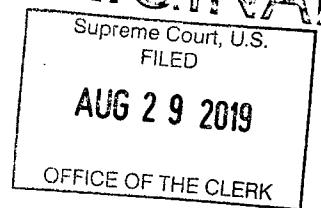


No. 19-7558

ORIGINAL



IN THE  
SUPREME COURT OF THE UNITED STATES

FREDDIE LEE WILSON - PETITIONER

vs.

STATE OF FLORIDA - RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE 11<sup>TH</sup> CIRCUIT  
PETITION FOR WRIT OF CERTIORARI

FREDDIE LEE WILSON DC# B01930  
CALHOUN CORRECTIONAL INSTITUTION  
19562 S.E. INSTITUTION DRIVE  
BLOUNTSTOWN, FLORIDA 32424

## **QUESTION(S) PRESENTED**

- 1) Is it the United States Supreme Courts duty to ensure that all United States citizens constitutionally provided rights are upheld when they are previously denied as a result of the unconstitutional performance of their defense counsel?
- 2) As envisioned by the United States Constitution Amendment Six (6), is it deemed constitutionally efficient for criminal defense counsels to not obtain a medical examiner to research evidence on behalf of defense, even more so in homicide cases whose analysis is of varying opinion?
- 3) As envisioned by the United States Constitution Amendment Six (6), is it deemed constitutionally efficient for criminal defense counsels to omit defenses from the accused, resulting in no defense at all for their client?

## **LIST OF PARTIES**

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

## **TABLE OF CONTENTS**

	<b><u>PAGE NO.:</u></b>
QUESTIONS PRESENTED.....	i
LIST OF PARTIES.....	ii
TABLE OF CONTENTS .....	iii
INDEX TO APPENDICES .....	iv
TABLE OF CITATIONS .....	v. vi
OPINIONS BELOW .....	1
JURISDICTION .....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	2
STATEMENT OF CASE .....	3
REASONS FOR GRANTING THE PETITION.....	4
CONCLUSION .....	23
PROOF OF SERVICE .....	27

## **INDEX TO APPENDICES**

**Appendix A..... Transcripts of Sentencing Proceedings**

**Appendix B..... Copy of Judgment**

**Appendix C..... Copy of Sentence**

**Appendix D..... Opinion of the United States District Court**

**Appendix E..... United States Court of Appeals Order Denying  
Rehearing**

**Appendix F**

**(Exhibit A)..... Miami-Dade M.E. Report (autopsy findings)**

**Appendix G**

**(Exhibit B)..... Depositions of Dr. Emma Lew (pg. 97)**

**Appendix H**

**(Exhibit C)..... Depositions of Dr. Emma Lew (pg. 98)**

**Appendix I**

**(Exhibit D)..... Depositions of Dr. Emma Lew, dated 9/8/14**

**Appendix J**

**(Exhibit E)..... Sentencing Transcripts, dated 10/29/2014**

## TABLE OF CITATIONS

## PAGE NO.:

<i>Adams v. United States, ex rel McCann,</i> 317 U.S. 269, 63 S. Ct. 236, 87 L. ED. 268 (1942) .....	13
<i>Bauder v. D.O.C. State of Florida,</i> 619 F. 3d 1272 (11 <sup>th</sup> Cir. 2010).....	22
<i>Britz v. Cowan,</i> 192 F. 3d 1101, 1103 (7 <sup>th</sup> Cir. 1999) .....	19
<i>Chandler v. United States,</i> 218 F. 3d 1305 (11 <sup>th</sup> Cir. 2000).....	25
<i>Douglas v. State,</i> 652 So. 2d 887, Fla. App. 4 <sup>th</sup> DCS (1995).....	21
<i>Hill v. Lockhart,</i> 474 U.S. 52, 106 S. Ct. 366, 88 L. ed. 203 (1985).....	22
<i>Hubert,</i> 138 Was. App. 924, 158 P. 3d 1282, 1285 (2007) .....	17
<i>Jones v. Delo,</i> 56 F. 3d 878, 883 (8 <sup>th</sup> Cir. 1995).....	7
<i>Murray v. State,</i> App. 4 dist. 328 So. 2d 501 .....	8
<i>Panchu v. State,</i> 1 So. 3d 1234 (Fla. 4 <sup>th</sup> DCA 2009) .....	17
<i>Sandstorm v. Montana,</i> 442 U.S. 510, 520, 99 S. Ct. 2450, 61 L. Ed. 2d 39 (1979) .....	21
<i>States v. Cronic,</i> 466 U.S. 648, 80 L. Ed. 257 (1984).....	19

<i>Strickland v. Washington</i> , 693 F. 2d at 262, 103 S. Ct. 2451 (1983).....	19
<i>Vasquez v. Bradshaw</i> , (2009) 345 Fed. Appx. 104.....	15

IN THE  
**SUPREME COURT OF THE UNITED STATES**  
**PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

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

reported at Unknown; 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 April 23<sup>rd</sup> 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: June 18<sup>th</sup> 2019, and a copy of the order denying rehearing appears at Appendix E.

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

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

United States Constitution Amendment Five (5)

United States Constitution Amendment Six (6)

United States Constitution Amendment Fourteen (14)

## **STATEMENT OF THE CASE**

1. On June 24, 2010 the Petitioner was charged with Second Degree Murder in Miami-Dade County, Circuit Court case number F10-018682.
2. Petitioner was represented by Ms. Julia Seifer-Smith, Assistant Public Defender from the Eleventh Judicial Circuit.
3. On October 28, 2014 during a meeting between defense counsel and the Petitioner, counsel confessed that she knew of defenses to the charge. Wilson inquired about what these defenses were, but counsel still chose to omit them, which is contrary to established Federal law of United States Constitutions Amendments 5, 6, and 14.
4. On October 29, 2014 pursuant to a plea agreement, Wilson pleaded guilty to Second Degree Murder. The Circuit Court of Miami-Dade County, Honorable Fleur J. Lobree, accepted the guilty plea and sentenced Wilson to 35 years.
5. Petitioner filed for a belated appeal, and it was granted on May 27, 2015.
6. A direct appeal was denied on December 10, 2015.
7. Petitioner filed for post conviction relief 3.850 on February 22, 2016.
8. Motion for post conviction relief 3.850 was denied May 17, 2016.
9. Filed Federal Habeas Petition on November 10, 2016.

## REASONS FOR GRANTING THE PETITION

Wilson comes before this Court for the sole purpose of seeking an opportunity to prove that he is not guilty of Second Degree Murder, but instead the charge of Manslaughter. This case is based on the tragic end to a once loving, fruitful marriage that evolved into a volatile marriage, doomed by drug abuse, neglect, and resulting violence. There was no malice involved in this case, only a passion that escalated into an unimaginable tragic accident that was the result of multiple violations against the vows that Wilson and Vanessa (The Victim) swore to on the day of their marriage.

Within this Petition, Wilson will explain clearly the numerous violations of the United states Constitution committed by his defense counsel. Promises were made to Wilson from counsel that she would obtain another medical examiner to seek a possible alternate analysis for the purpose of having a expert's credibility to support a defense that the homicide was Manslaughter, not Second Degree Murder. Also within this Petition it's explained that defense counsel confesses to omitting defenses from Wilson and did not present any defenses to Wilson's charge that would have reduced the charge to manslaughter. In particular the "Heat of passion" defense. In totality Ms. Julia Seifer-Smith's representation of Wilson was deficient and her performance prejudiced any possible defense for Wilson's

charge. The foregoing arguments will detail the numerous violations of the United States Constitution Amendments 5, 6, and 14 committed by Ms. Julia Seifer-Smith.

### **GROUND ONE**

#### **COUNSEL WAS INEFFECTIVE WHERE COUNSEL DID NOT OBTAIN THE ANALYSIS OF A 2<sup>nd</sup> MEDICAL EXAMINER**

When defense counsel, Ms. Julia Seifer-Smith, and I had our initial meeting we discussed the case and its evidence. I explained to counsel that the victim and I were together for close to 3 years, with 2 of those years being husband and wife. At the time of this tragedy we shared a 20 month old daughter as well, her name is Tiana, but unfortunately 3 months before the tragedy she was placed in custody of the Department of Children and Families (D.C.F.) due to our unstable relationship was strained and sometimes volatile. Our issues stemmed from Vanessa's (my wife) drug abuse. She would steal money and leave me and our daughter and go on drug binges. She would be gone anywhere from a few days to a couple weeks. The strain was very hard on me, being thrust at any given moment into being a single parent of my infant daughter. Even more so, it was virtually impossible to keep steady employment with my wife gone at times and having to care for our infant daughter. When my wife would return home we would argue, and sometimes we would fight. I went to jail twice behind these repeated incidents, not including that tragic evening that got me this case.

About 2 weeks before the tragedy occurred my wife went on another drug binge. Vanessa called me 2 days after she left and told me she had been kidnapped and didn't know where she was, soon after that our call was suddenly cut off. I went directly to Broward Sheriff's Office (B.S.O.) and reported this to them. They said they would look into it. A week or so passed and I had gotten no luck from B.S.O.'s investigations. Then out of the blue I get a call from Vanessa, and she's frantic, speaking fast, and telling me where to come get her. After I picked her up I went directly to B.S.O.'s office. B.S.O.'s office was closed, so I then went to Fort Lauderdale Police Department (F.L.P.D.), we went in and I explained the entire situation to them. After they listened, they separated us and questioned us. The conclusion was that my side of the story checked out, but hers didn't. My wife was yet again on another drug binge, and she made up that lie to tell me because at that time we were trying to get ourselves together so we could get our daughter back from D.C.F. I was disappointed in her, upset, and hurt to say the least. But I loved her, and I believe that she loved me too, but her drug addiction was too powerful for us to conquer.

About a week or so later the tragedy occurred that got me this case, and Vanessa's passing. Everything that I have explained can be proven by B.S.O., F.L.P.D., and D.C.F. records in 2009 and 2010. I continued to explain at our initial meeting why I believed I was mischarged with 2<sup>nd</sup> Degree Murder and should have

been charged with Manslaughter. I explained to counsel that this incident was a mistake and an unimaginable tragedy. I further explained that after our physical altercation my wife took a shower and continued on living for at least an hour after the incident. I also explained to Ms. Seifer-Smith my belief that the death occurred from some kind of internal damage or some pre-existing health condition that was exacerbated from the fight.

After Ms. Seifer-Smith took this in she responded by saying "I'm going to get a 2<sup>nd</sup> medical examiner to investigate the cause of your wife's death to help determine if you were wrongly charged with Murder 2 instead of Manslaughter." Counsel continued on and told me "a second opinion is necessary to compel the State to lower the charge from 2<sup>nd</sup> Degree Murder to Manslaughter." I gave counsel my approval of that plan. After that meeting concluded I relied on the 2<sup>nd</sup> medical examiners findings so I could have an experts credibility to either compel the State to lower the charge to Manslaughter, or at the very least have a M.E.'s analysis that would support a defense that would prove that the homicide was a result of culpable negligence, which would also constitute the lesser charge of Manslaughter.

Manslaughter can be committed in one of three ways, by act, by procurement, or by culpable negligence. Jones v. Dello, 56 F.3d 878, 883 (8<sup>th</sup> Cir. 1995), "Although a prototypical example of actual innocence is the case where the

State has convicted the wrong person of the crime, one is actually innocent if the State has the right person but he is not guilty of the crime with which he is charged." Ms. Julia Seifer-Smith was my defense counsel for over 3 years, and in all that time a 2<sup>nd</sup> medical examiner was never obtained on my behalf.

United States Amendment VI states that one of the rights of the accused is to "have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense." Defense counsel failed to investigate and/or present a medical examiner as a expert witness. The original M.E., Dr. Jennifer Park D.O., based on the autopsy protocol lists the cause of death as being a result of blunt force injuries. (See, Exhibit A). These injuries resulted in fractured ribs and lacerations on the liver. Which in all probability means my wife's death was due to internal bleeding or difficulty breathing. Murray v. State, App. 4 Dist. 328 So.2d 501, "Felony of Manslaughter by culpable negligence contemplates personal injury resulting in death."

Also based on the deposition of Dr. Emma Lew, the substitute medical examiner, the transcripts clearly demonstrates different M.E.'s making different evaluations. (See, Exhibit B and C). The substitute M.E. was being deposed by Lisa Jacobs (prosecutor), and Julia Seifer-Smith (defense counsel) as to her opinions of Dr. Jennifer Park's autopsy examinations, the original M.E., Ms. Seifer-Smith asks:

**Q:** "Is that something you would have noted in the report that you did of this autopsy?"

Dr. Lew answers:

**A:** "If I did, I would have noted the other additional areas of discoloration on the left side of the abdomen."

**Q:** "Why is that?"

**A:** "Because there are multiple areas of discoloration."

Wilson asserts that this exchange is evidence of a more thorough analysis.

The deposition continued, and defense counsel Ms. Seifer-Smith asks:

**Q:** "Why do you think it was that Dr. Park omitted those from her report?"

**A:** "I am just looking at the photographs, she saw it in person, so it may have looked different to her."

Wilson asserts that this last exchange between defense counsel and Dr. Lew is crystal clear evidence of the importance and relevance for Ms. Julia Seifer-Smith to obtain a 2<sup>nd</sup> M.E. on behalf of defense. Yet in over 3 years of being defense counsel she never obtained one. Despite her own realization during this deposition concerning the differences between examinations of one M.E. compared to another. Ms. Seifer-Smith asked:

**Q:** "Why do you think it was that Dr. Park omitted those from her report?"

For defense counsel to even have to ask that question is a "very loud alarm" as to the importance of obtaining your own M.E. on behalf of defense. As well as

giving your word to Wilson that you would obtain a 2<sup>nd</sup> M.E.'s analysis for defense previously anyway. Defense counsel was ineffective under U.S.C. Amendment VI by failing to consult an expert, in this instance an M.E., had counsel done so, she might have been able to present a case that the homicide in question was in fact Manslaughter and not 2<sup>nd</sup> Degree Murder, and the testimony of that expert may have been admissible, even if it was based on assumptions. Wilson asks, as should this Court, "What else was omitted by Dr. Jennifer Park D.O. during her autopsy examinations?" Wilson asserts that if the medical examiners analysis contains omissions, then her entire report is unreliable, and when this fact was realized by defense counsel, she should have moved to have the evidence removed and or stricken from this case. Counsel was ineffective for failing to consult with or even call a medical expert, or even challenge medical evidence because if counsel had conducted such investigations, she would have discovered that a qualified M.E. could be found who would testify that prosecutions physical evidence was not indicative of 2<sup>nd</sup> Degree Murder, counsel thus could have presented strong affirmative case that the charged crime was incorrect and the homicide should have been deemed Manslaughter; counsels decision to simply concede medical evidence without any investigation into whether it could be challenged was objectively unreasonable.

Fundamental fairness is violated when a criminal defendant is denied the opportunity to have an expert of his choosing to examine critical evidence whose nature is subject to varying opinion; "critical evidence" is material evidence of substantial probative force that could induce reasonable doubt in the minds of enough jurors to avoid conviction. In *Cronic*, however the court opined that there are some circumstances where the absence, actions or inactions of counsel compromise the very reliability of the trial process. In such circumstances prejudice to the applicant is presumed because the defendant's 6<sup>th</sup> Amendment right to counsel is actually or constructively denied.

Wilson also points to the date of the deposition of Dr. Emma Lew which was on 9/8/2014, and the date Wilson unintelligently and involuntarily signed the plea on 10/29/2014, (See, Exhibit D and E) and shows that defense counsel had 51 days after the deposition where counsel realized that, 1) different M.E.'s can likely have different analysis to support a defense, and 2) the original M.E. who did the examinations omitted information in her report, which even more so should have compelled defense counsel to obtain a 2<sup>nd</sup> M.E.'s analysis. Yet counsel refused to do so, even after initially conferring with Wilson and telling him she would. This is clear evidence of a deficient representation by Ms. Julia Seifer-Smith, which prejudiced Wilson's defense. Defense counsel's representation constitutes failure to exercise customary skill and diligence that a reasonably competent attorney

would perform under similar circumstances. Wilson asserts that counsels performance concerning obtaining a 2<sup>nd</sup> medical examiner was nonexistent, despite defense counsels word, and the evidence presented within this ground. There was no effective assistance of counsel as envisioned by the 6<sup>th</sup> Amendment. Ms. Seifer-Smith's representation was clearly a violation of established Federal law. Wilson seeks for Ground One to be granted.

## **GROUND TWO**

### **COUNSEL WAS INEFFECTIVE WHEN COUNSEL CHOSE TO OMIT POSSIBLE DEFENSES TO THE DEFENDANT, WHICH RENDERED DEFENDANT'S PLEA UNINTELLIGENT AND INVOLUNTARY**

Ms. Julia Seifer-Smith was Wilson's counsel for over 3 years. During that time Wilson explained repeatedly to counsel the circumstances of the case, including back ground information and Wilson's claim of being not guilty of 2<sup>nd</sup> Degree Murder, as explained in the beginning of Ground One. On October 28, 2014, the day before unknowingly Wilson would sign the plea, defense counsel came to see him for the last time. During that meeting Ms. Julia Seifer-Smith stated to Wilson that she "knew of defenses to his charge." Wilson was shocked by counsels revelation because up to that point counsel had never made the Defendant aware of any defense she intended using on his behalf.

Wilson asked counsel what those defenses were, but counsel refused to tell him. Wilson insistently repeated his question to counsel and Ms. Seifer-Smith

answered that she wasn't sure if those defenses would work. Wilson again asked counsel what were the defenses names? Tell me about the defenses. Ms. Julia Seifer-Smith refused to speak about it anymore, and continued to omit those defenses. Wilson asserts that the duties of counsel to defendant's in order to constitute reasonably competent assistance are to confer with their client as often as necessary to ascertain potential defenses and discuss fully potential strategies and tactical choices. In Strickland, we explained that "Access to counsel's skill and knowledge is necessary to accord defendants ample opportunity to meet the case of the prosecution," to which they are entitled, 466 U.S. at 685, 104 S.Ct. at 2063. Also quoting Adams v. United States, ex rel McCann, 317 U.S. 269, 275, 276, 63 S.Ct. 236, 240, 87 L.Ed 268 (1942) "Counsel has a duty to bear such skill and knowledge as will render the trial a reliable adversarial testing process."

Wilson points to already documented evidence of counsel's familiarity concerning omissions (See, Exhibit B and C). In Ground One during the deposition of Dr. Emma Lew M.E., the substitute for the original M.E., Dr. Jennifer Park D.O. defense asked Dr. Lew, "Why do you think it was, that Doctor Park omitted those from her report?" Defense counsel asked Dr. Lew this question because of with held information from the original medical examiners analysis that the substitute M.E. revealed.

Criminal cases stand on truth, facts, and evidence, all three of those are obtained through information. Information obtained from a government or public official is held at a higher standard than those of private citizens. Including police, judges, lawyers and medical examiners. As documented in Ground One, Dr. Jennifer Park omitted information from her analysis, and defense counsel asks Dr. Emma Lew why would Dr. Park omit information. Yet not even 2 months later after counsel questioned the medical examiner's omission, she omits defenses from Wilson, and continues to omit them when Wilson pleads with counsel to reveal them.

The 6<sup>th</sup> Amendment provision guaranteeing accused right to assistance of counsel for his defense is made obligatory upon states by the 14<sup>th</sup> Amendment. By defense counsel omitting defenses from the Petitioner, and continuing to omit defenses after Wilson asked her to tell him of the defenses, is a blatant disregard of her duties as an attorney, and in itself is ineffective assistance of counsel, deemed by the 6<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution. "Omission to perform duty" indicates that the duty is an affirmative one, that is duty to act positively, rather than a passive duty of refraining to act. These omissions are material in that reasonable counsel would have informed her client of possible defenses.

Defense counsel omission of defenses clearly prejudiced Wilson's defense possibilities to the extent of nonexistence. As a result of Ms. Julia Seifer-Smith omission the Petitioner was deprived of his liberty without due process of law so as to violate the provisions of the 14<sup>th</sup> Amendment of the United States Constitution. Wilson seeks for Ground Two to be granted.

### **GROUND THREE**

#### **COUNSEL WAS INEFFECTIVE WHEN COUNSEL NEVER REVEALED ANY DEFENSE, WHICH RENDERED THE DEFENDANTS PLEA UNINTELLIGENT AND INVOLUNTARY**

Defense counsel, Ms. Julia Seifer-Smith in over 3 years of representing Wilson never revealed any defense on his behalf. Wilson and counsel discussed this case in detail from their initial meeting, as documented in Ground One. Yet defense counsel revealed no defense at all. Wilson points to the transcripts and the record as a whole, as evidence that there was no defense presented or even mentioned before the court. "Sixth Amendment guarantees minimally effective representation because adversarial testing of states case, cornerstone of the criminal justice system is very difficult without counsel; Attorney has skills and knowledge beyond ken of average criminal defendant; she should be expected to put together best challenge to prosecutions proof this is true even if she must use info gleaned from discovery and investigation instead of defendants mouth."

*Vasquez v. Bradshaw*, (2009) 345 Fed. Appx. 104.

Over the course of Ms. Julia Seifer-Smiths representations of Wilson for over three years. This is the summary of counsels performance. In ground one its documented that 1) counsel stated to Wilson that she would retain a second examiner to investigate the homicide for the purpose of potentially getting Wilson's charge reduced to Manslaughter. Defense counsel did not obtain an M.E. on behalf of the defense. 2) It was revealed to defense counsel that the original M.E. Dr. Jennifer Park omitted certain information in her autopsy protocol. (See, Exhibit B and C). After this revelation defense counsel continued to not obtain another M.E. on behalf of defense. There was not another medical examiner retained on behalf of defense by counsel throughout the entirety of this case. 3) As documented in Ground Two, defense counsel tells Wilson that she knows of defenses to his charge but refused to reveal them. 4) After Wilson asks counsel what are these defenses, counsel refused to comply and continued to omit this information that was vital to Wilson's case. Also there was a suppression motion that defense counsel was to bring before the court on 10/29/2014, the day Wilson unintelligently and involuntarily signed the plea. But before the motion could be presented this is what defense counsel told Wilson. 5) "If we go forward with this motion the State will take the plea off the table, and we will have to go to trial, and I don't believe the judge will grant this suppression motion." The plea was 35 years.

As documented throughout this entire brief counsel never revealed any defense strategy throughout her representation. Ms. Julia Seifer-Smith had never even mentioned any potential defenses period. Wilson asks, as this is true, how could he have gone to trial literally defenseless? The maximum sentence for 2<sup>nd</sup> Degree Murder is life if a defendant loses trial, meaning Wilson's hand was forced to sign the plea. There was no other reasonable option without any defense strategy. Wilson asserts that after counsels lies about her investigations, and omissions of potential defenses, as well as her statement that "if we go forward with this motion the State will take the plea off the table, and we will have to go to trial, and I don't believe the judge will grant this suppression motion." What viable options did Wilson truly have? Because of these facts, Wilson was literally in fear of going forward with the suppression motion, and having it denied, as Ms. Seifer-Smith believed it would, and be forced to go to trial defenseless.

The totality of defense counsel's representation gave Wilson no confidence what so ever in Ms. Seifer-Smith as defense counsel. As a result of her representation Wilson believed out of all things revealed by counsel that his best option was to involuntarily and unintelligently sign the plea out of fear of going to trial defenseless. Panchu v. State, 1 So.3d 1234 (Fla. 4<sup>th</sup> DCA 2009), plea was not voluntary, knowingly, or intelligently entered because she had received no advice or inadequate advice was to available defenses. In re Hubert, 138 Was. App. 924,

158 P.3d 1282, 1285 (2007), holding that counsels failure to discover and advance defense constituted ineffective assistance of counsel. As well as the previously mentioned inactions, there is also the entirety of the case itself including the relationship history of Wilson and Vanessa [victim] as a whole where documented history and retroactive details in itself points to this homicide being a crime of passion.

Crime of passion, more specifically heat of passion, emotional insanity, partial insanity, diminished capacity, all of these defenses are reasonably meritorious defenses to Wilson's charge. Retroactive law makes all of the above defenses potentially viable. Wilson's detailed explanation of the history of the relationship through B.S.O., F.L.P.D. and D.C.F.. At the very least one of the above defenses would have been successful in getting Wilson's charge reduced to Manslaughter.

Wilson argues that counsel had failed to subject prosecution's case to meaningful adversarial testing by not pursuing or investigating any tactical defenses to murder 2 and in actuality submitting to the charge. Wilson asserts that there were numerous strategies counsel should have pursued that are supported by the evidence and the totality of the circumstances. Thus counsel's failure to have any defenses at all prejudiced Wilson by him having no defense strategy, therefore leaving him defenseless to his charge.

There are many mitigating circumstances detailed in the relationship of Wilson and his wife that would have lowered his charge and lessened his sentence. A “mitigating circumstance”, defined broadly as “any aspects of a defendant’s character or record, and any of the circumstances of the offense” that reasonably may serve as a basis for imposing a sentence less than what would otherwise be required by law, maybe statutory or non-statutory in nature. Defense counsel advised her client on whether to go to trial or accept a plea without making any real effort to determine what could be elicited by way of defense, and violated her duty to conduct a factual investigation.

Britz v. Cowan, 192 F.3d 1101, 1103 (7<sup>th</sup> Cir. 1999), rejecting as too narrow the view that an actual innocence claim requires that the Petitioner did not actually kill the victim, explaining “one can kill yet be innocent of murder”, such as where he has a valid defense to the crime as charged. Constitutional right to present defense is rooted in compulsory process and confrontation clause of the 6<sup>th</sup> Amendment and due process clause of the 5<sup>th</sup> Amendment; furthermore, 6<sup>th</sup> Amendment rights to confrontation and to compulsory process are made applicable to state prosecutions through due process clause of the 14<sup>th</sup> Amendment. United States v. Cronic, 466 U.S. 648, 80 L.Ed.2d 657 (1984), cases in which defense counsel “entirely fails to subject the prosecution’s case to meaningful adversarial testing.” Strickland v. Washington, 693 F.2d at 1262, 103 S.Ct. 2451 (1983),

counsels ineffectiveness "resulted in actual and substantial disadvantage to the course of his defense" which this disadvantage determined the outcome of the entire case. Wilson seeks for Ground Three to be granted.

#### **GROUND FOUR**

##### **COUNSEL WAS INEFFECTIVE FOR NOT ARGUING THE DEFENSE THAT THE HOMICIDE WAS COMMITTED IN THE "HEAT OF PASSION"**

As documented in Ground One ever since the initial meeting of Wilson and Ms. Julia Seifer-Smith, counsel has been aware of the turbulent relationship of Wilson and Vanessa (victim). Defense counsel was informed of the relationship issues that support the claims made by Wilson. In support of Wilson's claims are documented circumstances from Broward Sheriff's Office (B.S.O.), Fort Lauderdale Police Department (F.L.P.D.), and Department of Children and Families (D.C.F.). Defense counsel was informed and repeatedly made aware of Wilson's belief that this charged homicide should have been Manslaughter. Yet through over 3 years of representing the Defendant, Ms. Julia Seifer-Smith never revealed any defense on behalf of her client.

As documented in Ground Three, Wilson lists four probable meritorious defenses, heat of passion, emotional insanity, partial insanity and diminished capacity. But defense counsel did not make Wilson aware of any of these defenses. But through research one of these defenses stands out, as it matches the issue of

Wilson and his deceased wife's volatile marriage. This homicide was a crime of passion, more specifically, this homicide was committed in the "heat of passion."

The heat of passion defense is a meritorious one for Wilson's case. Retroactive law will support this defense. Yet defense counsel never pursued it.

When there is evidence to support an affirmative defense is as significant to the fairness and accuracy of a criminal proceeding as is the right to counsel. The law reduces the killing of a person in the heat of passion from Murder to Manslaughter out of recognition of the frailty of human nature, of the temporary suspension or overthrow of the reason or judgment of the Defendant by a sudden access of passion. While acting in the heat of passion premeditation is impossible and the "depravity" which characterizes Murder in the Second Degree is absent.

Defense counsel's failure to investigate the history of Wilson and his wife where there is documented history of couples relationship is in itself ineffective assistance of counsel, where the retroactive circumstances clearly shows that the heat of passion defense would have been valid. Douglas v. State, 652 So.2d 887 Fla. App. 4<sup>th</sup> DCA (1995), "Evidence of past relationship between victim and defendant, which would be relevant to show why defendant went into rage is admissible even if it reflects badly on the character of the victim." Sandstorm v. Montana, 442 U.S. 510, 520, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979). "The due

process clause requires the prosecution to prove beyond a reasonable doubt the absence of the heat of passion when the issue is raised properly.”

Wilson was not aware of the heat of the passion defense before his plea colloquy, he should not be punished for relying on counsel’s representation. If Wilson would have been aware of the heat of passion defense he would not have signed the plea, and would have insisted on going to trial. Wilson did not have an opportunity to either raise a heat of passion defense or express dissatisfaction with defense counsel at his plea colloquy. To take either action would have required Wilson to not only assume that Ms. Seifer-Smith’s representation was incorrect but also to have better knowledge of the applicable law than his own lawyer.

These are unreasonable expectations and imposing them essentially forces a defendant to assume responsibility for the deficient conduct of his own counsel. By counsel not informing Wilson about the heat of passion defense, despite the facts of the case that match the defense, would constitute a performance falling below an objective standard of reasonableness. “Florida courts uniformly recognize heat of passion as a defense that may reduce a charge of 2<sup>nd</sup> Degree Murder to Manslaughter.

Further, the 11<sup>th</sup> Circuit has held that counsel’s affirmative misadvice can constitute a deficient performance,” Bauder v. D.O.C. State of Florida, 619 F.3d 1272 (1th Cir. 2010). Hill v. Lockhart, 474 U.S. 52, 106, S.Ct. 366, 88 L.Ed.2d 203

(1985), "but for counsel's errors the defendant would not have pleaded guilty and would have insisted on going to trial." Wilson seeks for Ground Four to be granted.

### **CONCLUSION**

The United States Constitution states in Amendment 5 – No person shall be deprived of life, liberty, or property, without due process of law. Amendment 6 – In all criminal prosecutions the accused shall enjoy the right to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. Amendment 14 – No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the U.S.; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ms. Julia Seifer-Smith's representation as defense counsel was a clear violation of the standards set by the United States Constitution Amendment 5,6, and 14. The previously documented four grounds lists several violations of the United States Constitution. Here are some of the violations shown within this brief:

- Defense counsel lied to Wilson about obtaining a 2<sup>nd</sup> M.E. on behalf of defense, for the purpose of seeking an alternate analysis to support a defense.

- Defense counsel ignored the realization that the original M.E. Dr. Jennifer Parks omitted details from her autopsy report during the deposition of the substitute M.E. Dr. Emma Lew, and chose not to pursue any further investigations on behalf of defense.
- Defense counsel confessed to knowing defenses to Wilson's charge but did not reveal them.
- Wilson asked defense counsel to reveal those defenses but counsel continued to omit them.
- Defense counsel never revealed any defense, despite knowledge of the case, history of the marriage, and documented evidence from legal authorities, Broward Sheriff's Office, Fort Lauderdale Police Department, and the Department of Children and Families.
- Defense counsel never revealed or pursued the meritorious defense of "heat of passion", despite knowledge of the case, history of the marriage, and documented evidence from legal authorities, Broward Sheriff's Office, Fort Lauderdale Police Department, and the Department of Children and Families.

All of these violations of Ms. Julia Seifer-Smith of the United States Constitution rights guaranteed to all citizens is clearly ineffective assistance of counsel, and her representation amounted to a deficient performance that

prejudiced the integrity of the defenses as a whole. Denial of the entire judicial proceeding, which Wilson wants and to which Wilson has right, demands presumption of prejudice because no presumption of reliability can be accorded to judicial proceedings that never took place.

Conduct of defense counsel which was so inadequate as to amount in practical effect to no counsel at all, clearly violates Wilson's 6<sup>th</sup> Amendment right to counsel; equated to Wilson's substantial disadvantage. Wilson asserts that different attorney's will pursue different strategies with regard to investigation and discovery, development of theory of defense, and style of witness examination. Also different attorney's will affect whether, and on what terms the defendant cooperates with the prosecution, plea bargains or decides instead to go to trial.

In light of these myriad aspects of representation it is essential that Wilson be represented by efficient counsel, which is his Constitutionally provided right for all defendants as provided by the 6<sup>th</sup> Amendment. Previously Wilson was denied that right. Wilson now seeks this appeal to be granted on all four grounds so he has an opportunity to truly exercise his constitutionally guaranteed rights, and prove his innocence of 2<sup>nd</sup> Degree Murder before a fair and impartial tribunal. Wilson also seeks for this case to be set for an evidentiary hearing, or whatever other remedy your Honor deems necessary in light of these constitutional violations.

Chandler v. United States, 218 F.3d 1305 (11<sup>th</sup> Cir. 2000), "the issue is not what is

possible, or what is prudent, or appropriate, but only what is constitutionally compelled."

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

*Freddie L. Wilson*  
Freddie L. Wilson  
DC# B01930  
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