NO. 19-7772

IN THE

SUPREMEM COURT OF THE UNITED STATES

JOHN LEE BARRON

PETITIONER-APPELANT,

V.

JULIE JONES

RESPONDENTS-APPELLEES,

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

PETITION FOR WRIT OF CERTIORARI

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Pro se

QUESTION PRESENTED

Whether a Petitioner who is serving a life sentence without the possibility of parole is denied due process where a single judge of the Court of Appeals denied a COA based on a failure to make a substantial showing of a denial of a constitutional right. Notwithstanding that a Federal District Court judge disagreed with the magistrate judge report and recommendation and found the Petitioner's Constitutional claim of Ineffective Assistance of Counsel to have merits.

LIST OF PARTIES

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

RELATED CASES

There are no related cases.

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

Petitioner John Lee Barron, respectfully petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, denying Petitioner's application for Certificate of Appealability.

OPINIONS BELOW

The following opinions and orders below are pertinent here, all of which are attached as appendices:[1] The opinion and orders of the United States Court of Appeals for the Eleventh Circuit Denying Request for Certificate of Appealability (9-26-19). **(App. A).** The opinions is designated for publication but is not yet reported. [2] The opinions and orders of the United States District Court for the Southern District of Florida (Hon. Joan A. Lenard), granting in part and denying in part Petition for Writ of Habeas Corpus and denying Certificate of Appealability (6-20-18). **(App. B).** [3] The report and Recommendation of Magistrate Judge P.A. White. **(App. C).** [4] Court of Appeal order Denying Petitioner's Motion for Reconsideration (11-22-19). **(App. D).** [5] Order granting Respondent's Motion for Reconsideration (59(e)) (6-29-18). **(App. E).** [6] Order Denying Petitioner's Motion for Relief from Judgment (60(b)) (10-24-18), **(App. F).** [7] Order on Remand Denying Certificate of Appealability (3-27-19). **(App. G).** [8] Decision of State Court of Appeal; Third District. **(App. H).** [9] Decision of the State Supreme Court Denying Review **(App. I).** [10] Decision of the State Court of Appeal. **(App.I).** [11] Decision of thr State Court of Appeal. **(App. J).** [12] Decision of the State Court of Appeal. **(App. K).**

STATEMENT OF JURISDICTION

The District Court and the Court of Appeal for the Eleventh Circuit denied Petitioner's request for Certificate of Appealability. In *Hohn v. United States*, 524 U.S. 236 (1998), This court held that, pursuant of 28 USC 1254 (1), The United States Supreme Court has jurisdiction, on certiorari, to review a denial of a request for Certificate of Appealability by a circuit judge or panel of a Federal Court of Appeals.

The date on which the United States Court of Appeals decided my case was September 26, 2019, and a copy of the order denying reconsideration appears at Appendix **(D).**

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The right of a State prisoner to seek Federal Habeas Corpus Relief is guaranteed in 28 USC 2254. The standard for relief under "ADEPA" is set forth in 28 USC 2254 (d) (1).

The absence of effective assistance of counsel violates a State prisoner's rights under the 14th Amendment to the U.S. Constitution, as well as under every State Constitution. As the 14th Amendment "incorporates' most of the bill of rights, it is also a violation of the U.S. 6th Amendment right to counsel. *Strickland v. Washington*, 466 U.S. 668 (1984).

STATEMENT OF THE CASE

Petitioner was charged by an amended information with second-degree felony-murder arising from a shooting by Derek Cody; Attempted Armed Robbery of Ed Cody and/or Derek Cody; Unlawful use of a Firearm during the commission of a felony; Attempted First-Degree Felony Murder of Ed Cody with a Firearm; and Attempted Second-Degree Murder of John Barron. This last charge, Attempted Murder of himself, was dropped prior to trial.

The jury returned guilty verdicts as charged, except for Count V. the attempted first-degree felony murder charge, to which the jury returned a lesser-included offense of attempted second-degree murder with a firearm. The trial court adjudicated Petitioner consistent with the verdicts and sentenced Petitioner as follows: Count I. (Second-degree felony murder) to life; Count II. (attempted strong-armed robbery) to 15 years imprisonment; Count III (attempted-armed robbery) to 30 years imprisonment; Count IV (use of a firearm) to 15 years imprisonment, and Count V. (attempted second-degree murder) to 30 years imprisonment, with 10-year minimum-mandatory sentences imposed on counts I,II,III, and V, all sentences to run consecutively.

Petitioner appealed the conviction. On August 22, 2007, The Florida Third District Court of Appeal affirmed Petitoiner's conviction issuing a lengthy written opinion specifically whether or not the evidence was insufficient to hold the Petitioner criminally liable as a principle for the attempted second degree murder of

Ed Cody. Dissenting Judge C.J. Sheppard, also issued a lengthy opinion disagreeing with the majority's decision with respect to the attempted second - degree murder of Ed Cody. *Barron v. State*, 990 So.2d 1098 (Fla. 3rd DCA 2007). (**App. H**). Petitioner pursued discretionary review in the Florida Supreme Court, which denied review on May 21, 2009. *Barron v. State*, 11 So.3d 355 (Fla. 2009). **(App. I).**

Subsequently, the Petitioner filed a motion for postconviction relief (3.859), and amended motion for postconviction relief (3.850). The trial court denied said motion. Petitioner appealed. The Third District Court of Appeal reversed and remanded the trial court to hold an evidentiary hearing or grant other relief. *Barron v. State*, 100 So.3d 230 (Fla. 3rd DCA 2012). (**App. J**). Petitioner returned for a scheduled evidentiary hearing. Successor judge Hon. Teresa Pooler, appointed Kathy Eisner of the public defender's office to represent Petitionr. Subsequently-reason unknown- judge Pooler quased her order appointing the public defendaners office and denied relief without conducting an evidentiary hearing. Petitioner appealed. The Third District Per Curiam Affirmed. *Barron v. State*, 150 So.3d 1151 (Fla. 3rd DCA 2014). (**App. K**_).

On September 3, 2015, Petitioner, pursuant to 28 USC 2254, filed a petition for writ of habeas corpus in the U.S. District Court for the Southern District of Florida. On July 28, 2016, Respondent filed a supplemental response miminally addressing Petitoner's claims on the merits.

On June 28, 2017, Magistrate Judge Patrick A. White issued a report amd

recommendation recommending that the court deny Petitoner's petition. On November 21, 2017, Petitioner filed objections to the report.

On June 20, 2018, a final judgment was entered by hon. Judge John A. Lenard granting in part and denying in part Petitioner's petition. The partial final judgment was entered in favor of Petitioner. Specifically, on ground twenty-four of the petition.

On June 28, 2018, The Respondent filed a motion for Reconsideration pursuant to Federal Rule of Civil Procedure 59 (e), for reconsideration of the court's order granting ground twenty- four of the petition. On June 29, 2018, the court granted Respondent's motion for reconsideration and enterd an amended final judgment in favor of respondent Julie Jones.

On July 12, 2018, Petitioner filed a Motion for Relief from Judgment Rule 60 (b). On October 24, 2018, the district curt denied Petitoner's motion for relief from judgment. On November 21, 2018, Petitoner filed a timely notice of appeal. Subsequently, On June 10, 2019, Petitioner filed a Certificate of Appealability.

On September 26, 2019, the Eleventh Circuit Court of Appeals, (by a single judge) entered an order denying Petitoner's certificate of appealability. Concluding "[p]etitoner failed to make a substantial showing of a denial of a constituitional right." On October 9, 2019, Petitioner filed a Motion for Reconsideration. On November 22, 2019, The court denied the motion for reconsideration.

FACTS MATERIAL TO QUESTION PRESENTED

The prosecution presented the testimony of Dr. Bruce Hyma, chief medical examiner for Dade County, Florida. His testimony was presented to establish the identity of the deceased. The total sum of Dr. Hyma, testimony consisted of the identification of the deceased autopsy photos and a depiction of the wounds as it relates to the autopsy that he performed.

The prosecution did not admit any fingerprints of the deceased; the prosecution did not secure a fingerprint technician to take the deceased prints to compare with the prints on file; The prosecution did not admit a death certificate. The prosecution did not admit any witnesses to testify that they knew the deceased in his lifetime; The prosecution did not admit any D.N.A. evidence, all of which is required in all murder prosecutions under long standing controlling Florida law, holding the prosecution must prove the corpus delicti. *Lee v. State*, 117 So. 699 (1928), and controlling case governing identity of the victim. *Trowell v. State*, 288 So.2d 506 (Fla. 1st Dist 1973).

REASON FOR GRANTING WRIT ARGUMENT SUMMARY

The following six-factors based on trial counsel failure to object were all present in this case.

(1) trial counsel did not cross-examine any of the prosecution witnesses to demonstrate that the witnesses did not actually know the deceased in his

lifetime.

(2) Did not argue that no fingerprints were admitted alone with the testimony of a technician who took the prints on file.

(3) Did not argue that no relative or friend who knew the deceased in his lifetime testified that the person in the photo was the deceased.

(4) Did not argue that the prosecutor failed to admit testimony of a relative or friend who saw the deceased body as late as the furnal service.

(5) Did not argue that the prosecution failed to admit a certified death certificate to butteress the medical examiner testimony.

(6) Did not argue that the prosecutor failed to admit a photo of the deceased when he was alive for purpose of identification by a person who knew the deceased in his lifetime.

All of the above is required to establish the identity of a deceased person under Florida law.

This Court should revisit *Hohn v. United State*, 524 U.S. 236 (1998), where it appears the court approved the issuance or denial of a COA by an individual appellate judge as long as the decision can be regarded as an action of the court itself and not of the individual judge.

Hohn, somewhat conflicts with this court's holdings in *Miller-El v. Cockrell*, 537 U.S. 322 (2003), accord *Tennard v. Dretke*, 542 U.S. 274, 276, 282 (2004). In

Miller-El, the court held ("a COA should issue if the applicate has made a substantil showing of the denial of a constitutional right, 28 USC 2253 (c) (2). Which we have interpreted to require that the Petititoner must demonstrate that reasonble jurist would find the district court's assessment of the constitutional claim debatable or wrong"). Id.

The Court noted in Hohn, *"[c]ircuit rules of the 1st, 3rd, 4th, 7th, 8th, 10th, and 11th circuits require that panels of judges not individual judges rule on certificate of appealability and certificate of probable cause to appeal"*).

In contrast, the court noted in *Harbison v. Bell*, 556 U.S. 180, 183 (2009) "[s]ectioin 2253 (c) (1) (A) provides that unless a circuit justice or judge issues a COA, an appeal may not be taken from the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court."

Here, a single judge of the 11th circuit concluded the Petitioner failed to make a substantial showing of a denial of a constitutional right. **(App. A)**. In comparison, the 11th circuit decision may conflict with the 7th circuit decision in *Jones v. Basinger*, 635 F.3D 1030, 1040 (7th Cir. 2011). (" When a State appellate court is divided on the merit of the constitutional question, issuance of a certificate of appealability should ordinarily be routine")

The Petitioner maintain the Court should resolve the conflict issue as to a single judge denial of a COA where a Federal District Court judge disagreed with the Federal magistrate conclusion that defense counsel had no basis for an objection.

Thus, creating the inference that reasonable jurist would find the assessment of the constitutional claim debatable or wrong.

Since the Petitioner's claim rested on a violation of his constitutional right to effective assistance of counsel under the sixth amendment, resolution of his COA application required a preliminary, through not definitive, consideration of the two-step framework mandated by this court in *Strickland v. Washington*, 466 U.S. 668, 693-94, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

CONCLUSION

Based on the foregoing, this court should grant the petition for writ of certiorari and order full briefing.

Respectful submitted,

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John Lee Barron, Pro se

Date: 2/18/20