No. 19-8279

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Jeffrey LaGasse – PETITIONER

Vs.

Mark S. Inch – RESPONDENT(S)
Sec. Dept. of Corrections

ON PETITION FOR WRIT OF CERTIORARI TO
11TH Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Jeffrey LaGasse
Jefferson Correctional Institution
1050 Big Joe Road
Monticello, Florida 32344

FEDERAL QUESTIONS TO BE ASKED

Did the 11th Circuit Court of Appeals by-pass the petitioner's 5th, 6th and 14th Amendment rights by denying his petition for Certificate of Appealability, considering the following:

A) The police admitted that (out of "9000" cases) this case, was the "only" case, where-in they (the police) knowingly and willingly falsified the documents in an effort to fulfill some personal agenda. They (the police) encourage us to "Report Suspicious Activity" ---should their enthusiasm wane when the spotlight lands on them? Fundamental Fairness should be the Courts ultimate focus. See Lockhart v Fretwell, 506 U.S. at 369, 113 S.Ct. 838, 122 L.Ed. 2d 180 (1993).

B) When separate cases are "not" severed into separate trials --- the contaminating effects of spillover (despite the above tampering factor) will still always result in confusion, chaos and disarray. (See Ground Two). Fairness takes precedence over efficiency, convenience and judicial economy see Dodge v State, 204 So. 2d 490 (4th Dist. 2016) and Lockhart v Fretwell (supra).

C) Failure to honor a plea agreement (just because the law has since changed) is a breach of contract knowing that, "any law of which inflicts a greater punishment then the law at the time of the crime --- is a violation of the Ex

post factos provision." See Akins v Snow 922 F. 2d 1558 (11th Circuit 1991). .

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CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. 1254(1)

28 U.S.C. 2253

28 U.S.C. 2254

775.084 (1999) Fla. Statute

775.085 (2000) Fla. Statute

JURISDICTION

[] For cases from **Federal Courts:** 2254 Denied November 19th, 2018 Decision affirmed April 30th, 2019.

The date on which the United States Court of Appeals decided my case was December 6th, 2019. (Petition for Certificate of Appealability).

[] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 28th, 2020, and a copy of the order denying rehearing appears at Appendix 3-4.

[] 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. §1254(1)

[] For cases from **State Courts:**

[X] The date on which the highest court decided my case was January 15th, 2015 (Case No. 4D13-1746. The denial of the motion for rehearing appears on Appendix page 5 date March 5th, 2015 in the 4th District Court of Appeals.

[X] The petitioner's 3.800(a) was pending at the same time the above 3.850 was being decided (in the same court, case No. 4D15-4142) and was denied on July 23rd, 2015 and the timely filed motion for rehearing was denied on 5/17/2016 and appears on Appendix page 6.
[] An extension of time to file the petition for writ of certiorari was granted to and including_____(date) on _____(date) in Application No. ___A_____.

Jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

OPINIONS BELOW

- 3.850 filed July 31st, 2008 and on April 17th, 2013 the trial court denied relief. The 4th District Court of Appeal affirmed the denial on January 15th, 2015 and denied the petitioners motion for rehearing on March 5th, 2015 Case No. 4D13-1746 without opinion.
- Meanwhile-the petitioner's 3.800(a) was still pending in that same court (4th DCA) and that motion was denied on July 23rd, 2015 and the 4rh District Court of Appeal affirmed that denial on April 7, 2016. Case No. 4D15-4142 without opinion.
- The petitioner's Appeal to the U.S. District Court was denied on November 19th, 2018 and that denial was affirmed on 4/30/19 case no. 17-60692 without opinion.
- The petitioner filed for a Certificate of Appealability to the U.S. District Court of Appeals (Atlanta) on June 5th, 2019 which was denied on December 6th, 2019 and that denial was affirmed on January 28th, 2020 case no. 19-12183-D without opinion.

CERTIFICATE OF INTERESTED PERSONS
LIST OF PARTIES RULE 29.6

Jeffrey LaGasse
Petitioner

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Ashley Moody
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Address: Capitol Plaza Level 01, Tallahassee, Florida 32399

INTERESTED PERSONS

Abramschmitt, Dea (Assistant Public Defender)

Avrunin, Nathan, (Assistant State Attorney)

Backman, The Honorable Paul L. (17th Circuit Judge)

Bondi, Pamela Jo ([former] Attorney General)

Ciklin, The Honorable Corey J. (Fourth District Judge)

Conner, The Honorable Burton C. (Fourth District Judge)

Cotrone, John F. (Defense Counsel)

Crist, Charlie ([former] Governor)

Damoorgian, The Honorable Dorian K. (Fourth District Judge)

Gerber, The Honorable Jonathan D. (Fourth District Judge)

Germanowicz, Jeanine (Assistant Attorney General)

Gold, The Honorable Marc H. (17th Circuit Judge)

Greene, The Honorable Charles M. (17th Circuit Judge)

Gress, Jodi (Assistant State Attorney)

Gross, The Honorable Robert M. (Fourth District Judge)

Haimes, The Honorable David A. (17th Circuit Judge)

Haughwout, Carey (Public Defender)

Hazouri, The Honorable Fred A. ([former] Fourth District Judge)

Hugentugler, Susan Odzer (Assistant State Attorney)

Klein, The Honorable Larry A. ([former] Fourth District Judge)

Kneski, Paul J. (Defense Counsel)

Levine, The Honorable Spencer D. (Fourth District Judge)

McCollum, Bill ([former] Attorney General)

Melear, Melynda (Senior Assistant Attorney General)

Moody, Ashley (Attorney General)

Salazar, Michael G. (Defense Counsel)

Satz, Michael J. (State Attorney)

Schultz, David ([former] Assistant Attorney General)

Shahood, The Honorable George A. ([former] Fourth District Judge)

Steinsaltz, Debra L. (Defense Counsel, OCCCRC)

Siegal, Dennis (Assistant State Attorney)

Stevenson, The Honorable W. Matthew ([former] Fourth District Judge)

Tjoflat, Gerald B. (United States Circuit Judge)

Warner, The Honorable Martha C. (Fourth District Judge)

"INDEX TO APPENDICES"

Federal Courts

Page # App (1& 2) April 30th, 2019 Magistrates denial "Affirmed" Case #17-60692 U.S. District Court Southern District 2254

Page # App (3&4) January 28th, 2020 Motion for reconsideration "Denied" Case# 19-12183-D (11th Circuit Court of Appeals) petition for Certificate of Appealability

Page #s Specified after each quote (See exhibits A, B, C, D)

STATEMENT OF CASE

II. STATE TRIAL COURT PROCEEDINGS

Petitioner was originally charged by Felony Information with six (6) First Degree Felony counts of Lewd or Lascivious Molestation of 3 minors under twelve (12) years of age. These charges stemmed from a slumber or sleepover as part of an extended birthday party for the daughter of one of his female friends. The events alleged were said to have occurred on or near April 26 and/or April 27, 2002. These offenses were tried by a jury, and Petitioner was found guilty as charged in five (5) of the counts, but was determined to be guilty of a lesser offense of simple Battery on the remaining count.

On Petitioner's first direct appeal, it was opined that a statement that he furnished law enforcement during a custodial interrogation was improperly admitted at the trial and should have been suppressed due to a deficient Miranda rights advisement. Florida's Fourth District Court of Appeal reversed the conviction and remanded the case back to the trial court for a new trial. See Lagassee v State, 923 So. 2d 1287 (Fla. 4th DCA 2006).

On retrial, which commenced October 9th, 2006, the state filed an Amended Information in which it dropped the count of which the first jury returned a verdict of guilt to a lesser-included charge. The Amended Information included only five (5) of the initial six (6) counts. These five (5) counts resulted in guilty verdicts,

concurrent prison sentences of twenty-four (24) years followed by fifteen (15) years of sex offender probation. Petitioner's sentence was enhanced as he was found to be an habitual felony offender – December 7, 2006.

Following Petitioner's retrial, but before his sentencing, his trial attorney filed a Motion for New Trial. The written Motion relies, primarily, on three (3) issues "[t]hat the court erred in matters of law." The issues: (a) the trial court denied Petitioner a continuance when, on the day of trial, the State filed additional discovery materials; (b) the trial court failed to allow Petitioner to impeach a victim through her recorded statement, and during the State's case; and (c) the trial court improperly admitted hearsay evidence. The Motion for New Trial was denied.

Petitioner filed a timely Notice of Appeal, and his attorney listed two (2) judicial acts that needed review – (1) the pretrial ruling permitting child hearsay; and (2) the pretrial ruling denying Petitioner's motion for continuance due to the last minute presentment of the State's supplemental discovery.

In the trial court proceedings, Petitioner was represented by Debra L. Steinsaltz, Esquire, whose Florida Bar Number is 0095729, and whose business address if 2860 West State Road 84, Suite 103, Fort Lauderdale, Florida 33312.

III. DIRECT APPELLATE REVIEW

On direct appeal following Petitioner's retrial, Petitioner raised two issue for consideration by the Fourth District Court of Appeal in Florida, to wit: (1) that the trial court erred by denying Petitioner a continuance on the first day of trial when the State had, that same day, presented Petitioner with first-time seen (by the defense) discovery material; and (2) that the trial court erred by permitting a State witness to testify at sentencing notwithstanding the Petitioner had no notice or knowledge of the possibility that she would be a witness nor the substance of her knowledge or testimony. This was appellate case number: 4D06-5039.

In a per curiam decision, the Fourth District affirmed the Judgment and Sentences of the trial court. See, LaGasse v State, 975 So. 2d 1150 (Fla. 4th DCA 2008) (table decision). No further appellate review was taken from the decision of the Fourth District because Florida Law does not permit further review by the State Supreme Court without a written opinion.

IV. STATE POSTCONVICTION PROCEEDINGS

Petitioner placed his initial Florida Rule of Criminal Procedure 3.850 motion for postconviction relief into the hands of prison officials on July 31, 2008. The first motion raised seven (7) grounds for relief. The State requested that the trial court deny grounds four (4) through seven (7), but permit Petitioner to amend

grounds one (1) through three (3). Without affording Petitioner any opportunity to amend, the trial court denied the motion on all seven (7) grounds in a summary denial order. Petitioner appealed the July 9, 2009 denial, and Florida's Fourth District Court of Appeal noticed that Petitioner had already filed an amended Rule 3.850 motion before the trial court's summary denial. Thus, the Fourth District remanded to the lower court to consider Petitioner's amended motion's first three (3) grounds, to wit: (a) trial counsel's failure to call or investigate named witnesses, (b) trial counsel's failure to depose and call other witnesses ------ and (c) trial counsel's failure to argue the sufficiency of the evidence during her motion for judgment of acquittal. Lagassee v State, 35 So. 3d 164 (Fla. 4th DCA 2010).

During the Rule 3.850 postconviction appeal, Petitioner filed his Florida Rule of Appellate Procedure 9.141 petition alleging ineffective assistance of his direct appellate attorney. In the petition, Lagasse asserted that his appellate attorney during direct review was ineffective for not arguing trial court error in denying defense counsel's motion for judgment of acquittal during the trial, as well as three (3) related grounds concerning the trial court's claimed erroneous denial of Petitioner's motion for a **new trial** and its failure to issue a written order to that effect. This petition was denied by the Fourth District Court of Appeal. The petition was mailed on November 1, 2009.

Following the Mandate's issuance in the appeal of the summary denial of Petitioner's initial postconviction motion, the trial court took up the amended motion, which that court had held in abeyance. In taking up Petitioner's postconviction motion, Petitioner had already filed a second amended motion for postconviction relief. In the second amended motion, filed October 29, 2009, Petitioner included the three (3) grounds from his amended postconviction motion, but he also added six (6) others, namely: (1) that defense counsel was ineffective for failing to sever the charges prior to trial; (2) attorney ineffectiveness for failing to effectively cross-examine or impeach witness Sherry Smith; (3) attorney ineffectiveness for failing to object or see a mistrial in connection with prosecutorial misconduct; (4) that defense counsel should have sought a written order denying Petitioner's motion for new trial; (5) counsel ineffectiveness in failing to move to have Counts IV and V dismissed; and (6) counsel ineffectiveness for failing to seek a mistrial based on misidentification during trial.

On July 6, 2010. Petitioner filed an "addendum" to his pending postconviction grounds. The addendum merely sought to incorporate "newly obtained information" that related to the grounds already contained in Petitioner's second amended motion. However, shortly after --- the filing of the addendum, on September 29, 2010, the trial court ordered the State to respond to Petitioner's pleadings.

On January 27, 2011, The State responded pursuant to the trial court's order by requesting an extension of time. The trial court, on February 10, 2011 granted the State an extension and clarified the scope of the ordered response. The order further gave Petitioner additional time to make any further amendments to his second amended postconviction motion. On March 9th, 2011, Petitioner filed a "Partial Amendment to Addendum", and then on May 10, 2011, he filed on "Amended Addendum with Supplements and Retractors."

The State level trial court held an evidentiary hearing on Petitioner's postconviction filings. That was held on December 10, 2012 and December 19, 2012. The trial court requested written closing arguments to be filed by January 14, 2013. On April 17, 2013, that court "denied" all of Petitioner's postconviction motions, amended motions, and addendums, some grounds were summarily denied while others were denied in connection with the evidentiary hearing. Petitioner appealed to Florida's Fourth District Court of Appeal. The District Court of Appeal affirmed the denial on January 15, 2015, and it issues its Mandate on March 27, 2015.

"While" the postconviction appeal was pending, however, Petitioner filed his motion seeking to correct an illegal sentence pursuant to Florida Rule of Criminal Procedure 3.800(a) on January 8, 2015. In this motion, Petitioner alleged that his sentence was illegal because it had been improperly enhanced by using an

ex post facto law to qualify Petitioner for Florida's Habitual Felony Offender sentencing enhancement. (See Ground Three herein). On July 23, 2015, the Rule 3.800(a) motion was denied, and appeal was taken. The Fourth District Court of Appeal of Florida affirmed the denied on April 7, 2016 and issued its Mandate on June 3, 2016.

The Petitioner appealed to the U.S., District Court (Southern District of Florida) on April 3rd, 2017 and replied to the States answer brief on September 7, 2017 ... Then the magistrate of the U.S. District Court "Denied" the petitioners 2254 motion on November 19th, 2018 ... The U.S. District Court Affirmed" the magistrates denial on April 30th, 2019.

The petitioner filed for Certificate of Appealability on June 5th, 2019 in the 11th Circuit Court of Appeals ... The Certificate was denied on December 6th, 2019. The petitioner then filed a motion to reconsider on December 19th, 2019 and the 11th Circuit denied that motion on January 28th, 2020.

PRELIMINARY STATEMENT

For the benefit of this Court, please be advised that the symbol **(T#)** Will be referring to the trial transcripts from the petitioner's October, 2006 trial [1].

The symbol **(EVT#)** will be in reference to the petitioner's December 10th, 2012 Evidentiary Hearing...(All of these pages are attached here-on).

OVERVIEW

This matter stems from three separate gatherings of which all took place at the same residence over a 24 hour period (eighteen years ago) where-in several kids and four adults came and went throughout --- 1) a pool party in the afternoon --- #2) popcorn and movies that evening and (#3) a slumber party/sleepover that night.

[1] There were 2 trials – not to be confused with November 2004 trial.

GROUND ONE

KNOWINGLY FALSIFYING RECORDS IS A VIOLATION OF THE 5TH, 6TH, AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION

If you're talking about the lottery --- (1 in 9000) is pretty good odds. If you're talking about your airplane landing safely --- (1 in 9000) is terrible odds...But if you're talking about your Court documents being the --- (1 in 9000) of which the police have chosen to tamper with — those odds should "not" be difficult to overcome, because (according to Strickland) "Fairness" should be the courts ultimate focus, unfortunately any public servant of whom has been pressured into making the real information conform to his or her own personal agenda — has really just taken the first step towards obliterating Fairness[2]

The petitioner's greatest fears were not solidified until he had a chance to question the lead investigator in this case at his (the petitioner's) evidentiary hearing where-in the detective admitted that --- after processing "9000" cases, despite never knowing or hearing of the petitioner or the petitioner's family in his lifetime --- he, this Broward County Detective, chose "this case" to be the "only" case where-in he would make the decision to knowingly and willingly change the information. T# 517, 518 and Evt# 14, 23, 33, 34, 39, 40, 41 (all attached, see exhibit B).

[2] This case already encompassed divorce, motive, bankruptcy, collusion, whispering and financial gain---being involved in some web of lies and deceit (of which the petitioner had nothing to do with) only guaranteed the further entanglement of these matters.....(See Ground Two).

Title 18, chapter 73 of the United States Code (under obstruction of justice) says that "whoever knowingly alters or falsifies any record with intent to obstruct or influence the investigation of any matter in any department or Agency of the United States---shall be fined, imprisoned up to 20 years, or both."— It has now been **18 years** since this officer of the law committed these crimes and during that time the petitioner has spent 16 of those years in prison while this officers actions have been completely overlooked.

Fraud, deception, tampering — no matter what spin you put on it --- if cheating is the new norm, Pete Rose will become the commissioner of baseball and our football games will be decided by paid off referees... Look at Lance Armstrong, he had his victories taken from him because he was caught cheating! And if the chair members of a bicycle race can get it right the petitioner refuses to believe that the American System of Justice cannot.

"If any concept is fundamental to the American Justice System it is that those of whom are trusted to uphold the law are prohibited from fabricating evidence." See Brown v Miller, 519 F.3d 231 (U.S. App. 5th Circuit 2008).

Since there are "8999" cases of which this detective processed "without" foul play --- by all means let the Broward County Sheriff's Office revel in that admirable accomplishment... But as far as "this case" (the "1" in 9000) case that was somehow selected as the Guinea Pig towards achieving some trumped up

prize) --- the Broward Sheriff's office should be compulsorily required to surrender that tarnished (so called) prize[3].

GROUND TWO

COUNSEL'S FAILURE TO MOVE TO SEVER CHARGES INTO SEPARATE TRIALS VIOLATED THE PETITIONER'S 5TH, 6TH AND 14TH AMENDMENTS RIGHTS

Of all the people of whom came, went, and returned during the **three episodes** in question --- only two of those people were sisters --- as it turns out, those same two sisters — parents, had just gotten divorced "that same week" and those same two sisters (because of said divorce) began counseling (also) "that same week". Then, we find that they (these same two sisters) went on to spend the remainder of that weekend with their father, of whom after being financially ravaged (again) that same week, went on (not only) to initiate the lawsuit, but has participated "**in only**" the lawsuit since seventeen years ago when this case began. T#534, 542, 543 (See exhibit "A" attached) and bankruptcy case no. #03-26216. also See Mikler v State, 829 So. 2d 932 (Fla. 2002) evaluating adult influence, mental state and motive.

It is with no great wonder that of all the people present that day —"this" is the household from which these accusations (and the lawsuit of which ensued)

[3] Speaking of "odds," the petitioner has had two trials, appealed to five different courts, is indigent, pro se and has a sex charge... factoring the madness of the Carona Virus into all of this leaves the Petitioner with about a (1 in 9000) chance of achieving relief from this court, yet he and his family remain optimistic due to the gravity of these issues.

arose... Taking the sensitivity of these matters into account, the need for diligent and concise police work was an obvious necessity... That was not the case... This detectives influence was felt throughout... not only did he "continue" to contaminate this case by questioning these sisters together --- but he admitted how important it would be for these interviews to be done correctly to avoid adult influence. #513-518 (See attached Exhibit "B")

At trial, the mother of these 2 (above) sisters shed light on the importance of solidarity in this matter...

Question: "Your husband **(the initiator of the lawsuit)** has **never been to one hearing** in this criminal matter?"[4]

Answer: "Correct – **he has only been involved in the civil** suit."

Question: "You are seeking money damages for physical injuries?

Answer: "Yes."

Question: "The girls did not suffer any physical injuries though, did they?"

Answer: "No, they did not."

Question: "You believe it would be helpful to your civil case to have a conviction in this criminal case?"

Answer: "Yes"

T# 542, 543 (See Attached Exhibit "A")

[4] There had been nearly fifteen hearings in the criminal matter (including the first trial) at the time of these questions.

These are not words that the Petitioner is making up and it's no minor unfolding that over a year later, after saying their daughter (Marina) seemed fine --- one of the other families (from the gatherings) heard about the lawsuit and decided **(under eerily similar conditions)** that they were going to sue as well:

Question: This time to (Marina's) mother ---"Your husband has **only been involved in** the civil case?"

Answer: "Correct – **he has never been to court in this criminal case."**

Question: "You found out they were suing so you decided you were going to sue as well?"

Answer: "Correct."

Question: "You had originally decided your daughter (Marina) seemed to be fine and now you are seeking monetary damages for emotional distress?"

Answer: "Correct"

T#567-68 (See Attached Exhibit "A")

When combining contamination, parental influence, failure to sever and a lead investigator with questionable intentions --- the result will always become problematic...

Accusations IV and V were "Marina" (the above latecomers) accusations --- (which would be considered **"episode one" ---** being brought in the house and groped while the other kids swam in the pool).

Had Marina's testimony stood trial "without" the contaminating effects of "spillover" — her first claim that the person of whom allegedly victimized her was **"NOT** in the courtroom" (at the Petitioner's first trial) and her second claim, that the person of whom allegedly victimized her was sitting in the "third row" **of the gallery** (at the Petitioner's second trial) --- while the "**Petitioner**" was sitting fifteen feet in front of her face at "both trials"— it is safe to say that any judge, jury or prosecutor in these United States would have looked at each other and said "**well, I guess that answers that question**" and began filing out of the courtroom... However, the contaminating effects of spillover caused the jury (through no fault of their own) to find the one person Marina has never pointed out at either trial—The Petitioner — "Guilty" of both of Marina's accusations --- regardless of what they had just witnessed. T# 589, 575, 675 (See Attached Exhibit "A").

If an accused person is thought to have committed one crime --- he must have committed them all. See Ellis v State, 534 So. 2d 1234(2nd Dist. 1988) **"Fairness"** takes precedence over efficiency, convenience "and" judicial economy. See Dodge v State, 204 So. 2d 490 (4th Dis. 2016).

We don't know if it was parental pressure, failure to sever or police meddling that caused (Sarah) one of the two sisters --- to argue with the Petitioner's attorney for over one hour on the stand (this would be considered

"**episode two**" --- groping a man of whom was present during the movie) where-in Sarah insisted **that she was the victim of the crimes her sister was alleging and her sister was the victim of hers.** Sadly, getting her sister Tori to clarify was also a moot point because after being asked if it was okay to lie Tori responded "**Yes, but you can't really do it all the time**" T# 390 (attached exhibit D). The contaminating effects of spillover caused the jury to find the Petitioner guilty of both of these accusations, regardless (once again) of what they had just witnessed. Please see this entire exchange T#450-474 Exhibit "C" (attached).

So, when Sara (the above sister of whom was not sure which accusation was allegedly hers — came back six months later with a complete new and unrelated story (which would be considered **"episode three")** about being taken outside by herself at 12:30 a.m. that night after the movie was over and also allegedly groped — it becomes a curious matter that (at 12:30 am) the Petitioner had long since gone home (as acknowledged by **five out of five witnesses)** T#408, 361, 429, 362, 330, 593 (See Exhibit "D") and the man of whom had been there earlier that day (while the kids swam in the pool) "returned". T#390, 391 (See Attached Exhibit "A") 357, 358 also.

However, **(not the above man of whom returned during the movie) but the man of whom the police inserted false information on his police report** (the Petitioner) comes to this Court (after sixteen years of unlawful incarceration) with

this pleading, interjecting that Marina (the alleged victim of whom has never identified the Petitioner as the man of whom brought her in the house and allegedly groped her while the kids swam in the pool) — not only claimed that she remembered what the perpetrator looked like --- but that she remembered so well she was careful not to sit next to him during the movie (of which the Petitioner was only present for a short time T#362). However, the man of whom had been there earlier and returned later that night has never been questioned. (Exhibit "D")

It would take an **unearthly frame of mind** to sit in a courtroom accusing somebody of the lowest form of criminal activity known to man (Child Molestation) and be so desperate for a culprit — **"Any"** culprit, that you would just start pointing out people "in the courtroom" --- in the hallway "or even" **on the bench???** Obviously the contaminating effects of spillover would wreak havoc on even the most attentive of juries...

Incidentally, nobody even knows who the man that Marina pointed at was or what he was doing there, but the Petitioner can assure you that that man high tailed it out of the courtroom so fast that there was nothing left but a puff of smoke where he had once been sitting... And those of whom remained in the courtroom were left fearing for their life knowing that they may be pointed out next.

This is not a laughing matter; it is a clear showing of the willingness of this girl (and her family) to trample on another person's life in their pursuit of financial gain.

Painting these three separate episodes with a "One criminal episode" brush is an injustice if a reliable outcome is unable to be reached without "severing" these charges...Yes, many of these same people were at the house in question over a 24 hour period, but there were also many people of whom came and went during that time. The three alleged episodes were at roughly 3:00p.m., 7:30 p.m. and midnight... the Petitioner was only present for approximately one hour. Severance should be granted liberally if prejudice is likely to follow if there is no severance – even if consolidation is the most practical way to process a case, practicality does not override "FAIRNESS". See Sosa v State, 639 So. 2d 173 (Fla. 3rd DCA 1994); also see Shermer v State, 935 So. 2d 74 (Fla. 4th DCA 2006). (See exhibit "D" "all").

Two separate juries were able to overlook the "Lack of evidence" in these cases for one simple reason - when there's a flood everything gets wet. If the State is confident in their case, severance should not be a problem. These girls are welcome to be witnesses to each other's allegations in two new trials of which do "NOT' contain the contaminating effects of spillover... Then, let the cards fall where they may. "Fairness takes precedence over efficiency, convenience and

judicial economy." See Dodge v State, 204 So. 3d 490 (Fla. 4th DCA 2016). Also see Roark v State, 620 So. 2d 237 (4th DCA 2006) "The evidence in one crime may seem to bolster the proof of another crime thus tipping the scales." "In molestation cases severance should be granted where-in offenses occurred at different times and places and involved different victims."

The failure to sever these charges created the opportunity for the prosecutor to utter things like "We're talking about **"Three Different Girls"** of whom were molested by "THAT MAN" thus continuing to milk the pyramid scheme. T# 687 (see attached). EX. "A" In her closing argument the prosecutor said that the alleged victim "absolutely DID NOT point at the defendant" T# 675 (See Exhibit "A" attached) and she (the prosecutor) also added that "each of these incidents is a **separate crime**." T# 681 (see exhibit "A" attached).

The contamination created by the pyramiding of these inferences compelled the jury to reach their decision based on what appeared to be a propensity to commit crimes rather than proof of offenses, see Jones v State, 945 So. 2d 536 (5th DCA 2006); and Robertson v State, 829 So. 2d 901 (Fla. 2002).

Focusing solely on outcome without paying attention to whether that outcome was "FAIR" would be a miscarriage of justice. The Strickland Standard is "NOT" to be mechanically applied --- **Fundamental Fairness** should be the Court's "Ultimate Focus". The Petitioner cannot receive a fair trial without

severing these charges first. See Lockhart v Fretwell, 506 U.S. at 369, 113 S.Ct. 838, 122 L.Ed. 180 (1993).

GROUND THREE

FAILURE TO HONOR THE PETITIONER'S 1999 PLEA AGREEMENT (JUST BECAUSE THE LAW HAS CHANGED) IS AN EX POST FACTO VIOLATION AND/OR BREACH OF CONTRACT

In an effort to find the simplest solution to an entangled situation, the Petitioner pled No Contest to a June 1999 attempted burglary charge... It was a win win situation because "AT THAT TIME" your rights remained completely intact as long as you "successfully" completed your probation...You could still vote, still possess a firearm, still travel to any country in the world and you could still answer "NO" to your felony status on job applications.

The clinching factor however when deciding to take that plea or go to trial was when the Petitioner learned that – once you've successfully completed your probation requirements the charge is gone --- never to resurface and thus haunt you from the grave --- the exact thing of which it is doing to the Petitioner right now. Florida Habitual Offender Statute 775.084 (1999) states that, "With-held adjudications "shall only" be treated as convictions if THE NEW OFFENSE IS COMMITTED WHILE "ON PROBATION." (Emphasis added).

The Petitioner is extremely aware that "ANY" crime committed after July 1st, 1999 "DOES HAVE" the potential to be considered for habitualization under Florida Habitual Offender Statute 775.084 (2000). However, the Petitioner does not fall under statute §775.084 (2000) because the crime for which he received w/held adjudication (for completing his probation successfully) took place in "June" of 1999 (before the effective date of the revised rule). The new rule (making w/held adjudications count as convictions) only applies to crimes of which were committed "after" the effective date. See Lynce v Mathis, 117 S.Ct. 891 (1997). The law that applies to an offense is the law in effect at the time **the crime was committed... (**Emphasis mine**)**

Years ago Florida inmates received 30 days of gain time for every 30 days that they served and got out of prison in 1/3 of the time that they do now because the law "now" is different from the law "then..." So what should we do, go and get all of the people of whom received the fruits of the old law and put them back in prison so that they can fulfill the 85% requirement of which is in effect now?" That would be absurd...Well, so is the fact that the Petitioner is still sitting in prison...

The situation is open and shut --- with-held adjudications before July 1999 "could **NOT**" be used for habitualization and with-held adjudications for crimes committed after July 1999 "could"... Florida Statute 775.084 (2000). Had the

Petitioner even imagined that the conditions under which he took his plea would not be met --- he would never have taken that plea. See Hill v Lockhart, 474 U.S. at 59, 106 S.Ct. 366 (1985).

Florida Habitual Offender Statute 775.085 (1999) (before the rules changed) states that w/held adjudications shall (only) be treated as a conviction if the (new) offense was committed "while on probation". Please see Whitmore v State, 147 So. 3d 24 (1st DCA 2013) and Castellanos v State, 62 So. 3d 1292 (3rd DCA 2011). The Petitioner is not applying the above ex post facto clause violations to the 2002 charges of which he took to trial and is now imprisoned (as the lower courts continue to allege) the case of which is being improperly applied is the successfully completed June 1999 w/held adjudication plea for attempted burglary of which is being used to enhance the sentence of which the Petitioner now serves. See Weaver v Graham, 67 L.Ed. 2d 17 450 U.S. 24, also see Akins v Snow, 922 F. 2d 1558 (11th Cir 1991)... Every law that inflicts a greater punishment than the law annexed to the crime (when committed) violates the ex post facto provision ... Id at page 1561.

CONCLUSION

Florida courts must deliver on their promise of justice and fairness, not merely their commitment to punish. This Court is being asked to uphold the Petitioner's constitutional "Due Process" rights as presented in the 5th, 6th and 14th

Amendments of the United States constitution. Petitioner's counsel was ineffective for "not" moving to achieve the following:

RELIEF SOUGHT

1) Tampering does not represent what the 5th, 6th and 14th Amendments guarantee us in our right to Due Process. The Petitioner prays that this Court will (1) consider how meddling contributed to the contamination of this case (2) send a message to the Broward Sheriff's Office (and others) that it will not allow rogue public servants to prosper... (3) Strip them of this fraudulent victory by dismissing this case.
2) The Petitioner humbly requests this Honorable Court to set his judgment aside, vacate his sentences and direct that the Petitioner be retried upon severed charges, thus eliminating the contaminating effects of spillover.
3) The Petitioner humbly requests this Honorable Court to vacate his sentence and order that he be resentenced as to the "State of the Law" at the time his previous alleged crime was committed, thereby removing his Habitual Offender Status

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been placed in the hands of a Corrections Institution Official. Pursuant of Florida Administrative Code, Chapter 33 §210.102(8)(g) to be furnished and/or forwarded via United States Postal Service by first class prepaid mail to the Office(s) of: U.S. Supreme Court, 1 First Street N.E., Washington, D.C. 20543, Clerk of the Court, [redacted] Office of the Attorney General, 444 Brickell Ave., Suite 650, Miami, Florida 33401 on this 2 day of April, 2020

/s/
Jeffrey LaGasse, DC# 680445
Jefferson Correctional Institution
1050 Big Joe Road
Monticello, Florida 32344-0430