No. 19-8322

IN THE

SUPREME COURT OF THE UNITED STATES

JOSEPH A. DIXON, PETITIONER

vs.

MARK S. INCH, FLORIDA DEPT. OF CORRECTIONS, AND RESPONDENTS', RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

11TH ELEVENTH CIRCUIT COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI

Joseph A Dixon
Marion Correctional Institution
P.O. Box 158
Lowell, Florida, 32663 – 0158

QUESTION #1

"Whether the U.S. District Court and the Eleventh Circuit of Appeals, have abused their discretion by failing to accept Petitioner's timely amended § 2254 Federal Habeas Corpus, before the courts made its final adjudication see, In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018)("Citing Clark v. U.S., 764 F.3d 653, 658 (6th Cir. 2014); Easley v. Cromartie, 121 S. Ct. 1452, N. [4] (2000)?"

QUESTIONS PRESENTED IN #(2 – 6)

"SAME"

LIST OF PARTIES

[ ] All parties appear in the Caption of the case on the cover page.

[✓] All parties **do not** appear in the Caption of the case on the cover page a list of all parties to the proceeding in the Court whose judgment is the subject of this petition is as follows:

Aulisio, Julius	Dixon's Direct Appeal Counsel
Barber, Thomas	United States District Judge
Bettker, Amanda	Assistant State Attorney
Bulone, Joseph	State Circuit Court Judge
Dixon, Joseph	Petitioner
Federico, Phillip	State Circuit Court Judge
Horbelt, Sonya Roebuck	Assistant Attorney General
Inch, Mark S.	Secretary, Florida Department of Corrections
Kelly, Patricia	Judge, Florida Second District Court of Appeal
LaRose, Edward	Judge, Florida Second District Court of Appeal
Lucas, Matthew	Judge, Florida Second District Court of Appeal
Migliore, Frank	Assistant State Attorney
Moody, Ashley	Attorney General, State of Florida
O'Leary, Donald	Dixon's Trial Counsel
Silberman, Morris	Judge, Florida Second District Court of Appeal

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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 court to appeals appears at Appendix "A" to the petition and is

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[ ] is unpublished.

The opinion of the United States court to appeals appears at Appendix ___ to the petition and is

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[ ] is unpublished

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

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

The opinion of the _____ court appears at Appendix ___ to the petition and is

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

JURISDICTION

[✓] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 25, 2020 .

[✓] 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: _____ and a copy of the order denying rehearing appears at Appendix _____ .

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

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____ _____. A copy of that decision appears at _____ .

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at _____.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner's U.S. Constitutional rights of the 14th Amendment to Due Process was abridge when Respondents failed to accept Petitioner's timely filed Amended § 2254 Federal Habeas Corpus before the Court made its final adjudication of the merits run afoul of clearly established Federal laws; see, In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018)("Citing Clark v. U.S., 764 F.3d 653, 658 (6th Cir. 2014); Easley v. Cromartie, 121 S. Ct. 1452, n. [4] (2000); Finch v. McKoy, 914 F.3d 293, N. [4] (4th Cir. 2019).

STATEMENT OF THE CASE

Petitioner was sitting in his backyard and the Clearwater, Florida Police Department had their Officer [Corporal Horning] come to Petitioner's home to harass and intimidate Petitioner by peeping over Petitioner's stockade privacy fence, entered a fence in backyard of a home enclosed by a (6) six foot tall fencing without a search warrant to surveil Petitioner's actions which resulted in Corporal Horning saying he seen Petitioner do a "hand – to – hand" transaction by standing on a chair and looking over a (6) six foot fence.

Then additional officers moved in and Petitioner being scared ran, and Sergeant McCauley and Officer Shen testified that after jumping over the fence they witnessed the Petitioner discard a Cheeto's bag that contained four (4) plastic baggies of cocaine and crack cocaine, was accomplished in violation of the 4th and 14th U.S. Constitutional Amendments, see, U.S. v. Struckman, 603 F.3d 731, 736 (9th Cir. 2010); Beck v. Ohio, 85 S. Ct. 223 (1964); Preston vs. Gee, 133 So.3d 1218 (Fla. 2d DCA 2014); U.S. vs. Rose, 526 F.2d 745 (8th Cir. 1975); whereas the AEDPA deference standard does not apply to Petitioner who is "actually innocent," see, Finch v. McKoy, 914 F.3d 293, N. [4] (4th Cir. 2019).

Petitioner timely exhausted state court remedies see, Dixon v. State, 98 So. 3d 576 (Fla. 2d DCA 2012).

Petitioner, thus, filed to the U.S. District Court, see, Appendix "B", then to the 11th Circuit Court of Appeals, see, Appendix "A", denied February 25th, 2020 makes this "Writ of Certiorari" be timely filed.

REASONS FOR GRANTING THE PETITION

LEGAL ARGUMENT #1

QUESTION #1

"Whether the U.S. District Court and the (11th) Circuit Court of Appeals abused their discretion by failing too rule on the merits of Petitioner's Amended § 2254 Habeas Corpus before the courts final adjudication was made is contrary to established Federal Laws; see, In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018)("citing Clark v. U.S., 764 F.3d 653, 658 (6th Cir. 2014); Easley v. Cromartie, 121 S. Ct. 1452, N. [4] (2000)?"

TRIAL COUNSEL DONALD O'LEARY WAS INEFFECTIVE ASSISTANCE OF COUNSEL FOR HIS FAILURE TO FILE A "MOTION TO DISMISS" AND SUPPRESS," WHEN CLEARWATER POLICE DEPARTMENT LACKED PROBABLE CAUSE TO ARREST AND DETAIN AND ILLEGALLY CONDUCT SURVEILLANCE OVER PETITIONER'S (6) SIX FOOT STOCKADE PRIVATE FENCE, WHICH WAS ADOPTED BY STATE TRIAL COURTS FACTUAL FINDING THAT CORPORAL HORNING DID IN FACT COMMIT, ILLEGAL ACTS TRANSFORMED EVERYTHING THEREAFTER, INTO FRUIT OF POISONOUS TREE DOCTRINE EVIDENCE, REQUIRING COURT TO SANCTION THE ALLEGED (4) BAGGIES OF COCAINE, DISCOVERED BY POLICE IS INADMISSIBLE EVIDENCE IN VIOLATION OF THE 4TH, 5TH, 6TH, 7TH, 8TH AND 14TH AMENDMENT OF THE U.S. CONSTITUTION REQUIRING DISCHARGE OF PETITIONER

(1)(A). Jurists of reason could disagree with the U.S. District Court and the 11th Circuit Court of Appeals resolution of Petitioner's constitutional claims are adequate to deserve encouragement to proceed further, see, Slack v. McDaniel, 120 S. Ct. 1595 (2000); Miller v. Cockrell, 123 S. Ct. 1029 (2003); U.S.

v. Streater, 70 F.3d 1314 (D.C. Cir. 1995); Curtis v. Chesterfield, 513 Fed. Appx. 292 (4th Cir. 2013); Hardwick v. Crosby, 320 F.3d 1127 (11th Cir. 2003); Williams v. Martinez, 586 F.3d 995 (D.C. Cir. 2009); Petitioner Joseph Augustus Dixon hereby files pursuant to Federal Rule 15, and its laws, procedures and rules of courts for this Honorable Court to allow Petitioner to amend this instant § 2254 Ground, when Petitioner is pro se and didn't understand the legal significance of failure to cite federal and state laws to support and show violations of the laws, requires Petitioner in the "interest of justice," to move this Court in accordance to see, In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018)("Citing Clark v. U.S., 764 F.3d 653, 658 (6th Cir. 2014)("A motion to amend pursuant to Rule 15 is not a second or successive habeas motion when it is filed before the [adjudication] of the initial § 2254 is complete"); Mayle v. Felix, 125 S. Ct. 2562 (2005) would avert the workings of a "manifest injustice" to a "miscarriage of justice," when Trial Counsel Donald O'Leary was ineffective assistance of counsel for his failure to file a "Motion to Dismiss and Suppress," when Clearwater, Florida Police lacked probable cause to make a warrantless arrest and [conduct] warrantless surveillance over Petitioner's stockade fence in a search to see and prove Petitioner was seen making hand – to – hand transactions, which lead to police in making Petitioner jump his own stockade fence, which police alleges (4) four small baggies of cocaine was found in a Cheetos bag that Petitioner had thrown is not probable cause but is harassment, intimidation, and brow-beating Petitioner, due to past arrests, made any verbal statements to police be inadmissible evidence.

(1)(B). Further, additional prejudice was predicated when State Trial Judge Philip J. Federico see, Appendix A0001 knew Petitioner's Post – Conviction 3.850 was legally insufficient on its face and he abused his discretion in failing to tell Petitioner to amend his motion with citing of federal and state cases, see, Spera v. State, 971 So. 2d 754 (Fla. 2003) has resulted in a act of bias against Petitioner, see, U.S. v. Williams, 183 F.3d 458 n. [14, 15, 16] (5th Cir. 1999)("Trial Counsel Ineffective for failure to

cite controlling authority caused a miscarriage of justice"); Marshall v. Jerrico, 100 S. Ct. 1610 (1980); Easley v. Cromartie, 121 S. Ct. 1452, N. [4] (2000)(Citing U.S. v. Gypsum, 68 S. Ct. 525 (1948); Neil v. James, 811 F.2d 100, 105 (2d Cir. 1987)("Pro se Petitioner's failure to understand the legal significance of the facts known to him.... is a credible explanation for his failure to present the claim earlier") when Petitioner arrest, detention, and etc., was formulated thru lack of probable cause that Petitioner possessed (4) baggies of cocaine when Clearwater, Florida Police officer/Corporal Horning admitted, see, Appendix A0002 – 3, Trial Transcript 61 – 65: ("Testimony establishes that he conducted his surveillance from a neighboring park to the north, where he looped through bushes, stood up on a chair and peered over a (6) six – foot stockade fence. T.T. at 65").

The above acts of misconduct were accomplished without a valid arrest warrant, search warrant and probable cause, see, U.S. v. Struckman, 603 F.3d 731, 736 (9th Cir. 2010)("Officers entered a fence in backyard of a home enclosed by a (6) six foot tall fence, but officers had to climb atop objects and peek through small holes in the fence to see what was happening[1] in the backyard of the residence I*d.* 739 subjective expectation of privacy in yard adjacent to defendant's house because enclosed and clearly designated as area where home life activities took place, citing Payton v. New York, 100 S. Ct. 1371 (1980); U.S. v. Wilson, 614 F.3d 219, 233 (6th Cir. 2010)("Error clear or obvious when conspicuously false statement made in opinion has been clearly manifested in State Trial Judge Federico, see Appendix 0001: ("In the present case, the record reflects that Corporal Horning testified that on August 5, 2007 he conducted surveillance of the Defendants at 207 Pennsylvania Avenue (see Exhibit B, 61 – 62), Corporal Horning testified that he conducted his surveillance from a neighboring park to the north where he looped

[1] ("Petitioner has been living in Clearwater Florida for over 45 years and this particular officer has been harassing me for a long time, and Petitioner doesn't understand why he keeps selective/prosecuting me, as retaliation, see, U.S. v. Andrews, 633 F.2d 449, 455 n. [4,5] (6th Cir. 1980)("**Due process values requires that Defendant be freed of apprehension of a retaliatory motivation on part of a [judge or prosecutor] Blackledge v. Perry, 94 S. Ct. 2098 (1974)").**

around through the bushes, stood up on a chair and peered over a six – foot stockade fence, see Exhibit B, 65) Corporal Horning testified that from behind the fence he saw the Defendant in the "shadows" and people coming and going from the property engaging in what he believed to be drug deals. (See Exhibit B. P. 65, 69, 71, 73). The record further reflects that Sergeant McCauley and Officer Shen both testified that they witness the Defendant jumping over the fence onto a public sidewalk (See Exhibit B, 97 – 98, 100, 112, 114). Both Sergeant McCauley and officer Shen testified that after jumping over the fence they witnessed the Defendant discard a Cheetos bag that contained four (4) plastic bags of cocaine and crack cocaine, see, Exhibit B, 97 – 98, 100, 112, 114"); this is not probable cause and is a violation of the (4th) Amendment of the U.S. Constitution, compare, U.S. v. Rose, 526 F.2d 745 (8th Cir. 1975)("Robbery case statement made later court reverse conviction, for lack of probable cause"); Logan v. Capps, 525 F.2d 937 (6th Cir. 1976); Beck v. Ohio, 85 S. Ct. 223 (1964); Preston v. Gee, 133 So. 3d 1218 (Fla. 2d DCA 2014); U.S. v. Stuckman, 603 F.3d 731, 736, 739 (9th Cir. 2010) made Trial Counsel Donald O'Leary be ineffective assistance of counsel for his failure to file a motion to dismiss and suppress when police lacked probable cause to arrest, detain and surveillance Petitioner's property without a "search warrant" see, Bradley v. Cowan, 500 F.2d 380 (6th Cir. 1974)("Counsel ineffective, evidentiary hearing whether he had consented to a search revealing incriminating evidence") Huynh v. King, 95 F.3d 1052 (11th Cir. 1996) ("IAC, failure to timely file suppression motion"); Strickland v. Washington, 104 S. Ct. 2052 (1984); Briley v. Cal., 564 F.2d 849, N. [16, 17] (9th Cir. 1977); U.S. v. Williams, 615 F.2d 585 (3d Cir. 1980); U.S. v. Easter, 539 F.2d 663 (8th Cir. 1976); Goodwin v. Balkcom, 584 F.2d 813 (FN18) (11th Cir. 1982) Cert. Denied 103 S. Ct. 1798 (1983)("Counsel failure to challenge whether police had probable cause to [arrest] and his failure to understand that the exclusionary rule could have barred admission of defendant's confession"); Cunningham v. State, 799 So. 2d 442 (Fla. 4th DCA 2001)("Failure to file motion to dismiss, IAC, granted"); Young v. Zant, 677 F.2d 792, 798 (11th Cir.

1982); Harich v. Houston, 813 F.2d 1083, 1089 (11th Cir. 1987); Edmonds v. Smith, 922 F.3d 737 (6th Cir. 2019) shows the State lower courts denial of this ground is unreasonable and contrary to established laws, compare, U.S. v. Wilson, 614 F.3d 219 (6th Cir. 2009).

(2). The [outcome] of the proceedings would be different but for the U.S. Constitutional violations would justify that no procedural bars be applied to keep a merits determination which has not been regularly applied in similar circumstances see, State v. Sireci, 502 So. 2d 1221 (Fla. 1987)("Limited evidentiary hearing granted") of the Clearwater, Florida Police harassment[2], intimidation of Petitioner, search of Petitioner's yard when Corporal Horning and other officers stood in a chair and peered over Petitioner's stockade fence, is a form of retaliation and selective prosecution, and patterns of illegality in order to frame Petitioner for all sort of drug arrests in the past and the present (Petitioner has been sentenced (25) twenty – five years in Florida Prison system) which has a cloak – of – deception that is amiss and now has Petitioner illegally arrested thru acts of Petitioner being illegally surveilled in order for Clearwater, Florida Police to perfect Petitioner's arrest contrary to establish federal laws, see, U.S. v. Struckman, 603 F.3d 731, 736 (9th Cir. 2010); U.S. v. Rose, *Supra*; Logan v. Capps, *Supra*, Beck v. Ohio, 85 S. Ct. 223 (1964) would not have been accomplished had Trial Counsel Donald O'Leary not been ineffective assistance of counsel for his failure to file a motion to dismiss and suppress, which any state or federal judge reading this motion would grant Petitioner's ineffective assistance ground due to Counsel's dereliction of duty owed to Petitioner, any federal or state judge would have alerted Petitioner to amend his motion under the Fed. Rule 15 Authorities of, see, Spera v. State, 971 So. 2d 754 (Fla. 2003); Mayle v. Felix, 125 S. Ct. 2562 (2005); In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018) would have eliminated any unbias allegations and impartiality in the "interest of justice" and required the

[2] ("Trial page 61, lines 16 – 21, Appendix A0002: Q: Officer Horning without suggesting anything other than you simply have worked that neighborhood for a long time and gotten to know a bunch of people would it be fair to say you had come into contact with Mr. Dixon too many times to count prior to August of 2007? A: Yes.")

courts to dismiss and suppress the (4) four small baggies of cocaine and any statements made by Petitioner disowning the cocaine is inadmissible evidence pursuant to Smith v. Dugger, 911 F.2d 494 (11th Cir. 1990)(IAC, granted"); U.S. v. Struckman, *Supra*, Beck v. Ohio, *Supra*, Logan v. Capps, *Supra*, U.S. v. Rose, *Supra*; Huynh v. King, 95 F.3d 1052 (11th Cir. 1996) ("IAC, failure to timely file suppression motion"); Goodwin v. Balkcom, 584 F.2d 813 (FN18) (11th Cir. 1982) Cert. Denied 103 S. Ct. 1798 (1983); Cummingham v. State, 799 So. 2d 442 (Fla. 4th DCA 2001)("Failure to file motion to dismiss, IAC, granted"); Kimmelman v. Morrison, 106 S. Ct. 2570 (1986)(same) has manifested the government's case against Petitioner, as insufficient on its face, when no overwhelming evidence exits of Petitioner's guilt, supports the prejudice that Petitioner is factually and legally innocent, when the ends of justice would be served if this Court would approve, and grant leave to amend this ground, and equitable toll the time to make this ground timely before the Court when it is more likely than not that no reasonable minded juror hearing [all] evidence would not have voted to convict Petitioner beyond a reasonable doubt and Petitioner would have been acquitted of all charges [in jury trial and on retrial] of: Possession of (4) small baggies of cocaine which has Petitioner convicted for (25) twenty – five years, requires this Court to deny all the government's rebuttal pleadings pursuant to Fed. Rule 56(f), see, Quinn v. Syracuse Model Neighborhood, 613 F.2d 438, 445 (2d Cir. 1980); Delprete v. Thompson, 10 F. Supp. 3d 907, n. [1,2] (Ill. 2014)("IAC, Excuse all procedural defaults"); Strickland v. Washington, 104 S. Ct. 2052 (1984); Finley v. Johnson, 243 F.3d 215, 221 (5th Cir. 2001); James v. Ryan, 679 F.3d 980, n. [33 – 35] (9th Cir. 2012); Barnett v. Roper, 904 F.3d 623, n. [13 – 18] (8th Cir. 2018); U.S. v. McKie, 73 F.3d 1149 (D.C. Cir. 1996); Majoy v. Roe, 296 F.3d 770, 776 (9th Cir. 2002); Souter v. Jones, 395 F.3d 577 (6th Cir. 2005); Whitley v. Senkowski, 317 F.3d 233 (2d Cir. 2003); Newell v. Hanks, 283 F.3d 827, 837 (7th Cir. 2002); Alalmalo v. U.S., 645 F.3d 1042, n. [13 – 15] (9th Cir. 2011); Gunn v. Newsome, 881 F.2d 949, 955 (11th Cir. 1989) Cert. Denied 110 S. Ct. 542 (1989); Neil v. James, 811

F.2d 100, 105 (2d Cir. 1987); Harris v. Nelson, 89 S. Ct. 1082, n. [1,2] (1969); U.S. v. Ferguson, 246 F.3d 129, 133 (2d Cir. 2000); U.S. v. Scroggins, 379 F.3d 233, 255 (11th Cir. 2004); U.S. v. Vicaria, 12 F.3d 195, 198 – 99 (11th Cir. 1994) would avert a "manifest injustice" to a "miscarriage of justice," see, Trapp v. Metropolitan Life Ins. Co., 70 F.2d 976, 981 (8th Cir. 1934) Cert. Denied 55 S. Ct. 112 (1934); Queyoda v. Scribber, 611 F.3d 1165, n. [4] (9th Cir. 2010); Finch v. McKoy, 914 F.3d 293, N. [4] (4th Cir. 2019); U.S. v. Thomas, 572 F.3d 945, n. [1 – 3] (D.C. Cir. 2009); Floyd v. McCoy, 887 F.3d 214, n. [2 – 4, 9, 10, 11, 22, 23, 30, 38] (5th Cir. 2018); Miller – el v. Cockell, 123 S. Ct. 1029 (2003); U.S. v. Medlock, 645 Fed. Appx. 810 (10th Cir. 2016); McQuiggen v. Perkins, 133 S. Ct. 1926 (2013); Edmonds v. Smith, 922 F.3d 737 (6th Cir. 2019).

CONCLUSION

(1). Grant Petitioner's ineffective ground and discharge Petitioner;

(2). Grant Petitioner a federal evidentiary hearing;

(3). Any other relief the Court deems just.

LEGAL ARGUMENT #2

QUESTION #2

"Whether the U.S. District Court and the (11th) Circuit Court of Appeals abused their discretion by failing too rule on the merits of Petitioner's Amended § 2254 Habeas Corpus before the courts final adjudication was made is contrary to established Federal Laws; see, In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018)("citing Clark v. U.S., 764 F.3d 653, 658 (6th Cir. 2014); Easley v. Cromartie, 121 S. Ct. 1452, N. [4] (2000)?"

TRIAL COUNSEL DONALD O'LEARY WAS INEFFECTIVE ASSISTANCE OF COUNSEL FOR HIS FAILURE TO OBJECT TO THE EXCLUSION OF AFRICAN – AMERICANS AS JURORS PREJUDICED PETITIONER'S DUE PROCESS RIGHTS UNDER THE FOURTEENTH (14)TH) AMENDMENT OF THE U.S. CONSTITUTION TO A FAIR TRIAL

(1)(A). Jurists of reason could disagree with the U.S. District Court and the 11th Circuit Court of Appeals resolution of Petitioner's constitutional claims are adequate to deserve encouragement to proceed further, see, Slack v. McDaniel, 120 S. Ct. 1595 (2000); Miller v. Cockrell, 123 S. Ct. 1029 (2003); U.S. v. Streater, 70 F.3d 1314 (D.C. Cir. 1995); Curtis v. Chesterfield, 513 Fed. Appx. 292 (4th Cir. 2013); Hardwick v. Crosby, 320 F.3d 1127 (11th Cir. 2003); Williams v. Martinez, 586 F.3d 995 (D.C. Cir. 2009); Petitioner Joseph Augustus Dixon hereby files pursuant to Federal Rule 15, and its laws, procedures and rules of courts for this Honorable Court to allow Petitioner to amend this instant § 2254 Ground, when Petitioner is pro se and didn't understand the legal significance of failure to cite federal and state laws to support and show violations of the laws, requires Petitioner in the "interest of justice," to move this Court in accordance to see, In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018)("Citing Clark v. U.S., 764 F.3d 653, 658 (6th Cir. 2014)("A motion to amend pursuant to Rule 15 is not a second

or successive habeas motion when it is filed before the [adjudication] of the initial § 2254 is complete"); Mayle v. Felix, 125 S. Ct. 2562 (2005) manifest itself when State Trial Judge Philip J. Federico see, Appendix A0001: knew Petitioner's post – conviction 3.850 was legally insufficient on its face and he abused his discretion in failing to tell Petitioner to amend his motion, with the citing of federal and state cases, see, Spera v. State, 971 So. 2d 754 (Fla. 2003) has resulted in a act of bias against Petitioner, see, U.S. v. Williams, 183 F.3d 458 n. [14, 15, 16] (5th Cir. 1999); Marshall v. Jerrico, 100 S. ct. 1610 (1980); Easley v. Cromartie, 121 S. Ct. 1452, N. [4] (2000); Neil v. James, 811 F.2d 100, 105 (2d Cir. 1987) would avert the workings of a "manifest injustice" to a "miscarriage of justice," when Trial Counsel Donald O'Leary was ineffective assistance of counsel for his failure to **object to the exclusion of African – Americans as jurors prejudiced petitioner's due process rights under the fourteenth (14th) amendment of the U.S. Constitution for Petitioner to have a fair trial.**

In the case at bar, Mr. Dixon being African – American was denied African – Americans to participate in his jury selection manifested itself by Counsel O'Leary's failure to object see, Batson v. Kentucky, 106 S. Ct. 1712 (1986); U.S. v. Mitchell, 502 F.3d 931, 957 (9th Cir. 2007)("Native Americans and African – Americans constitute a cognizable group"); Ga. v. McCollum, 505 U.S. 4, 112 S. Ct. 2348 (1992)("Prosecution may challenge the defendants use of preemptory challenges on Equal Protection grounds"); Jeb v. Ala., 511 U.S. 127, 129, 114 S. Ct. 1419 (1994)("Either party may challenge gender – based exclusion"); Zapata v. Vasquez, 788 F.3d 1106 (9th Cir. 2015)("Reverse conviction, IAC, for failure to object"); Floyd v. Meachum, 907 F.2d 347 (2d Cir. 1990); Drain v. Woody, 595 Fed. Appx. 558 (6th Cir. 2014); Hodge v. Hurley, 426 F.3d 368, 369 (6th Cir. 2005)(same); Burns v. Gammon, 260 F.3d 892 (8th Cir. 2001)(same); Washington v. Hofbauer, 228 F.3d 689 (6th Cir. 2000); Robles v. State, 188 So. 2d 789, 794 (Fla. 1966)(same); Burge v. Bellegue, 290 Fed. Appx. 73 (9th Cir. 2008)(same); Rogers v. Lynaugh, 848 F.2d 606 (5th Cir. 1988)(same);

Manning v. Huffman, 269 F.3d 720 (6th Cir. 2001); Goodwin v. Balkcom, 684 F.2d 794, 814 – 817 (11th Cir. 1982) Cert. Denied 103 S. Ct. 1798 (1983)("IAC, granted on his failure to "object" and challenge composition of grand jury") it is well settle as a matter of law, that this Court [must] determine whether the explanation is facially race – neutral and whether the opponent of the preemptory challenge has proven purposeful racial discrimination see, Purkett, 514 U.S. at 768 – 69, 115 S. Ct. 1769 (1995)("Prosecutor proffered explanation"); Snyder v. La., 552 U.S. 472, 477 128 S. Ct. 1203 (2008)("If the proffered explanation ...and the court chooses to credit that explanation as race – neutral, then the judge must actually make determination on the record regarding the juror...").

In Mr. Dixon case, the Prosecutor never gave a proffered explanation based on race – neutrality, nor did the court actually make a determination made trial counsel be ineffective assistance of counsel for his failure to object to protect the integrity of the judicial proceedings, see, Strickland v. Washington, 104 S. Ct. 2052 (1984).

(2). The [outcome] of the proceedings would have been different, but for the U.S. Constitutional violations would justify that no procedural bars be applied to keep a merits determination which has not been regularly applied in similar circumstances see, State v. Sireci, 502 So. 2d 1221 (Fla. 1987)("Limited evidentiary hearing granted") of State Trial Judge Philip J. Federico see, Appendix A0001 alerted Petitioner to the fact that his post – conviction 3.850 was legally insufficient on its face for Petitioner's failure to cite federal and state controlling legal authorities came about due to his abuse of discretion, when an amended petition would have preserved this issue for review, therefore, this Fed. Rule 15 Amendment under, see, Spera v. State, 971 So. 2d 754 (Fla. 2003); Mayle v. Felix, 125 S. Ct. 2562 (2005); In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018) would have eliminated any unbias allegations and impartiality in the "interest of justice" and required the courts to grant

Petitioner a new trial due to Respondent's misconduct in excluding all the Black – **African – Americans off Petitioner's jury contrary to, Batson v. Kentucky, 106 S. Ct. 1712 (1986) when Trial Counsel Donald O'Leary's "silence" and failure to object allowed Prosecutors to resolve the factual matters biasly, that affected Petitioner's substantial rights to Due Process of the 6th, 7th, and 14th Amendment Rights, see,** Strickland v. Washington, 104 S. Ct. 2052 (1984) when it is more likely than not that no reasonable minded juror hearing [all] of the evidence would not have voted to convict Petitioner beyond a reasonable doubt and Petitioner would have been acquitted of all charges in jury trial and on retrial of: possession of (4) four small baggies containing cocaine which Petitioner was convicted for (25) twenty – five years, requires this Court to deny all the governments rebuttal pleadings pursuant to Fed. Rule 56(f) see, Quinn v. Syracuse Model Neighborhood, 613 F.2d 438, 445 (2d Cir. 1980); Goodwin v. Balkcom, 684 F.2d 794, 814 – 817 (11th Cir. 1982) Cert. Denied 103 S. Ct. 1798 (1983); Delprete v. Thompson, 10 F. Supp. 3d 907, n. [1,2] (Ill. 2014)("IAC, Excuse all procedural defaults"); Strickland v. Washington, 104 S. Ct. 2052 (1984); Finch v. McKoy, 914 F.3d 293, N. [4] (4th Cir. 2019); Finley v. Johnson, 243 F.3d 215, 221 (5th Cir. 2001); McQuiggen v. Perkins, 133 S. Ct. 1926 (2013).

CONCLUSION

(1). Grant Petitioner's ineffective ground and discharge Petitioner;

(2). Grant Petitioner a federal evidentiary hearing;

(3). Any other relief the Court deems just.

LEGAL ARGUMENT #3

QUESTION #3

"Whether the U.S. District Court and the (11th) Circuit Court of Appeals abused their discretion by failing too rule on the merits of Petitioner's Amended § 2254 Habeas Corpus before the courts final adjudication was made is contrary to established Federal Laws; see, In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018)("citing Clark v. U.S., 764 F.3d 653, 658 (6th Cir. 2014); Easley v. Cromartie, 121 S. Ct. 1452, N. [4] (2000)?"

TRIAL COUNSEL DONALD O'LEARY WAS INEFFECTIVE FOR HIS FAILURE TO OBJECT TO UNTESTED COCAINE AS EVIDENCE, PREJUDICED THE PETITIONER TO A FAIR, UNBIASED TRIAL

(1). Jurists of reason could disagree with the U.S. District Court and the 11th Circuit Court of Appeals resolution of Petitioner's constitutional claims are adequate to deserve encouragement to proceed further, see, Slack v. McDaniel, 120 S. Ct. 1595 (2000); Miller v. Cockrell, 123 S. Ct. 1029 (2003); U.S. v. Streater, 70 F.3d 1314 (D.C. Cir. 1995); Curtis v. Chesterfield, 513 Fed. Appx. 292 (4th Cir. 2013); Hardwick v. Crosby, 320 F.3d 1127 (11th Cir. 2003); Williams v. Martinez, 586 F.3d 995 (D.C. Cir. 2009); Petitioner Joseph Augustus Dixon hereby files pursuant to Federal Rule 15, and its laws, procedures and rules of courts for this Honorable Court to allow Petitioner to amend this instant § 2254 Ground, when Petitioner is pro se and didn't understand the legal significance of failure to cite federal and state laws to support and show violations of the laws, requires Petitioner in the "interest of justice," to move this Court in accordance to see, In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018)("Citing Clark v. U.S., 764 F.3d 653, 658 (6th Cir. 2014)("A motion to amend pursuant to Rule 15 is not a second or successive habeas motion when it is filed before the [adjudication] of the initial § 2254 is complete");

Mayle v. Felix, 125 S. Ct. 2562 (2005) would avert the workings of a "manifest injustice" to a "miscarriage of justice," when Trial Counsel Donald O'Leary was ineffective assistance of counsel for his failure to object to untested cocaine as evidence has prejudiced Petitioner to a fair and unbias jury trial, when the face of Petitioner's post – conviction 3.850 file to State Trial Judge Philip J. Federico see, Appendix A0001 was legally insufficient manifest the judge abused his discretion for failing to allow Petitioner to amend to cite federal and state cases to support ground, see, Spera v. State, 971 So. 2d 754 (Fla. 2003); U.S. v. Williams, 183 F.3d 458 n. [14, 15, 16] (5th Cir. 1999); Marshall v. Jerrico, 100 S. Ct. 1610 (1980); Easley v. Cromartie, 121 S. Ct. 1452, N. [4] (2000); Neil v. James, 811 F.2d 100, 105 (2d Cir. 1987); when the drugs of (4) alleged small baggies of cocaine found on a public sidewalk made Counsel duty- bound to alert the Court and jury that State of Florida Prosecutors failed to test the cocaine by Florida Department of Law Enforcement experts, shows that Petitioner has been prosecuted without Due Process of the (14th) Fourteenth Amendment of the U.S. Constitution, see, Strickland v. Washington, 104 S. Ct. 2052 (1984); Goodwin v. Balkcom, 584 F.2d 813 (FN18) (11th Cir. 1982) Cert. Denied 103 S. Ct. 1798 (1983);("IAC, grant counsel failure to object and challenge the composition of the grand jury"); **Manning v. Huffman, 269 F.3d 720 (6th Cir. 2001); Burns v. Gammon, 260 F.3d 892 (8th Cir. 2001); Manning v. Bowersox, 310 F.3d 571, 576, (8th Cir. 2002)("IAC, filed motion in limine but failed to [object] to the admission of Constitutionally inadmissible evidence at trial").**

(2). The [outcome] of the proceedings would be different but for the U.S. Constitutional violations would justify that no procedural bars be applied to keep a merits determination which has not been regularly applied in similar circumstances see, State v. Sireci, 502 So. 2d 1221 (Fla. 1987)("Limited evidentiary hearing granted") of State Trial Judge Federico see, Appendix A0001 had he allowed Petitioner to amend his motion , judicial relief could have been granted but a abused his discretion occurred, causing this Court to have to grant Petitioner's instant motion to amend which relief of a new

trial would have been granted when police found (4) small baggies of cocaine on the public sidewalk and the government Attorneys failed to have Florida Department of Law Enforcement experts test the drugs to show a reasonable possibility exist that the alleged drugs could have been a person's medication and not drugs causing dismissal of charges or the interference from the jury that Petitioner was not engaged in any unlawful activities, which any court would deem Trial Counsel Donald O'Leary ineffective assistance of counsel for his failure to prepare for trial and object instantly when government proffered alleged (4) small baggies of cocaine, see, Strickland v. Washington, 104 S. Ct. 2052 (1984); Delprete v. Thompson, 10 F. Supp. 3d 907, n. [1,2] (Ill. 2014)("IAC, Excuse all procedural defaults excused"); Kenley v. Armontrout, 937 F.2d 1298, 1304 (8th Cir. 1991)("Trial Counsel's failure to investigate and prepare cannot be deemed trial strategy because failure to interview witness and discover evidence relates to trial preparation and not trial strategy"); Canney v. Adams, 706 F.3d 1148, n. [4, 7] (9th Cir. 2013)(same); has manifested the government's case against Petitioner, as insufficient prima facie case, premised on a frame or set – up job on Petitioner, compare, Limone v. Condon, 373 F.3d 39, n. [6] (1st Cir. 1990); Stano v. Dugger, 901 F.2d 898, 899 (11th Cir. 1990); Briley v. Cal., 564 F.2d 849, N. [16, 17] (9th Cir. 1977)(same) when no overwhelming evidence of guilt exists of Petitioner's guilt supports the predicate that Petitioner is factually and legally innocent when the "ends of justice" would be served if this court would approve and grant leave to amend when Petitioner has not abused the writ on this ground and equitable toll the time to make this ground timely before the court when it is more likely than not that no reasonable mined juror hearing [all] of the evidence would not have voted to convict Petitioner beyond a reasonable doubt and Petitioner would have been acquitted of all charges in jury trial and on retrial] of (4) four small baggies of cocaine which has Petitioner convicted for (25) twenty – five years requires this Court to deny all the government's rebuttal pleadings pursuant to Fed. Rule 56 (f), see, Quinn v. Syracuse Model Neighborhood, 613 F.2d 438, 445 (2d Cir. 1980); James v. Ryan, 679 F.3d 980, n. [33 – 35] (9th Cir.

2012); Barnett v. Roper, 904 F.3d 623, n. [13 – 18] (8th Cir. 2018); U.S. v. McKie, 73 F.3d 1149 (D.C. Cir. 1996); Majoy v. Roe, 296 F.3d 770, 776 (9th Cir. 2002); Souter v. Jones, 395 F.3d 577 (6th Cir. 2005); Alalmalo v. U.S., 645 F.3d 1042, n. [13 – 15] (9th Cir. 2011); Gunn v. Newsome, 881 F.2d 949, 955 (11th Cir. 1989) Cert. Denied 110 S. Ct. 542 (1989); Neil v. James, 811 F.2d 100, 105 (2d Cir. 1987); Harris v. Nelson, 89 S. Ct. 1082, n. [1,2] (1969); U.S. v. Ferguson, 246 F.3d 129, 133 (2d Cir. 2000); U.S. v. Scroggins, 379 F.3d 233, 255 (11th Cir. 2004); U.S. v. Vicaria, 12 F.3d 195, 198 – 99 (11th Cir. 1994) would avert a "manifest injustice" to a "miscarriage of justice," see, Trapp v. Metropolitan Life Ins. Co., 70 F.2d 976, 981 (8th Cir. 1934) Cert. Denied 55 S. Ct. 112 (1934); Queyoda v. Scribber, 611 F.3d 1165, n. [4] (9th Cir. 2010); U.S. v. Thomas, 572 F.3d 945, n. [1 – 3] (D.C. Cir. 2009); Floyd v. McCoy, 887 F.3d 214, n. [2 – 4, 9, 10, 11, 22, 23, 30, 38] (5th Cir. 2018); Miller – El v. Cockell, 123 S. Ct. 1029 (2003); Finch v. McKoy, 914 F.3d 293, N. [4] (4th Cir. 2019); McQuiggen v. Perkins, 133 S. Ct. 1926 (2013).

CONCLUSION

(1). Grant Petitioner's ineffective ground and order a new trial;

(2). Grant Petitioner a federal evidentiary hearing;

(3). Any other relief the Court deems just.

LEGAL ARGUMENT #4

QUESTION #4

"Whether the U.S. District Court and the (11th) Circuit Court of Appeals abused their discretion by failing too rule on the merits of Petitioner's Amended § 2254 Habeas Corpus before the courts final adjudication was made is contrary to established Federal Laws; see, In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018)("citing Clark v. U.S., 764 F.3d 653, 658 (6th Cir. 2014); Easley v. Cromartie, 121 S. Ct. 1452, N. [4] (2000)?"

TRIAL COUNSEL DONALD O'LEARY WAS INEFFECTIVE FOR HIS STIPULATION AND CONCEDE ERROR OF UNTESTED COCAINE EVIDENCE AS FACT, WAS PREJUDICIAL UNDER THE TOTALITY OF THE CIRCUMSTANCES TEST, IS TANTAMOUNT TO CONCESSION OF ERROR

(1)(A). Jurists of reason could disagree with the U.S. District Court and the 11th Circuit Court of Appeals resolution of Petitioner's constitutional claims are adequate to deserve encouragement to proceed further, see, Slack v. McDaniel, 120 S. Ct. 1595 (2000); Miller v. Cockrell, 123 S. Ct. 1029 (2003); U.S. v. Streater, 70 F.3d 1314 (D.C. Cir. 1995); Curtis v. Chesterfield, 513 Fed. Appx. 292 (4th Cir. 2013); Hardwick v. Crosby, 320 F.3d 1127 (11th Cir. 2003); Williams v. Martinez, 586 F.3d 995 (D.C. Cir. 2009); Petitioner Joseph Augustus Dixon hereby files pursuant to Federal Rule 15, and its laws, procedures and rules of courts for this Honorable Court to allow Petitioner to amend this instant § 2254 Ground, when Petitioner is pro se and didn't understand the legal significance of failure to cite federal and state laws to support and show violations of the laws, requires Petitioner in the "interest of justice," to move this Court in accordance to see, In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018) ("Citing Clark v. U.S., 764 F.3d 653, 658 (6th Cir. 2014)("A motion to amend pursuant to Rule 15 is not a second or successive habeas motion when it is filed before the [adjudication] of the initial § 2254 is complete"); Mayle v. Felix, 125 S.

Ct. 2562 (2005) would avert the workings of a "manifest injustice" to a "miscarriage of justice," when Trial Counsel Donald O'Leary was ineffective assistance of counsel for his stipulation of untested cocaine evidence as fact, was prejudicial under the totality of the circumstances test, is tantamount to concession of error, when drugs were found on a public sidewalk.

(1)(B). Further, additional prejudice was predicated when State Trial Judge Philip J. Federico, see, Appendix A0001 knew Petitioner's post - conviction 3.850 was legally insufficient on its face and he abused his discretion in failing to tell Petitioner to amend his motion with the citing of federal and state cases, see, Spera v. State, 971 So. 2d 754 (Fla. 2003); has resulted in an act of bias against Petitioner, see, U.S. v. Williams, 183 F.3d 458 n. [14, 15, 16] (5th Cir. 1999); Marshall v. Jerrico, 100 S. Ct. 1610 (1980); Easley v. Cromartie, 121 S. Ct. 1452, N. [4] (2000); Neil v. James, 811 F.2d 100, 105 (2d Cir. 1987); when Petitioner defense was the drugs found was not drugs and was not his compare Corporal Horning, Police Report, see, Appendix A0003, makes Trial Counsel Donald O'Leary be ineffective assistance of counsel for him without Petitioner's consent to stipulate and concede error that (4) four small baggies of cocaine found on a public sidewalk was in fact cocaine, before having Florida Department of Law Enforcement test the alleged drugs made Counsel breach Petitioner's right to counsel, see, Strickland v. Washington, 104 S. Ct. 2052 (1984); Kenley v. Armontrout, 937 F.2d 1298, 1304 (8th Cir. 1991)("Trial Counsel's failure to investigate and prepare cannot be deemed trial strategy because failure to interview witness and discover evidence relates to trial preparation and not trial strategy") has manifested the government's case against Petitioner, as insufficient prima facie case, premised on a frame of set – up job on Petitioner compare, Limone v. Condon, 373 F.3d 39, n. [6] (1st Cir. 1990); Stano v. Dugger, 901 F.2d 898, 899 (11th Cir. 1990); Briley v. Cal., 564 F.2d 849, N. [16, 17] (9th Cir. 1977); Johnson v. Cowley, 40 F.3d 341, 346 (10th Cir. 1994)("Holding that remand was required where defendant's state trial counsel had [stipulated] to defendants prior conviction and there was no evidence in the record that defendant [had agreed to the

stipulation]"); Wright v. Craven, 461 F.2d 1109 (9th Cir. 1972); 325 F. Supp. 1253 (9th Cir. 1971)(same); Wiley v. Sowders, 647 F.2d 642 (6th Cir. 1981) Cert. Denied 102 S. Ct. 656 (1981)("IAC, granted when counsel conceded defendant guilt"); Francis v. Spraggins, 720 F.2d 1190 (11th Cir. 1983)(same); Young v. Zant, 677 F.2d 792 (11th Cir. 1982) (same); U.S. v. Swanson, 943 F.2d 1070 (9th Cir. 1991)(same).

(2). The [outcome] of the proceedings would be different but for the U.S. Constitutional violations would justify that no procedural bars be applied to keep a merits determination which has not been regularly applied in similar circumstances see, State v. Sireci, 502 So. 2d 1221 (Fla. 1987)("Limited evidentiary hearing granted") of State Trial Judge Federico see, Appendix A0001 had he allowed Petitioner to amend his motion , judicial relief could have been granted, but an abused of discretion occurred, causing this Court to grant Petitioner's instant motion to amend which relief for a new trial would be granted when Counsel Donald O'Leary overrode Petitioner's defense, contrary to the police report of Corporal Horning, see, Appendix A0003 that the drugs was not drugs and was not Petitioner's, was stipulated /conceded; when a possibility exist that "FDLE"/could have stated, the drugs were not real as a fact which would have been a great defense to exonerate Petitioner's, was undermined by Trial Counsel's breach of duty to Petitioner violated Petitioner's right to a fair trial, see, Strickland v. Washington, 104 S. Ct. 2052 (1984); Delprete v. Thompson, 10 F. Supp. 3d 907, n. [1,2] (Ill. 2014)("IAC granted, Excusing all procedural defaults"); Kenley v. Armontrout, 937 F.2d 1298, 1304 (8th Cir. 1991); Briley v. Cal. , 564 F.2d 849, N. [16, 17] (9th Cir. 1977); Stano v. Dugger, 901 F.2d 898, 899 (11th Cir. 1990); Limone v. Condon, 373 F.3d 39, n. [6] (1st Cir. 1990) when no overwhelming evidence of guilt exits of Petitioner's guilt that supports the prejudice that Petitioner is factually and legally innocent when the "ends of justice" would be served if this Court would approve and grant leave to amend when Petitioner has not abused the writ on this ground, and equitable toll the time to make this ground timely before the Court when it is more likely than not that no reasonable minded juror hearing [all] evidence would not have voted to convict Petitioner beyond a

reasonable doubt and Petitioner would have been acquitted of all charges [in jury trial and on retrial] of: Possession of (4) small baggies of cocaine which has Petitioner convicted for (25) twenty – five years requires this Court to deny all the government's pleadings pursuant to Fed. Rule 56(f), see, Quinn v. Syracuse Model Neighborhood, 613 F.2d 438, 445 (2d Cir. 1980); James v. Ryan, 679 F.3d 980, n. [33 – 35] (9th Cir. 2012); Barnett v. Roper, 904 F.3d 623, n. [13 – 18] (8th Cir. 2018); U.S. v. McKie, 73 F.3d 1149 (D.C. Cir. 1996); Majoy v. Roe, 296 F.3d 770, 776 (9th Cir. 2002); Souter v. Jones, 395 F.3d 577 (6th Cir. 2005); Alamalo v. U.S., 645 F.3d 1042, n. [13 – 15] (9th Cir. 2011); Gunn v. Newsome, 881 F.2d 949, 955 (11th Cir. 1989) Cert. Denied 110 S. Ct. 542 (1989); Neil v. James, 811 F.2d 100, 105 (2d Cir. 1987); Harris v. Nelson, 89 S. Ct. 1082, n. [1,2] (1969); U.S. v. Scroggins, 379 F.3d 233, 255 (11th Cir. 2004); U.S. v. Vicaria, 12 F.3d 195, 198 – 99 (11th Cir. 1994); would avert a "manifest injustice" to a "miscarriage of justice" see, Trapp v. Metropolitan Life Ins. Co., 70 F.2d 976, 981 (8th Cir. 1934) Cert. Denied 55 S. Ct. 112 (1934); Queyoda v. Scribber, 611 F.3d 1165, n. [4] (9th Cir. 2010); Miller – El v. Cockell, 123 S. Ct. 1029 (2003); McQuiggen v. Perkins, 133 S. Ct. 1926 (2013); Finch v. McKoy, 914 F.3d 293, N. [4] (4th Cir. 2019); compare Francis v. Spraggins, 720 F.2d 1190 (11th Cir. 1983)(same); Young v. Zant, 677 F.2d 792 (11th Cir. 1982) (same); Wiley v. Sowders, 647 F.2d 642 (6th Cir. 1981) Cert. Denied 102 S. Ct. 656 (1981); Cox v. Hutto, 589 F.2d 394 (8th Cir. 1978); Government of the Virgin Islands v. George, 741 F.2d 643, 648 (3d Cir. 1984).

CONCLUSION

(1). Grant Petitioner's ineffective ground and order a new trial;

(2). Grant Petitioner a federal evidentiary hearing;

(3). Grant any other relief the Court deems just.

LEGAL ARGUMENT #5

QUESTION #5

"Whether the U.S. District Court and the (11th) Circuit Court of Appeals abused their discretion by failing too rule on the merits of Petitioner's Amended § 2254 Habeas Corpus before the courts final adjudication was made is contrary to established Federal Laws; see, In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018)("citing Clark v. U.S., 764 F.3d 653, 658 (6th Cir. 2014); Easley v. Cromartie, 121 S. Ct. 1452, N. [4] (2000)?"

TRIAL COUNSEL DONALD O'LEARY WAS INEFFECTIVE FOR HIS FAILURE TO DEPOSE KEY STATE WITNESSES WAS PREJUDICIAL AND A FAILURE TO SUBJECT PROSECUTIONS CASE TO A MEANINGFUL PRESENTATION OF PETITIONER'S DEFENSES

(1)(A). Jurists of reason could disagree with the U.S. District Court and the 11th Circuit Court of Appeals resolution of Petitioner's constitutional claims are adequate to deserve encouragement to proceed further, see, Slack v. McDaniel, 120 S. Ct. 1595 (2000); Miller v. Cockrell, 123 S. Ct. 1029 (2003); U.S. v. Streater, 70 F.3d 1314 (D.C. Cir. 1995); Curtis v. Chesterfield, 513 Fed. Appx. 292 (4th Cir. 2013); Hardwick v. Crosby, 320 F.3d 1127 (11th Cir. 2003); Williams v. Martinez, 586 F.3d 995 (D.C. Cir. 2009); Petitioner Joseph Augustus Dixon hereby files pursuant to Federal Rule 15, and its laws, procedures and rules of courts for this Honorable Court to allow Petitioner to amend this instant § 2254 Ground, when Petitioner is pro se and didn't understand the legal significance of failure to cite federal and state laws to support and show violations of the laws, requires Petitioner in the "interest of justice," to move this Court in accordance to see, In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018)("Citing Clark v. U.S., 764 F.3d 653, 658 (6th Cir. 2014)("A motion to amend pursuant to Rule 15 is not a second or successive habeas motion when it is filed before the [adjudication] of the initial §

2254 is complete"); Mayle v. Felix, 125 S. Ct. 2562 (2005) would avert the workings of a "manifest injustice" to a "miscarriage of justice," when Trial Counsel Donald O'Leary was ineffective assistance of counsel for his failure to depose key State witnesses was prejudicial and failure to subject prosecution's case to a meaningful presentation of Petitioner's defenses, see, McGonigle v. Baxter, 27 F.R.D. 504 (2d Cir. 1961)("Fed. Rule 36, 28: Persons before whom depositions may be taken"); Aldrich v. Wainwright, 777 F.2d 630, 633 (11th Cir. 1985) Cert. Denied 107 S. Ct. 324 (1986); Code v. Montgomery, 799 F.2d 1481 (11th Cir. 1986); Hall v. State, 997 So. 2d 1284 (Fla. 4th DCA 2009); Farnbaugh v. State, 778 So. 2d 369 (Fla. 2d DCA 2001); Garcia v. City of El Centro, 214 F.R.D. 587 (9th Cir. 2003); Thomas v. Lockhart , 738 F.2d 304 (8th Cir. 1984); at bar, the Petitioner asked Trial Counsel to depose "listed" State witness to wit: Officer John Horning, Officer Wiiliam Rodger, Officer Brian McCaulry, Officer Mec, Ms. Dana Zuchetto, Ms. Shannon Vercona (T.T. 121 – 122). However, because Counsel did not investigate or depose State Witnesses who would have offered exonerating evidence showing Petitioner was framed and set – up by Clearwater, Florida Police contrary to see, Limone v. Condon, 373 F.3d 39, n. [6] (1st Cir. 1990)("Suppressed exculpatory evidence in an effort both to cover – up their malefactions and to shield the actual murders one of whom was being groomed as an FBI informant. The complaint weaves the allegations together from the platform asseverate that an individual's rights not be convicted by these tawdry means --- his right not to be [framed] by the government is beyond doubt").

(1)(B). Further additional prejudice was predicated when State Trial Judge Philip J. Federico, see Appendix A0001 knew Petitioner's post – conviction 3.850 was legally insufficient on its face and he abused his discretion in failing to tell Petitioner to amend his motion with citing of federal and State cases, see, Spera v. State, 971 So. 2d 754 (Fla. 2003) has resulted in a act of bias against Petitioner, see, U.S. v. Williams, 183 F.3d 458 n. [14, 15, 16] (5th Cir. 1999); Marshall v. Jerrico, 100 S. ct. 1610

(1980); Easley v. Cromartie, 121 S. Ct. 1452, N. [4] (2000) (citing U.S. v. Gypsum, 68 S. Ct. 525 (1948); Neil v. James, 811 F.2d 100, 105 (2d Cir. 1987) when the un- deposed witnesses could have offered the court detail explanations of why Officer Horning for the past (4) four consecutive arrests of Petitioner on different occasions still persists, has manifested itself as showing Counsel O'Leary being ineffective for his failure to depose and investigate, which is unreasonable and contrary to, see, Dugas v. Coplan, 428 F.3d 317, 332 (1st Cir. 2005)("Counsel's failure to investigate possible defense was ineffective assistance"); Goodman v. Bertrand, 467 F.3d 1022, 1023 – 331 (7th Cir. 2005)(same); Strickland v. Washington, 104 S. Ct. 2052 (1984); U.S. v. Wilson, 614 F.3d 219, 233 (6th Cir. 2010).

(2)(A). The [outcome] of the proceedings would be different but for the U.S. Constitutional violations would justify that no procedural bars be applied to keep a merits determination which has not been regularly applied in similar circumstances see, State v. Sireci, 502 So. 2d 1221 (Fla. 1987)("Limited evidentiary hearing granted") of Trial Counsel O'Leary's failure to depose and investigate the (6) six officers and eyewitnesses who would have offered sworn exonerating evidence, outlined in jury trial record could have been more detailed and depositions added into the evidence as a exhibit that would show jury and reviewing court's that Petitioner was illegally surveilled while in his backyard – behind his stockade fence contrary to see, U.S. v. Struckman, 603 F.3d 731, 736, 739 (9th Cir. 2010); Beck v. Ohio, 85 S. Ct. 223 (1964); Dugas v. Coplan, 428 F.3d 317, 332 (1st Cir. 2005); Goodman v. Bertrand, 467 F.3d 1022, 1023 – 331 (7th Cir. 2005) would have been supported by physical evidence to overturn Petitioner's arrest, and conviction, which any State or federal judge would grant Petitioner's ineffective ground, due to Counsel's dereliction of duty, also any federal or State judge would have alerted Petitioner to amend his motion under the Fed. Rule is authorities of see, Spera v. State, 971 So. 2d 754 (Fla. 2003); Mayle v. Felix, 125 S. Ct. 2562 (2005); In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018) would have eliminated any unbias allegations and impartiality in the

"interest of justice" and required the courts to grant Petitioner a new trial to make this ground timely before this court when it is more likely than not that no reasonable minded juror hearing [all] evidence would not have voted to convict Petitioner beyond a reasonable doubt and Petitioner would have been acquitted of all charges [in jury trial and on retrial] of: Possession of (4) small baggies of cocaine which has Petitioner convicted for (25) twenty – five years, requires this Court to deny all the government's rebuttal pleadings pursuant to Fed. Rule 56(f), see, Quinn v. Syracuse Model Neighborhood, 613 F.2d 438, 445 (2d Cir. 1980); Delprete v. Thompson, 10 F. Supp. 3d 907, n. [1,2] (Ill. 2014)("IAC, Excuse all procedural defaults"); Strickland v. Washington, 104 S. Ct. 2052 (1984); Finley v. Johnson, 243 F.3d 215, 221 (5th Cir. 2001); James v. Ryan, 679 F.3d 980, n. [33 – 35] (9th Cir. 2012); Barnett v. Roper, 904 F.3d 623, n. [13 – 18] (8th Cir. 2018); U.S. v. McKie, 73 F.3d 1149 (D.C. Cir. 1996); Majoy v. Roe, 296 F.3d 770, 776 (9th Cir. 2002); Souter v. Jones, 395 F.3d 577 (6th Cir. 2005); Whitley v. Senkowski, 317 F.3d 233 (2d Cir. 2003); Newell v. Hanks, 283 F.3d 827, 837 (7th Cir. 2002); Alalmalo v. U.S., 645 F.3d 1042, n. [13 – 15] (9th Cir. 2011); Gunn v. Newsome, 881 F.2d 949, 955 (11th Cir. 1989) Cert. Denied 110 S. Ct. 542 (1989); Neil v. James, 811 F.2d 100, 105 (2d Cir. 1987); Harris v. Nelson, 89 S. Ct. 1082, n. [1,2] (1969); U.S. v. Ferguson, 246 F.3d 129, 133 (2d Cir. 2000); U.S. v. Scroggins, 379 F.3d 233, 255 (11th Cir. 2004) when the "ends of justice," also would be served by a new trial, see, Trapp v. Metropolitan Life Ins. Co., 70 F.2d 976, 981 (8th Cir. 1934) Cert. Denied 55 S. Ct. 112 (1934); Queyoda v. Scribber, 611 F.3d 1165, n. [4] (9th Cir. 2010); McQuiggen v. Perkins, 133 S. Ct. 1926 (2013); Finch v. McKoy, 914 F.3d 293, N. [4] (4th Cir. 2019); Brown v. Crosby, 249 F. Supp. 2d 1285 – 1309 – 1310 (S.D. Fla. 2001); Figuero v. State, 84 So. 3d 1158, 1162 (Fla. 3d DCA 2012).

CONCLUSION

(1). Grant Petitioner's ineffective ground and order a new trial;

(2). Grant Petitioner a federal evidentiary hearing;

LEGAL ARGUMENT #6

QUESTION #6

"Whether the U.S. District Court and the (11th) Circuit Court of Appeals abused their discretion by failing too rule on the merits of Petitioner's Amended § 2254 Habeas Corpus before the courts final adjudication was made is contrary to established Federal Laws; see, In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018)("citing Clark v. U.S., 764 F.3d 653, 658 (6th Cir. 2014); Easley v. Cromartie, 121 S. Ct. 1452, N. [4] (2000)?"

TRIAL COUNSEL DONALD O'LEARY WAS INEFFECTIVE FOR HIS FAILURE TO FILE A MOTION TO DISMISS, AS THE STATE SELECTED TO PROSECUTE BASED ON RACIAL MOTIVES

(1)(A). Jurists of reason could disagree with the U.S. District Court and the 11th Circuit Court of Appeals resolution of Petitioner's constitutional claims are adequate to deserve encouragement to proceed further, see, Slack v. McDaniel, 120 S. Ct. 1595 (2000); Miller v. Cockrell, 123 S. Ct. 1029 (2003); U.S. v. Streater, 70 F.3d 1314 (D.C. Cir. 1995); Curtis v. Chesterfield, 513 Fed. Appx. 292 (4th Cir. 2013); Hardwick v. Crosby, 320 F.3d 1127 (11th Cir. 2003); Williams v. Martinez, 586 F.3d 995 (D.C. Cir. 2009); Petitioner Joseph Augustus Dixon hereby files pursuant to Federal Rule 15, and its laws, procedures and rules of courts for this Honorable Court to allow Petitioner to amend this instant § 2254 Ground, when Petitioner is pro se and didn't understand the legal significance of failure to cite federal and state laws to support and show violations of the laws, requires Petitioner in the "interest of justice," to move this Court in accordance to see, In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018)("Citing Clark v. U.S., 764 F.3d 653, 658 (6th Cir. 2014)("A motion to amend pursuant to Rule 15 is not a second or successive habeas motion when it is filed before the [adjudication] of the initial §

2254 is complete"); Mayle v. Felix, 125 S. Ct. 2562 (2005) would avert the workings of a "manifest injustice" to a "miscarriage of justice," when Trial Counsel Donald O'Leary was ineffective for his failure to file a motion to dismiss as the State selected to prosecute based on racial motives.

(1)(B). When additional prejudice is presumed and predicated when State Trial Judge Philip J. Federico, see Appendix A0001 knew Petitioner's post – conviction 3.850 was legally insufficient on its face and he abused his discretion in failing to tell Petitioner to amend his motion with citing of federal and State cases, see, Spera v. State, 971 So. 2d 754 (Fla. 2003) has resulted in a act of bias against Petitioner, see, U.S. v. Williams, 183 F.3d 458 n. [14, 15, 16] (5th Cir. 1999); Marshall v. Jerrico, 100 S. ct. 1610 (1980); Easley v. Cromartie, 121 S. Ct. 1452, N. [4] (2000) (citing U.S. v. Gypsum, 68 S. Ct. 525 (1948); Neil v. James, 811 F.2d 100, 105 (2d Cir. 1987).

(2)(A). At bar, the Petitioner has been in (4) four confrontations with Officer Horning, and all have equated to arrests and convictions, which the totality of circumstances require the inference that this instant conviction for (4) four baggies of cocaine for (25) twenty – five years in State prison rests on " selective prosecution" of African – American Petitioner.

Record evidence supports the physical evidence of Officer Horning, shows Horning was motivated based on race and social status. The case hinges in – part on the illegal surveillance of Petitioner's home. Defense Counsel presented testimony from Jamayn Johnson (T.T. 147), Jamar Johnson (T.T. 174); Lavida Johnson (T.T. 185); Kim Walker who identified Mr. Shawn Tisdale, as the sole owner, and person in the actual possession of the (4) four small baggies of cocaine discovered in a " Cheetos " bag.

Thereafter, Mr. Shawn Tisdale admitted to the ownership and sole possessor of the drugs he had thrown upon the convergence of the police coming in Petitioner's yard. (T.T. 214 – 217). All the

witnesses testified for the defense in that Petitioner did not have constructive possession of Mr. Tisdale's drugs.

At bar, Petitioner may prove disparate treatment by pointing to other similar situated individuals who were not prosecuted, see, U.S. v. Redondo – Lemos, 27 F.3d 439, 441 – 42 (9th Cir. 1994); U.S. v. Gordon, 817 F. 2d 1538, 1540 – 1554 (11th Cir. 1987)(" **Targeted African – American**"); U.S. v. P.H.E. Inc., 965 F.2d 848, n. [8] (10th Cir. 1992)("Assistant U.S. Attorney was extensively involved in the multiple prosecution strategy against defendants because there was substantial evidence that he was involved from its [inception] "); Hawkins v. Shaw, 461 F.2d 1171 (5th Cir. 1972); U.S. v. Adams, 870 F.2d 1140 – 46, n. [1] (6th Cir. 1988); U.S. v. Sanders, 211 F.3d 711, 721 (2d Cir. 2000); U.S. v. Smith, 231 F.3d 800, 806 (11th Cir. 2000); Yick v. Hopkins, 6 S. Ct. 1064, 118 U.S. 356, 373 – 374 (1886); Dixon v. District of Columbia, 394 F.2d 966 (D.C. Cir. 1967) improper motive exist only when the prosecution is deliberately based upon an unjustifiable standard such as race, religion, or arbitrary classification, see, Wayne v. U.S., 470 U.S. 598, 608, 105 S. Ct. 1524 (1985).

The Petitioner is African – American with prior felony convictions. The social stigma that even in the privacy of his home the provisions therein the Florida Constitution and Federal Constitution protections apply justify dismissing the criminal information /indictment filed in this case pursuant to the 14th Amendment of the U.S. Constitution makes Trial Counsel Donald O'Leary be ineffective for his failure of not filing a motion to dismiss which State and federal courts would have granted, see, Strickland v. Washington, 104 S. Ct. 2052 (1984); Cunningham v. State, 799 So. 2d 442 (Fla. 1st DCA 2001)(" **Failure to file motion to dismiss IAC, granted** "); Lambert v. State, 811 So. 2d 805 (Fla. 2d DCA 2002)(same); U.S. v. Williams, 615 F.2d 585 (3d Cir. 1980); Blackburn v. Foltz, 828 F.2d 1177 (6th Cir. 1987); Garton v. Swenson, 497 F.2d 1137 (FN4) (8th Cir. 1974); Tejedav. v. Dubios, 143 F.3d

18 (1st Cir. 1998); D.L. v. State, 138 So. 3d 499 (Fla. 4th DCA 2014)(" **Motion for judgment of dismissal granted due to [officers conflicting statements]").**

(3)(A). The [outcome] of the proceedings would be different but for the U.S. Constitutional violations would justify that no procedural bars be applied to keep a merits determination which has not been regularly applied in similar circumstances see, State v. Sireci, 502 So. 2d 1221 (Fla. 1987)("Limited evidentiary hearing granted") of Trial Counsel O'Leary's failure to file a motion to dismiss where Officer Horning violated the 4th and 14th Amendment and executed selective and vindictive prosecution on Petitioner at the [inception] thru previous arrests and convictions and then the illegal surveillance of Petitioner's backyard, by [Horning] standing in a chair and peering over a stockade fence came about thru overzealousness by Officer Horning, which was predicated thru defense witnesses testimony that Petitioner never possessed the (4) four small baggies of cocaine shows Officer Horning motive to fabricate and frame Petitioner thru a cloak of intimidation and harassment that voided the integrity of Petitioner's, would be different had not the taint of vindictive and selective prosecution been the primary objective, Petitioner would be free on the street and not in prison, compare U.S. v. P.H.E. Inc., 965 F.2d 848, n. [8] (10th Cir. 1992); which the instant presentation of this ground justifies dismissal of all charges by any reviewing judge, which they would also grant Petitioner's ineffective ground due to Counsel's O'Leary's dereliction of duty owned to Petitioner, also any federal or State judge would have altered Petitioner to amend his motion under the Fed. Rule 15 authorities of see, Spera v. State, 971 So. 2d 754 (Fla. 2003); Mayle v. Felix, 125 S. Ct. 2562 (2005); In Re Jermaine Stevenson, 889 F.3d 308 (6th Cir. 2018) would have eliminated any unbias allegations and impartiality in the "interest of justice" and required the courts to grant Petitioner a dismissal of all charges, and equitable toll the time to make this ground timely before the Court when it is more likely than not that no reasonable minded juror hearing [all] evidence would not have voted to convict Petitioner beyond a

reasonable doubt and Petitioner would have been acquitted of all charges [in jury trial and on retrial] of: Possession of (4) small baggies of cocaine which has Petitioner convicted for (25) twenty – five years, requires this Court to deny all the government's rebuttal pleadings pursuant to Fed. Rule 56 (f), see, Quinn v. Syracuse Model Neighborhood, 613 F.2d 438, 445 (2d Cir. 1980); Delprete v. Thompson, 10 F. Supp. 3d 907, n. [1,2] (Ill. 2014)("IAC, Excuse all procedural defaults"); Strickland v. Washington, 104 S. Ct. 2052 (1984); Finley v. Johnson, 243 F.3d 215, 221 (5th Cir. 2001); James v. Ryan, 679 F.3d 980, n. [33 – 35] (9th Cir. 2012); Barnett v. Roper, 904 F.3d 623, n. [13 – 18] (8th Cir. 2018); U.S. v. McKie, 73 F.3d 1149 (D.C. Cir. 1996); Majoy v. Roe, 296 F.3d 770, 776 (9th Cir. 2002); Souter v. Jones, 395 F.3d 577 (6th Cir. 2005); Whitley v. Senkowski, 317 F.3d 233 (2d Cir. 2003); Newell v. Hanks, 283 F.3d 827, 837 (7th Cir. 2002); Alalmalo v. U.S., 645 F.3d 1042, n. [13 – 15] (9th Cir. 2011); Gunn v. Newsome, 881 F.2d 949, 955 (11th Cir. 1989) Cert. Denied 110 S. Ct. 542 (1989); Neil v. James, 811 F.2d 100, 105 (2d Cir. 1987); Harris v. Nelson, 89 S. Ct. 1082, n. [1,2] (1969); U.S. v. Ferguson, 246 F.3d 129, 133 (2d Cir. 2000); U.S. v. Scroggins, 379 F.3d 233, 255 (11th Cir. 2004); when the "ends of justice" would be served by dismissal of all charges, see, Trapp v. Metropolitan Life Ins. Co., 70 F.2d 976, 981 (8th Cir. 1934) Cert. Denied 55 S. Ct. 112 (1934); Queyoda v. Scribber, 611 F.3d 1165, n. [4] (9th Cir. 2010); Finch v. McKoy, 914 F.3d 293, N. [4] (4th Cir. 2019); McQuiggen v. Perkins, 133 S. Ct. 1926 (2013); Brown v. Crosby, 249 F. Supp. 2d 1285 – 1309 – 1310 (S.D. Fla. 2001).

CONCLUSION

(1). Grant Petitioner's ineffective ground and order dismissal of all charges;

(2). Grant Petitioner a federal evidentiary hearing;

(3). The petition for writ of certiorari should be granted.

Respectfully submitted,

Joseph A. Dixon

Date: April 9, 2020.

OATH

UNDER THE PENALTIES OF PERJURY, I do swear that the facts' and circumstances' are true and correct, see, Kafo vs. U.S., 467 F.3d 1063, 1068 (7th Cir. 2006) executed on April 9 of 2020.

Joseph A Dixon 120132

Joseph A Dixon, 120132

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this pleading has been given to Florida DOC officials' to be U.S. Mailed to the: U.S. Supreme Court, One First Street, N.E. Washington D.C., 20543; Attorney General Ashley Moody, 3507 East Frontage Road, Tampa, Florida, 33607, filed on this date of April 9 2020, see, Ray v. Clements, 700 F.3d 993, N. [1] (7th Cir. 2012)("Mailbox rule").

Joseph A. Dixon 120132

Joseph A. Dixon, 120132
Marion Correctional Institution
P.O. Box 158
Lowell, Florida 32663-0158