury's verdict and is felony murder theory presented by the defense counsel, which ~~had~~^{was} not knowingly and voluntarily entered by defendant ~~counsel~~ and thus constitute a Guilty Plea entered by defense counsel alone result in a manifest injustice. See Newly Discovered Evidence case No: 05-014414 CF10A at Appendix I

3. Likewise, defense counsel exceed the scope of his authority as a defense counsel when he became a expert witness in voice authentication against the defendant, alleging that he recognized the voice on recording conversation to be that of the defendant and the use that he put the recording conversations to during trial was inappropriate and vitiated the conviction. This newly discovered evidence mailed to the defendant may 2018 has a significant impact on the Voluntariness of the plea establish that manifest injustice occurs.

4. In Addition, Defense counsel inappropriate use of inconclusive DNA Evidence was a conviction in itself due to the Scientific reliability of the technique

Reason(s) for Granting Petition Continued

establish that defense counsel presentation of DNA constitute a Guilty Plea in itself and prejudice is presume.

base on the foregoing establish that; the cumulative impact of a defense attorney's deficiencies at trial prejudice the defendant and thus deprive her of her 6th Amendment right to effective assistance of counsel. Harris by and through Ramseyer v. Wood, 64 F.3d 1432 (9th Cir. 1995); see also Mak. v. Blodgett, 970 F.2d 614 (9th Cir. 1992) ("... Significant errors occurred that, considered cumulatively compel affirmance of the district court's grant of habeas corpus as to the sentence of death.") see also Cooper v. Fitzsimmons, 586 F.2d 1325 (9th Cir. 1972) "prejudice may result from cumulative impact of multiple deficiencies." This is even so where no single error of omission of the counsel standing alone, significantly impairs the defense. Ewing v. Williams 596 F.2d 391 (9th Cir. 1979).

Wherefore the defendant Prays that this Honorable Court will grant a writ of habeas corpus where the newly discovered Evidence has a significant impact on the Voluntariness of the Plea resulted in a manifest injustice and fundamental miscarriage of justice is apparent on the record.

Petitioner has established in the foregoing newly discovered Evidence a substantial showing of the denial of the 6th Amendment right to counsel during her criminal trial proceeding. in that counsel is per se ineffective and should be deemed unconstitutional.

In Addition counsel cannot claim a reasonable trial strategy

Reason (3) for Granting Petition continued

For his Lack of knowledge and understanding of the Florida principal Law chapter 57.310 Laws of Florida that makes all principal Equally culpable (2) his Inappropriate use of DNA Evidence (3) To Exceed his Authority as a defense counsel in the Authentication of Evidence admissible to his client where the Evidence was material and only the state could have benefited.

Petitioner asserts that the foregoing newly discovered Evidence was not filed in previous timely filed Petition(s) and where they was filed was not properly Exhausted, now that the newly discovered Evidence that is material is now properly Exhausted, she should be given the opportunity to properly litigate her newly discovered Evidence claim(s) in the Appropriate Review Court(s).

Base on the standard set out in *Sones*, the Post conviction Court must consider the effect of the newly discovered evidence, in addition to all of the admissible evidence that could be introduced at trial. *Swafford v. State*, 125 So.2d 760, 775-76 (Fla. 2013).

In determining the impact of the newly discovered evidence, the Court must conduct a cumulative analysis of all the evidence so that there is a "total picture" of the case and all the circumstances of the case. *Id.* at 776 (quoting *Lightbourne v. State*, 742 So.2d 238, 247 (Fla. 1999)). As the Court held in *Lightbourne*, and more recently in *Swafford*, a post conviction Court must even consider testimony that was previously excluded as procedurally barred or presented in another post conviction proceeding in determining if there is a probability of an acquittal. *Swafford*, 125 So. 3d at 775-76 *Lightbourne*, 742 So. 2d at 247. See also *Robertson v. State*, 840 So.2d 962,

Reason for granting Petition continued

972 (Fla. 2002) (holding that upon remand, if the Trial Court determined that the testimony in a newly discovered evidence claim was reliable, the Trial Court was required to review that new evidence as well as claim under Brady v. Maryland (1963))

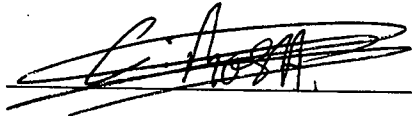
Wherefore Petitioner is requesting that the Honorable Supreme Court of the United States will find that the lower court improperly denied newly discovered evidence and Extraordinary writ of habeas corpus is necessary in the grant of habeas corpus where the violation of Petitioner's Sixth Amendment right to Counsel is apparent on the record.

CONCLUSION

Under the relaxed Back Standard, both the 11th circuit and the district court improperly deny newly discovered evidence from previous habeas petitions, not properly Exhaust and timely filed to enhance and substantiate previous claims and prove petitioner claim of violation of Sixth and Fourteenth Amendment.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 12-10-19