NO: 19-7625

IN THE SUPREME COURT OF

THE UNITED STATES OF AMERICA

ROBERT LEE SWINTON JR.,

Petitioner,

V.

THE STATE OF FLORIDA

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO

THE STATE OF FLORIDA, SECOND DISTRICT

COURT OF APPEALS

PETITION FOR REHEARING

S.CT. RULE 44

Robert L. Swinton Jr., PRO SE

6150 State Route 96

Romulus, N.Y. 14541

JURISDICTION TO HEAR PETITION.

On April 20, 2020, the petitioner received a copy his denial of Swinton v. Florida, 19-7625, dated for March 23, 2020, mailed to him on April 16, 2020. Due to the COVID-19 pandemic, extensions were given by this court, due to its shut down period. The petition has been returned for submission to file out-of-time with the Clerk. Pursuant to S.Ct. Rule 44, Rehearing is humbly requested.

GROUNDS FOR PETITION

In the initial petition, the petitioner did not address the deference standard applied to the State's ruling, when (1) its own policy led to the deprivation of counsel on direct appeal of right, and (2) contrary to the unambiguous language of U.S. Supreme Court and its own high volume of State precedents. See ***Kisor v. Wilkie, 139 S.Ct. 2400 (2019)***. The petitioner's State appeal of right was denied by counsel withdrawl on appeal and the petitioner was over-sentenced on the record, while no court has answered ineffective assistance of trial counsel claims for this issue raised by the petitioner. See Pet. Appx. 27 – 42. To this date, no court has answered this over-sentencing question, and deference has been given to the Florida Trial Court as right by Appeals Court when trial court never reached the merits presented; when its own records show this initial unlawful sentencing by the trial court in 1994, and the enclosed evidence in this petitioner's appendix.

In the initial petition, the petitioner did not address the 'hands off' policy applied to this case by The State of Florida. At no time did any state court confirm or deny that the petitioner was not unlawfully over-sentenced as alleged, nor at any time address the issue brought to their attention, including the 1994 PSR and Scoresheet. Pet. Appx. p. 1-2, 15-16, 27-40. In the petitioner's appeal of right, fines were unlawfully corrected without the assistance of counsel in 1996, the court affirmed overall and all Ineffective assistance of trial counsel allegations made were not addressed by The State of Florida, while over-sentenced by the record. See Pet. Appx. p. 41-42 and ***United States v. Glover, 531 U.S. 198 (2001)***.

The petitioner has not been afforded due process of law by The State of Florida, and "*Swinton v. State*" is now grounds in The State of Florida to overrule or unreasonably apply ***Douglas v. California, 373 U.S. 353***; ***Anders v. California, 386 U.S. 738***; ***Penson v. Ohio, 488 U.S. 75***; ***Martinez v. Ryan, 566 U.S. 1***; ***Trevino v. Thaler, 569 U.S. 413***; ***Grubbs v. Singletary, 900 F.Supp. 425,426,428 (M.D. Fla. 1995)*** and apply the 'hands off' doctrine to its own criminal cases which forfeit review of constitutional questions of law, caused by counsel, once the defendant is released or time for review has lapsed. The state court misconstrued the entire argument in this case, all denials were made for untimeliness, which was alleged to be the fault of prior counsel and no assessment of equitable tolling was

made to hear all of the merits in the motion concerning trial counsel, which were not addressed. The petitioner was entitled to counsel to make this argument in the Florida Courts that was never made. See *Grubbs*, *Penson*, *Martinez* and *Trevino*, Id. Collateral consequences have plagued the petitioner due to untimely redress, and would not have applied to 2017 federal guideline sentencing of 2012 criminal acts if addressed in 1996 direct appeal. A new resentencing would correct this.

No jurisdiction under 28 USC § 2254 exists, which ends the redress of this case. This is the State of Florida equivalent to a Habeas Corpus, where these claims were expected to be raised and now left unanswered by past counsels' ineffectiveness and the State Court. See ***Pace v. DiGuglielmo, 544 U.S. 408,425 (2005)***; ***Maples v. Thomas, 565 U.S. 266,281-83 (2012)***; ***Holland v. Florida, 130 S.Ct. 2549,2562 (2010)***. Swinton was entitled to be resentenced by a substantial body of Florida's own holdings. See Pet. Appx. p. 34-40.

Giles v. Maryland, 386 U.S. 66,81-82 (1967) stated:

> " It is not for us to direct what the Maryland courts will do in this case. The Court of Appeals may, for all we know, determine that the additional evidence demonstrates prejudice to the degree necessary under its previously applied standard to warrant a new trial. It may remand for a hearing free of the "work product" rule. It may reaffirm its judgment of reversal. Although relief may ultimately be denied, affording the state courts the opportunity to decide in the first instance is a course consistent with comity, cf. 28 USC § 2254, and a full and fair hearing in the state courts would make unnecessary further evidentiary proceedings in the federal courts. See Townsend v Sain, 372 US 293, 9 L ed 2d 770, 83 S Ct 745. We would remand because of our

conclusion that the police reports, considered in the context of the record before us, raise questions sufficient to justify avoiding decision of the broad constitutional issues presented by affording the opportunity to the Maryland Court of Appeals to decide whether a further hearing should be directed. See Henry v Mississippi, 379 US 443, 13 L ed 2d 408, 85 S Ct 564.

The truism that our federal system entrusts the States with primary responsibility in the criminal area means more than merely "hands off." The States are bound by the Constitution's relevant commands but they are not limited by them. We therefore should not operate upon the assumption-especially inappropriate in Maryland's case in light of its demonstrated concern to afford post-conviction relief paralleling that which may be afforded by federal courts in habeas corpus proceedings -that state courts would not be concerned to reconsider a case in light of evidence such as we have here, particularly where the result may avoid unnecessary constitutional adjudication and minimize federal-state tensions.

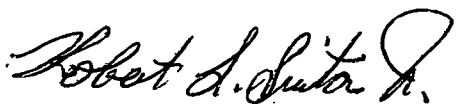
We would therefore vacate the judgment of the Court of Appeals and remand to that court for further proceedings."

The petitioner is humbly requesting that no deference be given to the Florida denials on unanswered petitioner challenges, equitable tolling be given to answer his challenge that deprived him effective assistance of trial counsel, counsel on appeal and a re-sentencing in accordance with Florida's own law. Criminal redress by Fla. R. Crim. P. § 3.850 was not afforded to the petitioner of his submitted Florida petition and no court would rule on all of the merits therein.

Under penalty of perjury, I swear all herein is true and correct.

Date: May 7, 2020

Respectfully Signed,



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CERTIFICATE OF GOOD FAITH

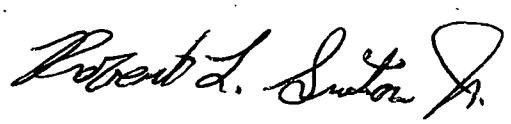
I, Robert L. Swinton Jr., swear that this petition for rehearing is made in good faith and not intended for delay of any kind. In good faith, the petition for rehearing was made to address the deference standard and hands off doctrine applied by The State of Florida, in a rightful challenge to its own criminal case that has had no full adjudication of the merits. This petition is executed PRO SE.

Under penalty of perjury, pursuant to 28 USC § 1746, I swear all herein is true.

Executed on the 7th, day of

May, 2020

Respectfully Signed,



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BRIAN CHAMBERS
Notary Public - State of New York
No. 01CH6166609
Qualified in Seneca County
My Commission Expires May 21, 2023