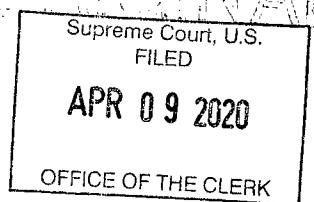


19-8442
No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

Erica J. Walker — PETITIONER
(Your Name)

vs.

Mark Inch, Sec. Fla — RESPONDENT(S)
Dept. of Corrections

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth District Court of Appeal, State of Florida
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Erica J. Walker, DC# 163764
(Your Name)

1900 S.W. 377th Street, Suite 200
(Address)

Florida City, Florida 33331
(City, State, Zip Code)

MA

(Phone Number)

QUESTIONS PRESENTED

- I. Was the Petitioner's right to a fair proceeding, effective assistance of counsel and Due Process of law violated when trial counsel LeRonnie Mason failed to investigate the petitioner's mental health history and retain a Mental Health expert for psychiatric evaluation?
- II. Did first counsel Michael Takiff render ineffective assistance of counsel when he failed to request a mental health determination whether petitioner was competent to proceed and/or insane at the time of the crimes, further violating her Fifth and Fourteenth Amendment right to a fair proceeding and Due Process of law?
- III. Was the Petitioner's right to a fair proceeding, effective assistance of counsel and Due Process of law violated when trial counsel failed to have petitioner evaluated by a mental health expert in support of insanity at the time of the crime?
- IV. Did trial counsel render ineffective assistance of counsel when he misadvised petitioner to plead guilty while under the influence of psychotropic medication and that the petitioner's plea was not knowing or voluntary based on fear and misapprehension which also violated the Petitioner's right to a fair trial and due process of law?
- V. Was trial counsel's performance ineffective when he failed to investigate, prepare and inform Petitioner of viable defenses, violating Petitioner's Fifth, Sixth and Fourteenth Amendment rights?
- VI. Was the Petitioner's right to effective assistance of counsel, fair proceeding and Due Process of law violated when trial counsel waived the Petitioner's right to a pre-sentence investigation and/or failing to present Mitigating factors during plea negotiation and sentencing phases as well as counsel being ineffective for failing to move for a downward departure?
- VII. Was counsel ineffective for failing to file a Motion to suppress Petitioner's statements, a violation of the Petitioner's right to a fair proceeding, effective assistance of counsel and due process of law?
- VIII. Did the trial court violate the Petitioner's Fifth and Fourteenth Amendment right to a fair proceeding and Due Process of law when it denied appointing counsel to represent the Petitioner at her evidentiary hearing held on Post Conviction Motion?

- IX. Did counsel's performance prove ineffective when he stipulated to a factual basis and when he failed to advise the Petitioner that the evidence against her was insufficient to support a charge of Second degree murder with a firearm and Robbery with a firearm, violating the Petitioner's right to effective assistance of counsel, a fair proceeding and Due Process of law?
- X. Was the Petitioner's Fifth, Sixth and Fourteenth Amendments violated when Michael Takiff and LeRonnie Mason failed to have Petitioner's case severed from her co-defendant's?
- XI. Did counsel render ineffective assistance when he failed to negotiate a substantial assistance agreement with the State based on information she gave that resulted in a confession by and conviction of her co-defendant, a violation of the Petitioner's Fifth, Sixth and Fourteenth Amendment right?
- XII. Did counsel render ineffective assistance when he failed to investigate, request discovery, interview and/or depose witnesses and victims in case number 2008CF001531A; a violation of the Petitioner's Fifth, Sixth and Fourteenth Amendment right?
- XIII. Was the Petitioner's right to a fair proceeding, effective counsel and due process violated when the trial court denied Petitioner's claim that the cumulative effect of counsel's errors deemed him ineffective?

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:

RELATED CASES

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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 of 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.

The opinion of the United States district 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.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix F 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 Fifth District Court of Appeal court appears at Appendix F 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 _____.

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. ___ A _____.

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

For cases from state courts:

The date on which the highest state court decided my case was December 5, 20
A copy of that decision appears at Appendix F.

A timely petition for rehearing was thereafter denied on the following date:
January 9, 2020, and a copy of the order denying rehearing appears at Appendix G.

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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT RIGHT TO A FAIR PROCEEDING

SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS OF LAW

STATEMENT OF THE CASE

On February 3, 2008, the Petitioner and her co-defendant, Travis Caroll was arrested and charged with one count of Felony Murder, Accessory After the fact, Robbery with a deadly weapon and Aggravated Battery with deadly weapon and bodily harm.

On February 26, 2008, the Petitioner and co-defendant were indicted by the grand jurors of the state of Florida for one (1) count of First Degree Murder with a firearm and one (1) count of Robbery with a firearm.

On March 3, 2008, the Petitioner and co-defendants Information was issued, charging them with one (1) count of Robbery with a weapon and Aggravated Battery (Deadly weapon Bodily harm).

The State offered the Petitioner's co-defendant a plea deal of seventy (70) years for count's one and two in case number 2008-CF-001781, thirty (30) years for count one and fifteen (15) years for count two in case number 2008-CF-001537 and seventy (70) years for counts one and two in a separate cold case Murder 2009-CF-010016. In exchange for his confession to case number 2009-CF-010016, he received concurrent sentences to all counts, reduced charges and the benefit of not facing the death penalty. He also agreed to testify against the Petitioner.

On September 3, 2009, the Petitioner pled guilty to all counts in both cases and was sentenced to thirty five (35) years for the reduced charges of second degree murder on count one and thirty five (35) years for count two in case number 2008-CF-001781 and thirty (30) years and fifteen (15) years for counts one and two in case number 2008-

CF-001537, all cases consolidated and sentences to run concurrently. (ROA 000141-000159).

The Petitioner timely filed a Notice of Appeal, case number 4D-09-4049. Following appointed appellate counsels dismissal of her appeal, the Petitioner filed a Habeas Corpus for Ineffective Assistance of Appellate Counsel and following an evidentiary hearing, the Judges' Magistrate granted her Habeas Corpus and a belated appeal was filed. Them Petitioner's convictions were affirmed, per curium without an opinion. Walker v. State, 112 So. 3d 678 (Fla. 4th DCA 2013) (APPENDIX A).

On May 20, 2015, the Petitioner filed a timely Motion for Post Conviction relief under Rule 3.850 containing fourteen (14) grounds for relief all alleging ineffective assistance of counsel.

The Honorable Samantha Schosberg-Feuer ordered the State to file a response to the Petitioner's Motion for Post Conviction Relief, which the State filed on December 6, 2016.

On April 27, 2018, Judge Samantha Schosberg-Feuer issued an order denying in part and granting an evidentiary hearing in part on the Petitioner's Motion for Post Conviction Relief. The court adopted and incorporated the exhibits attached to the State's Response to all grounds except ground eight which the court set for an evidentiary hearing. (APPENDIX B)

Prior to the evidentiary hearing, the petitioner filed a motion to appoint counsel to assist her at the evidentiary hearing, which was denied, and a motion for re-

consideration for the appointment of counsel which was also denied (APPENDIX C & D)

On August 17, 2018, the Petitioner, pro se, requested Ore Tenus the assistance of counsel during the evidentiary hearing which was denied by the Honorable Joseph Marx. Concluding the hearing, the Court denied ground eight of the Petitioner's Motion for Post Conviction Relief. (APPENDIX E)

On August 28, 2018, the Honorable Judge Joseph Marx issued an order denying ground eight of the Petitioner's Motion for Post Conviction Relief. The Petitioner then filed a pro se Notice of Appeal to the courts final order denying her Motion for Post Conviction Relief on September 27, 2018.

On January 17, 2019, the Fourth District Court of Appeal issued an order granting the Petitioner a ninety (90) days extension of time in which to file her Initial Brief.

On April 19, 2019, the Petitioner filed her Initial Brief. The Appellee subsequently filed its Response.

On September 9, 2019, the Petitioner filed her Reply Brief.

On December 5, 2019, the Fourth District Court of Appeal per curium affirmed the Petitioner's cause. (APPENDIX F)

On December 19, 2019, the Petitioner filed a Motion for Rehearing and request for written opinion which was subsequently denied by the Fourth District Court of Appeal on January 9, 2020. (APPENDIX G)

The Petitioner did not file a Petition for Writ of Habeas Corpus or a Petition for Certificate of Appealability in her cause. This timely Writ of Certiorari follows:

REASONS FOR GRANTING THE PETITION

The Petitioner was denied her Fifth and Fourteenth Amendment rights to a fair proceeding and Due Process of law pursuant to the United States Constitution and her right to effective assistance of counsel guaranteed under the Sixth Amendment and as held in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674. The State Courts have failed to grant relief. This Honorable Court should issue a Writ of Certiorari where her questions concern matters which District Courts are in conflict and which are violations of the U.S. Constitution especially where the conviction and sentence were administered to someone who was not actually mentally cognizant during the time of incident due to the use of illicit drugs which caused her to not have the capacity to appreciate the offense severity and further, she was not the actual perpetrator in this offense. The questions are asserted as follows:

I. Was the Petitioner's right to a fair proceeding, effective assistance of counsel and Due Process of law violated when trial counsel LeRonnie Mason failed to investigate the Petitioner's mental health history and retain a mental health expert for psychiatric evaluation?

The Petitioner avers that she was denied her Due Process rights to be evaluated by a mental health expert and counsel was ineffective for failing to Petition the court to have her evaluated.

The mere fact that the Petitioner was housed in the psychiatric unit of the Palm Beach County Jail for eleven (11) months prior to the conclusory plea hearing demonstrates that her competency was in question and therefore counsel had a constitutional duty under the Sixth Amendment of the U.S. Constitution to request a psychiatric evaluation for the Petitioner by trained Mental health professionals and further, investigate her Mental health history in an effort to show mitigating circumstances to the court and to be sure that every possible line of defense had been covered.

In Trask v. FL DOC, 679 Fed Appx 883(11th Cir. 2017), the United States Court of Appeal held:

“Where there is a reasonable belief that a defendant is suffering from a mental disability that renders him incompetent to proceed that it is necessary to determine the defendant’s mental competency.”

In Trask, his defense attorney filed a Motion requesting the appointment of a mental health expert to evaluate Trask’s competency to stand trial and sanity at the time of the offense. At an evidentiary hearing in Trask’s Post Conviction Motion, his defense counsel testified he filed the Motion; “Just to be sure” he was not missing anything.

In the instant case, counsel had a duty to make every effort to file all motions necessary to ensure the Petitioner's due process rights were not violated, this includes making reasonable investigations into the Petitioner's mental health history and drug use at the time the offense was committed. If counsel made a reasonable decision that a particular investigation along those lines was unnecessary, then this line of defense or lack thereof should have been conveyed to the Petitioner. Porter v. McCollum, 558 U.S. 30, 130 S.Ct. 447, 175 L.Ed. 2d 398 (2009) ("The U.S. Supreme Court unanimously held that counsel's failure to uncover and present any evidence of the defendant's mental health or mental impairment, his family background... clearly constitutes deficient performance of counsel and that such deficient performance was prejudicial..") As this is a viable defense, it was not reasonable trial strategy to forego having a mental health/psychiatric evaluation performed. Lucio v. Davis, 751 Fed. Appx 484 (5th (Tex.) Cir. 2018).

The Petitioner was at the psychiatric unit of her jail for eleven (11) months and remained there for the entire duration. Counsel had every opportunity to have the Petitioner evaluated; hence no performance failed below a reasonable objective standard. Furthermore, the court, while making their inquiry into the Petitioner's mental condition and use of medication during the plea colloquy should have made a more thorough inquiry as to the specific medications, the amount, and the length of time the Petitioner was being treated for her conditions. Had the court done this, they would have determined an evaluation was necessary before proceeding with a material stage against the Petitioner; thus demonstrating a violation of her Due Process right to a fair proceeding; severely prejudicing the Petitioner.

In Strickland v. Washington, 466 U.S. 668, 687, 80 L.Ed. 2d 674, 104 S.Ct. 2052 (1984), the prejudice prongs are satisfied where, “the defendant succeeds in showing that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceedings would have been different. A “reasonable probability” is one which is sufficient to undermine confidence in the outcome. Hence, the Petitioner’s proceedings were greatly affected by counsels deficient performance and it undermined the outcome of Petitioner’s proceedings in that there is a reasonable probability that the Petitioner would have been found incompetent to proceed to trial or incompetent to render any decision on acceptance of a plea and/or would have been found to be insane during the commission of the offense.

The Petitioner’s Fifth, Sixth and Fourteenth Amendment rights were violated and this Honorable Court should issue a Writ.

II. Did First Counsel Michael Takiff render ineffective assistance of counsel when he failed to request a mental health determination whether Petitioner was competent to proceed and/or insane at the time of the crimes, further violating her Fifth and Fourteenth Amendment rights to a fair proceeding and Due Process of law?

The Petitioner was arrested on February 3, 2008 for charges arising from two (2) separate robberies. The victim in case # 2008-CF-001781B was killed by her co-defendant and the Petitioner was charged as a principal in that case. At the time of her arrest, the Petitioner was suffering severe withdrawal symptoms resulting from her addiction to prescription pain medication. The Petitioner had been addicted to various drugs since the age of eleven (11). The Petitioner also had a history of mental illness and emotional instability dating back to age seven (7). More than once, the Petitioner was involuntarily hospitalized to receive emergency treatment for her mental illness.

At the time of her arrest, the Petitioner was in a critical state of mental disturbance, exasperated by her withdrawal symptoms and the recent loss of her infant daughter, who was removed from her custody in January of 2008.

Michael Takiff, esquire first met with the Petitioner while she was housed under medical observation and isolation inside the county jail. The Petitioner's appearance and her almost catatonic state, along with where she was housed in the county jail, should have compelled Mr. Takiff, who was acting as her attorney, to file a Motion Requesting the Petitioner receive a psychiatric evaluation to determine if she was competent to proceed to trial and/or insane at the time of the crime. A mental health expert should have evaluated the Petitioner or at the very least, defense counsel should have filed a notice of intent to rely on the insanity defense. Mr. Takiff failed to do so. His failure deprived the Petitioner of her right to a fair proceeding, effective assistance of counsel and Due Process of law greatly prejudicing the Appellant. Counsel's deficient performance fell below a reasonable objective standard; greatly prejudging the Petitioner and depriving her of an outcome that was reliable.

The Petitioner had a Constitutional right to present a complete defense. Holmes v. South Carolina, 547 U.S. 319, 324, 126, S.Ct. 1727, 164 L.Ed. 2d 503 (2006) (“The Constitution guarantees criminal defendant’s a meaningful opportunity to present a complete defense. Defendant’s are deprived of this right when evidence rules infringe upon a weighty interest of the accused and are arbitrary or disproportionate to the purposes they are designed to serve”)

Moreover, because the Petitioner's offense was a capital crime at first, by Indictment, just as the Petitioner's co-defendant was afforded the opportunity to a mental health experts psychiatric evaluation, assistance of co-counsel and investigator to uncover possible mitigating circumstances and possible lines of defense, the Petitioner should have received the same accommodation, rights that are protected by the United States Constitution. The Petitioner had none of the sort; which deprived her of judicial fairness and equality.

The Petitioner has met both prongs of Strickland and has demonstrated that her Fifth, Sixth and Fourteenth Amendment rights were violated and this Honorable Court should issue a Writ.

III. Was the Petitioner's right to a fair proceeding, effective assistance of counsel and Due process of law violated when trial counsel failed to have Petitioner evaluated by a mental health expert in support of insanity at the time of the crime?

The Petitioner avers that due to her extensive history of mental illness dating back to childhood and her severe dependency on narcotics, it was imperative that the Petitioner be evaluated by a mental health expert to determine whether or not the Petitioner acted under the influence of extreme mental or emotional disturbance at the time the crimes were committed. The Petitioner could not appreciate the exact nature of her actions or the consequences thereof.

Trial counsel had a constitutional duty under the Sixth Amendment, Fifth and Fourteenth Amendment to investigate an insanity defense. And the Petitioner vehemently disagrees with the lower courts (State) that alleges she acted deliberately

due to her own admission. The Petitioner avers that she was suffering from extreme withdrawal symptoms from prolonged use of prescription opiates and benzodiazepam.

The law in the State of Florida recognizes insanity super induced by the long and continued use of intoxicants so as to produce a fixed and settled frenzy or insanity either permanent or intermittent. Cirack v. State, 201 So.2d 706 (Fla. 1967).

Counsel had knowledge of the Petitioners long term use of intoxicants. The Petitioner has established that Counsel's failure to investigate an insanity defense under the facts presented was outside the broad range of reasonably competent performance under prevailing professional norms. Counsel's deficient performance prejudiced the Petitioner and deprived her of an outcome that was reliable. There is a reasonable probability that had counsel investigated the insanity defense by procuring a mental health expert, this would have ultimately resulted in the presentation of a viable insanity defense. But for counsel's errors, the result of the proceedings would have differed. The Petitioner's claim is not refuted by the record and is facially sufficient to warrant relief. The Petitioner has satisfied the prongs of Strickland and demonstrated that her Fifth, Sixth and Fourteenth Amendment rights have been violated. This Honorable Court should issue a Writ.

IV. Did Trial counsel render ineffective assistance of counsel when he misadvised Petitioner to plead guilty while under the influence of psychiatric medication and that the Petitioner's plea was not knowingly or voluntarily based on fear or misapprehension which also violated the Petitioner's right to a fair trial and due process of law?

The United States Court of Appeal held in USA v. Wingo, 789 F.3d 1226 (11th Cir. 2015) that:

“Our Criminal justice system depends on the exercise of or knowing and intelligence waiver of constitutional rights. But to engage in these activities a defendant must first and necessarily have the abilities to understand the proceedings and to assist counsel. Because competence is the base upon which other constitutional rights balance, Due Process...”

The Petitioner avers that her mental faculties were impaired due to long term use of prescription psychiatric medication and therefore she did not knowingly and voluntarily enter into a plea agreement in good faith. Had counsel requested medical records to reflect the Petitioner’s on-going mental health diagnosis and had counsel requested a psychiatric evaluation, he would have been able to correctly advise the Petitioner on how and what to plea; if at all the Petitioner was deemed competent to proceed. Counsel’s misadvise to Petitioner caused her to enter a plea of guilt while under the influence of heavy psychotropic medication; the entrance thereof was not in her best interest, highly prejudicing the Petitioner which resulted in an outcome that was not reliable.

Moreover, despite being advised that the Petitioner was medicated and being treated for mental illness, the court still did not thoroughly inquire as to the Petitioner’s understanding of the proceedings. Instead of holding a hearing as to the Petitioner’s competency to accept a plea, the court accepted her plea and in turn violated her Fifth and Fourteenth Amendment rights to a fair proceeding and due process of law. According to the United States Code, Section 4241 (01) Title 18, a hearing is required to be held on a defendant’s competence to proceed to trial or to enter a guilty plea, when a reasonable cause to believe that the Petitioner might not have been competent to proceed exist.

Counsel's performance fell below a reasonable objective standard, greatly prejudicing the Petitioner.

Furthermore, Defense Counsel misrepresented the amount of time the Petitioner was facing as to length of sentence or eligibility of gain time. This in itself can be basis for relief in the form of leave to withdraw guilty plea. State v. Leroux, 689 So.2d 235 (Fla.1996).

The law is well settled that if a defendant enters a plea in a reasonable reliance on his attorney's advice, which in turn was based on the attorney's honest mistake or misunderstanding, the Petitioner should be allowed to withdraw his plea.

The Petitioner was advised that should she go to trial, counsel would lose based on his opinion that there were no defenses available to pursue and she would receive three (3) life sentences. However, the maximum penalty is case number 2008-CF-001537A, count one-Robbery with a weapon was (30) thirty years, not life. The plea contract addendum (ROA pg. 000146) states in question one (1) the maximum penalty is life and the minimum penalty is twenty-five (25) years. This was error. Claims that an attorney coerced his client into accepting a plea bargain and sentence by telling him that he would spend the rest of his life in prison and the attorney would drop the case if defendant insisted on going to trial warrant attachment of portions of the record which conclusively refute the claims or an evidentiary hearing McCoy v. State, 598 So. 2d 169 (Fla. 1st DCA 1992).

When a defendant makes an allegation that his attorney misrepresented the consequences of a plea, this constitutes a facially sufficient claim of ineffective assistance of counsel, if the defendant also alleges that the guilty plea would not have been entered but for counsel's advice.

The Petitioner has satisfied the requirements of Strickland and has demonstrated that her Fifth, Sixth and Fourteenth Amendment rights to a fair proceeding, effective assistance of counsel and due process of law has been violated. This Honorable Court should issue a Writ in this cause.

V. Was trial counsel's performance ineffective when he failed to investigate, prepare and inform Petitioner of viable defenses, violating Petitioner's Fifth, Sixth and Fourteenth Amendment rights?

Defense counsel asserts that there were no viable defenses to pursue, however the Petitioner avers that there were several that warranted investigation and preparation; including but not limited to an insanity defense, which was viable and available. Had counsel made Petitioner aware of the viable defenses available to her, she would have not entered a plea but proceeded to trial using one of these defenses.

Counsel failed to investigate and prepare as well as inform the Petitioner of viable defenses.

State Courts have held in Yarborough v. State, 871 So. 2d 1026 (Fla. 1st DCA 2004) that:

"Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffective case, a particular

decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments."

Because the Petitioner's case was capital, it was very necessary for counsel to investigate and prepare for any line of defense available to the Petitioner in order to preserve her constitutional rights under the United States Constitution. Instead, counsel ill-advised the Petitioner to accept a plea, allowing her to believe there was no hope whatsoever for her acquittal. Counsel's failure prejudiced the Petitioner and his performance fell below a reasonable objective standard. But for counsel's unprofessional errors, there is a reasonable probability that the outcome of the Petitioner's proceedings would have differed. Counsel's deficient performance undermined the outcome of the Petitioner's proceedings.

An insanity defense is a viable defense and a state claim alleging that counsel failed to investigate this defense is facially sufficient to warrant relief.

Moreover, a defense of duress would have also prevailed however the lower court alleges it would have not. This is error as in order to state a facially sufficient claim needs not establish that the defense would have been successful at trial, but by whether counsel's failure was deficient and whether Petitioner could establish a reasonable probability that an investigation would have ultimately resulted in the presentation of a viable defense and that the result would have been different. Additionally, defenses which were not brought to the Petitioner's attention cannot be waived. Trial counsel failed in every respect.

The Petitioner has met the requirements of Strickland and demonstrated that her Fifth, Sixth and Fourteenth Amendment rights have been violated. This Honorable Court should issue a Writ.

VI. Was the Petitioner's right to effective assistance of counsel, fair proceeding and Due process of law violated when trial counsel waived the Petitioner's right to a pre-sentence investigation and/or plea negotiation and sentencing phases as well as counsel being ineffective for failing to move for a downward departure?

The Petitioner avers that she did not make an intelligent, knowing, or informed decision not to present any mitigating factors at sentencing. Moreover, the Petitioner's decision to waive a pre-sentence investigation was not made intelligently or knowingly nor should that decision have been left up to the Petitioner in the first place. Counsel had a constitutional responsibility to provide effective assistance of counsel. Counsel failed to explain to the Petitioner what the purpose of a pre-sentence investigation was and it's important part in the sentencing process. Counsel also failed to present mitigating circumstances to the trial court to support a request for a downward departure. Had counsel done so there is a reasonable probability that the Petitioner could have received a more favorable sentence. Counsel's deficient performance prejudiced the Petitioner and undermined confidence in an outcome that was reliable.

Prior to waiving the preparation of a PSI, the Petitioner did not know that when a defendant in a criminal case has been found guilty or has entered a plea of Nolo Contendre or not guilty, that the Circuit Court may refer the case to the Florida Department of Corrections for investigation and recommendation. The Petitioner most certainly did not know that no sentence or sentences other than probation or the

statutorily required mandatory minimum may be imposed on any defendant found guilty of a first time felony offense.

In the Instant case, the Petitioner is a first time felony offender. The preparation of a PSI report would have most certainly and significantly affected the Petitioner's sentence and would have exposed counsel's erroneous advise that she would have received three (3) life sentences had she not accepted the States' plea.

According to Florida State Law governed by the Florida Rules of Criminal Procedure, 3.710(a), the Petitioner was supposed to be sentenced to the statutory required mandatory term.

Pursuant to Florida Statute § 921.0026, the Petitioner had numerous mitigating circumstances; Petitioner was an accomplice to the offense and was a relatively minor participant in the criminal conduct (F.S. 921.002(2)(b)); Petitioner cooperated with the State to resolve an offense (F.S. 921.0026(2)(i)); the Petitioner was ignorant of these facts; trial counsel, on the other hand, was not. Counsel knew what the significance of a PSI report was. Trial Counsel knew that Florida Rules of criminal Procedure 3.710(a) prohibited any sentence other than probation or the statutory required Mandatory Minimum for the Petitioner as she was a first time felony offender. Trial counsel also know what Florida Statute § 921.0026(2) provided and that the Petitioner met several of the circumstances constituting mitigating circumstances and warranting a downward departure. Yet, in spite of knowing all of the aforementioned things, trial counsel misadvised the Petitioner to waive a PSI which violated the Petitioner's Sixth

Amendment right of the United States Constitution, to effective assistance of counsel and counsel also failed to present mitigating factors to the trial court.

Counsel should have exercised due diligence, had the PSI prepared and mitigating factors ready to present to the trial court. Had counsel done this, there is a reasonable probability the Petitioner would have been sentenced to the statutory required mandatory minimum sentence since the Petitioner was a first time felony offender.

Counsel's performance fell below a reasonable objective standard as outlined in Strickland and prejudice occurred. The Petitioner has met both prongs of Strickland and demonstrated her Fifth, Sixth and Fourteenth Amendment rights have been violated. This Honorable Court should issue a Writ.

VII. Was counsel ineffective for failing to file a Motion to Suppress Petitioner's Statements, a violation of the Petitioner's right to a fair proceeding, effective assistance of counsel and Due Process of law?

In United States v. Cardenas, 410 F.3d 287 (5th Cir. 2015), the United States Court of Appeal held that:

"To counter the inherently coercive nature of custodial interrogation, under Miranda, the prosecution may not use statements, whether Exculpatory or Inculpatory, stemming from custodial interrogation of a defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination."

In the Instant case, the Petitioner possessed a right under the Fourth and Fifth Amendment of the United States Constitution to be protected from self-incrimination. Counsel failed in his constitutional duty to uphold that right by filing a Motion to suppress her incriminating Statements made to the police, as these statements the

Petitioner made to law enforcement were while she was suffering severely from withdrawal effects from her long term addiction to opiates, Oxycodone, Hydrocodone and Xanax, which manifested as Post Acute Withdrawal Syndrome. Law enforcement, seeing her condition and watching it deteriorate with each passing moment, took advantage of her physical, mental and emotional state and coerced her into telling them what they wanted to know by promising to give her something to help abate her suffering from withdrawal's.

In United State v. Graham, 323 Fed. Appx 793 (11th Cir. 2009) the United States Court of Appeal concluded:

"No public policy should castigate a confession of a crime merely because it may have been prompted by the hope that cooperation might achieve or increase the chances of a lenient sentence."

And while in this emotional state, the Petitioner unknowingly, unintelligently and involuntarily waived her Miranda rights.

The gravamen of a waiver is that it be made knowingly, intelligently and voluntarily. This, of course, was made clear by the United States Supreme Court's statement in Miranda. That definition, however, was addressed further in Moran v. Burbine, 475 U.S. 412, 106 S. Ct. 1135, 89 L.Ed. 2d 410 (1986) and the Supreme Court fashioned a two-part test for determining whether an accused waived their rights:

1. Whether the waiver was free choice on the part of the defendant and not the product of intimidation, coercion or deception, and
2. Whether the waiver was made with a full awareness of the nature of the right being abandoned and the consequences of the abandonment.

This test was adopted by the Florida Supreme Court for the Florida Constitution in Traylor v. State, 596 So. 2d 957 (Fla. 1992)

Counsel had knowledge of the aforementioned, that the Petitioner had made incriminating statements after she waived her Miranda rights while in a Mental and Emotional State, withdrawing from opiates and yet counsel failed to file a Motion to Suppress in order to suppress these statements and prevent them from being used in open court by the prosecution against her. This was a very critical stage of the Petitioner's case and counsel failed in his constitutional duty to ensure that the Petitioner was free from constitutional violations during the adversarial process. This greatly prejudiced the Petitioner and deprived her of an outcome that was reliable.

Moreover, as to voluntariness, it cannot be presumed. In fact in Tague v. Louisiana, 444 U.S. 469, 100 S.Ct. 652, 62 L.Ed.2d 622 (1980), this Honorable Court concluded that voluntariness tests and its determination is to be made from a totality of the circumstances.

Like the voluntariness of a confession issue, the categories of circumstances that may be considered to determine whether a purported waiver was fully made with a full awareness of an accused's right logically would include the personal characteristics of that accused and the actions of the police attempting to obtain the waiver. Colorado v. Connelly, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed. 2d 473 (1986).

In the State of Florida, a confession had been found to be inadmissible, as resulting from an involuntary waiver of Miranda rights, solely because the defendant

has been beaten, prior to arrest and was found intoxicated at the time of the confession.

Wakeman v. State, 237 So. 2d 61 (Fla. 4th DCA 1970).

In United States v. Arterberry, 2001 U.S. App LEXIS 32262 (5th Cir. 2001), "...the voluntariness of a confession presents a mixed question of law and fact." The ultimate question of voluntariness is a legal one that is reviewed *de novo*. United States v. Scurlock, 52 F.3d 531, 536 (5th Cir. 1995).

But for counsel's deficient performance in failing to file a motion to suppress the Petitioners statements to law enforcement, there is a reasonable probability that the outcome of the Petitioners proceedings would have differed, as she would not have taken a plea but proceeded to trial. The Petitioner has satisfied the requirements of Strickland and demonstrated that her Fifth, Sixth, and Fourteenth Amendment rights have been violated. This Honorable Court should issue a Writ.

VIII. Did the trial court violate the Petitioner's Fifth and Fourteenth Amendment rights to a fair proceeding and Due Process of law when it denied appointing counsel to represent the Petitioner at her evidentiary hearing held on post conviction motion?

The Petitioner, in the filing of her claims in state court, relied upon the assistance of certified inmate law clerks in the Florida Department of Corrections to research and argue every claim raised in her motion for post conviction relief. The Petitioner is a layman, unskilled in the law. While the Petitioner was at her evidentiary hearing on her motion to suppress claim, she stated that she was confused as to what she was supposed to do and say what her part was supposed to be and that was why she filed two (2) motions for appointment of Counsel (See Evidentiary Hearing transcripts, page 4, lines 9-12). A review of the transcripts from the evidentiary hearing

will clearly show how inexperienced the Petitioner was and how she fumbled her way through the entire hearing.

Similarly, in Lee v. State, 801 So. 2d 1022, Lee moved for post conviction relief. Lee sought counsel for evidentiary hearing in his petition. The Circuit Court denied his request and motion. At the evidentiary hearing, Lee expressed some concerns about the purpose of the hearing and his desire for counsel. The Circuit judge glossed over Lee's concerns and held the hearing and after hearing testimony from Lee's trial defense attorney and Lee, the Circuit Court denied Lee's claim for post conviction relief. Lee appealed the decision and the Second District Court of Appeal reversed and remanded, holding that counsel should have been appointed to represent Lee at evidentiary hearing. The second DCA held, "Because Counsel should have been appointed to represent Mr. Lee at the evidentiary hearing, we reverse the order denying Lee's post conviction relief motion and remanded for appointment of counsel and a new evidentiary hearing. See Ganote v. State, 916 So. 2d 997; Florence v. State, So. 2d 175 (Fla. 1st DCA 2000); Rogers v. State, 702 So. 2d 607 (Fla. 1st DCA 1997); Jackson v. State, 908 So. 2d 1183 (Fla. 2d DCA 2005).

Because the Petitioner was not represented by counsel at evidentiary (in the instant case), and because it was obvious the Petitioner was ignorant of the workings of the law, the state took advantage of this fact, making condescending references to the Petitioner's questions to the court.

The Petitioner's case was complex; her argument on counsel's deficiency in not requesting or filing a motion to Suppress was also complex and had counsel filed a

motion to Suppress the statements she made, incriminating statements made under the influence of coercion and in despondency from withdrawal, there is a reasonable probability that the outcome of the Petitioner's proceedings would have differed.

Moreover, the right to appointment of counsel in post conviction proceedings turns upon whether, under the circumstances of a particular case, the assistance of counsel is essential to accomplish a fair and thorough presentation of a defendant's claim for collateral relief. In determining whether to appoint counsel for collateral relief in assisting an indigent defendant, trial courts should consider four factors: (1) the adversary nature of the proceeding, (2) its complexity, (3) the need for an evidentiary hearing and (4) the need for substantial legal research. Although trial courts need not appoint counsel for all indigent defendants whose post conviction claims are not susceptible to summary disposition, the determination that an evidentiary hearing is necessary in itself implies that three (3) of the four (4) elements of the test for whether to appoint counsel to assist an indigent defendant in post conviction proceedings are involved courts should resolve all doubts regarding the need for appointed counsel in a post conviction proceeding in an indigent defendant's favor. See Williams v. State, 472 So. 2d 738 (Fla. 1985).

The trial court abused its discretion and therefore denied the Petitioner of her Due Process rights and right to a fair proceeding under the Fifth and Fourteenth Amendment of the United States Constitution. Therefore, this Honorable Court should issue a Writ in the Petitioner's cause.

IX. Did counsel's performance prove ineffective when he stipulated to a factual basis and when he failed to advise the Petitioner that the evidence against her was insufficient to support a charge of second degree murder with a firearm and Robbery with a firearm, violating the Petitioner's right to effective assistance of counsel, a fair proceeding and Due Process of law?

"When arguing the factual basis, the court is required to determine that the factual conduct to which the defendant admits is sufficient as a matter of law to constitute a violation of the statute." U.S. v Marek, 238 F. 3d 310, 314 (5th Cir. 2001).

Moreover, the purpose of ensuring that a factual basis exists is to prevent a defendant from pleading guilty to charges that he/she could not otherwise have been convicted of.

In the instant case, the Petitioner pled guilty to a charge of second degree murder with a firearm. Pursuant to Florida law in Florida Statute 782.04(2) and 775.087, Second Degree Murder with a firearm is defined as "The unlawful killing of a human being when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to affect the death of any particular individual". A conviction for second degree murder with a firearm requires proof of a specific intent to kill or inflict great bodily harm and contains the element of a "depraved mind".

There was no evidence presented that the Petitioner participated in the victim's murder, but that the act was solely committed by her co-defendant. The Petitioner was not aware of her co-defendants intentions or actions until he had already committed the offense. Even to be convicted as a principal, the Petitioner must have a conscious intent that the crime be committed, and do some act or say some word which was intended to

and did initiate a third party to commit the crime in which the Petitioner is charged. Mere presence at the scene of the crime is insufficient to support a charge/conviction as principal. There was no evidence in this case that supports the factual basis for second degree murder with a firearm, either as the perpetrator or as a principal.

The Petitioner, who was not well versed in the law, had no way of knowing that the evidence in her case did not support a conviction for the charges against her. The Petitioner relied on counsel to make an informed decision however he could not have based his decision or an informed one because no investigations were performed by counsel. This greatly prejudiced the Petitioner and undermined confidence in the outcome of proceedings. Counsel allowed the Petitioner's due process rights as guaranteed under the Fourteenth Amendment to be violated. See Mendez v. State, 271, So. 3d 1093 (Fla. 3d DCA 2019) ("The Due Process clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.)

In United States v. Olano, 123 L.Ed. 2d 508, 507 U.S. 725, 113 S. Ct. 1770 (1993), this Honorable Court held:

"The State may not rely on evidence presented in the defenses case to supply the missing elements necessary to prove its case. Legal sufficiency alone, as opposed to evidentiary weight, is the appellate courts only concern."

Counsel's performance fell well below a reasonable objective standard. But for counsel's deficient performance in stipulating to a factual basis where no evidence was presented to prove the Petitioner committed, participated or even, "master minded" these offenses, there is a reasonable probability that the outcome of the Petitioner's

proceedings would have been different as the Petitioner would not have entered nor accepted a guilty plea but proceeded to trial.

The Petitioner has met the requirements of Strickland and demonstrated that her right to a fair proceeding, effective assistance of counsel and Due process of law under the Fifth, Sixth and Fourteenth Amendments have been violated. This Honorable Court should issue a Writ.

X. Was the Petitioner's Fifth, Sixth and Fourteenth Amendment rights violated when Michael Takiff and LeRonnie Mason failed to have Petitioner's case severed from her co-defendant's

"Effective assistance of counsel for Sixth Amendment purposes is defined as representation that does not fall below an objective standard of reasonableness in light of the professional prevailing norms when the representation took place." Ball v. United States, 271 Fed. Appx. 880 (11th Cir. 2008)

The Petitioner was arrested for two (2) crimes committed within seven (7) weeks of each other. In case number 2008-CF- 001781b, The Petitioner's co-defendant, Travis Carroll, killed a man with whom he was acquainted and took prescription pain medication from the victim's house. The primary evidence against the Petitioner were various statements she made to law enforcement before and after her arrest and these statements were made while either Petitioner was under the influence of opiates or experiencing withdrawals. Consequently, the evidence clearly reflects that the Petitioner did not aide, abet, counsel, hire, or otherwise procure the death of her co-defendants acquaintance. At no time did she realize her co-defendant intended to commit such a crime, especially a murder, when they went to visit the victim, Brian

Whipp. The Petitioner was outside of the victim's home when he was killed by Mr. Carroll, and she never returned into the apartment. The Petitioner had no idea that any crime had occurred until Mr. Carroll confessed to what he had done.

In view of all the foregoing, the petitioner had two (2) viable theories of defense to the charges, but absence a severance of the unrelated Robbery with a weapon charge, case number 2008-CF-001537A, the petitioner was unable to exercise her right to proceed to trial.

If the cases had been severed, the petitioner would have proceeded to trial under the alternate theories that: (1) She was an accessory after the fact and/or (2) the Robbery and Murder were both committed as independent acts of her co-defendant. Given the facts of the case, and the statements of her co-defendant, there is a reasonable probability that a jury would have found her not guilty and/or guilty of being an accessory after the fact. Even if she were convicted of being an accessory after the fact, she would have potentially received a lesser sentence than thirty-five (35) years as she is currently serving within the Florida Department of Corrections.

The defense attorney's in question should have moved to have the petitioner's case severed from her co-defendant as to give her an opportunity to obtain a fair review of her defenses by the fact finders of the court case. Moreover Counsel's deficient performance prejudiced the petitioner in that their failure caused a violation of the petitioner's fifth, sixth and Fourteenth Amendment right to a fair proceeding, effective assistance of counsel and Due Process of law, and prevented the petitioner from utilizing her Constitutional right to go to trial. Because once the jurors heard that the

Petitioner committed another unrelated Robbery it would have prompted them to find her guilty of the murder. In a trial for murder, the second case was extremely prejudicial because the mere mention of a second, unrelated robbery would undoubtedly produce a conviction prone jury to find the petitioner guilty.

“To obtain relief on the basis of ineffective assistance of counsel, the defendant as a general rule bears the burden to meet the standard. First, the defendant must show deficient performance, i.e. that the attorney’s errors were so serious that counsel was not functioning as the counsel guaranteed the defendant by the sixth Amendment. Second, the defendant must show that the attorney’s error prejudiced the defense.”

Weaver v. Massachusetts, 137 S.Ct. 1899, 198 L.Ed.2d. 420, 2017 U.S. Lexis 4043.

Had Counsels moved to sever the petitioner’s case from her co-defendant’s, there is a reasonable probability that the outcome of the petitioner’s proceedings would have differed, the petitioner would not have taken a plea and proceeded to trial.

The Petitioner has satisfied the Strickland Standard and demonstrated that her 5th, 6th, and 14th Amendment rights have been violated. This Honorable Court should issue a Writ.

XI. Did Counsel render ineffective assistance when he failed to negotiate a substantial assistance agreement with the state based on information she gave that resulted in a confession by and conviction of her codefendant, a violation of the Petitioner’s Fifth, Sixth and Fourteenth Amendment rights?

“Although it is possible for concession of a single error to amount to ineffective assistance, this circumstance is clearly the exception and not the rule. To ground a claim of ineffective assistance, a single error must be so substantial as to stamp

counsel's overall performance with a mark of ineffectiveness." Gordon v. United States, 518 F.3d 1291 (11th Cir. 2008)

In the instant case, the petitioner through the information she provided the Palm Beach Garden Police Department, led Detective John Boyle, in obtaining a confession by her codefendant, Travis Carroll, which resulted in the conviction of a 2005 cold case murder. Absent the Petitioner's assistance, the case would still be unsolved.

Even though Florida did not enact an official statute for Substantial Assistance Agreements until July 1, 2010 and the petitioner's plea colloquy was conducted in 2009, one cannot conclude that prior to July 1, 2010, no allowances were made for defendants to benefit from a substantial assistance agreement.

Michal Takiff and LeRonnie Mason, defense counsels for the petitioner, had a constitutional duty to ensure the petitioner's due Process rights were not being violated and to protect the interest of the petitioner. Their failure severely prejudiced the petitioner and their deficient performance fell below a reasonable objective standard, depriving the petitioner of an outcome that was reliable. Counsel had a duty, at plea colloquy, to present petitioner's substantial assistance as a mitigating factor in securing a more favorable sentence. There is a reasonable probability that had counsel sought to negotiate a plea agreement based on the petitioner's substantial assistance, the outcome of the petitioner's proceedings would have been different.

The petitioner has met the Strickland requirements demonstrating that counsel rendered ineffective assistance violating the Sixth Amendment of the U.S. Constitution

as well as a showing that her Fifth and Fourteenth Amendment right to a fair proceeding and Due Process of law have been violated. This Honorable Court should issue a Writ.

XII. Did counsel render ineffective assistance when he failed to investigate, request discovery, interview and/or depose witnesses and victim's in case number 2008-CF-001537A, a violation of the Petitioner's Fifth, Sixth and Fourteenth Amendment rights?

The Petitioner avers that counsel failed to investigate, ask for discovery, interview and depose witnesses and victims. The Petitioner provided the names of the victim, Debra Gibb Carpino, her codefendant Travis Carroll, Glenn Holzer (petitioner's father), Gregory A. Holzer (Petitioner's brother) and Jennifer Ambrose Ortiz (Petitioner's sister) and what the substance of their testimony would have been. The omission of their testimony was highly prejudicial to the petitioner in that its absence undermined the petitioner's inference of innocence. These witnesses were also available to testify.

The victim in case number 2008-CF-001537A, Debra Carpino-Gibb would have provided deposition testimony inconsistent with the original, singular, unsworn, and unsigned statement made from the hospital and while heavily medicated, and constituted as persuasive impeachment evidence. Counsel had a duty to perform reasonable pre-trial investigations and the record will show that no attempt by defense counsel was made to substantiate either the victim's or petitioner's version of events, there was no investigation of the police reports, of which does not constitute a discoverable statement made by the victim where it was not signed, adopted or approved by the person to whom they have been attributed; the reports were not

substantially verbatim and were not recorded contemporaneously with their making as is required by Florida Law in Rule 3.220, Florida Rules of Criminal Procedure (a), states witnesses were not deposed, and the victim's undisclosed oral statement would have differed from her deposition testimony thereby questioning the validity of the series of events.

The substance of the victim's testimony would have contained evidence which may have conveyed reasonable doubt to whether the petitioner had a viable self-defense claim, where she believed danger was actual and could only be avoided by the use of force, when the victim initiated a reactionary response from the petitioner by picking up a pair of long-bladed scissors, a weapon, following an argument between the two about the amount and price of Opiod prescription pills, Roxicodone, that the victim was attempting to sell to the petitioner. The petitioner, once inside the victim's apartment, had no intention of committing any acts of violence against the victim having no prior documented history of being violent, and only responded to the victim's aggression, feeling danger was imminent, by defending herself. Upon realizing that the victim sustained severe injuries, the petitioner panicked and called her codefendant, Travis Carroll, to come inside. Mr. Carroll retrieved the safe containing additional prescription bottles, asked the victim to open it, which she did and they promptly left.

Counsel had an obligation to obtain sworn testimony from the victim, do even a minimal investigation of the evidence to prove or disprove material facts and his failure to investigate said facts, inability to adequately advise the petitioner on proceeding to trial; where defense strategies, trial and sentencing preparations were not available

and in a manner required of diligent and conscientious advocacy, resulted in the petitioner receiving the maximum penalty for both charged offenses and thereby renders the petitioner's plea as unknowingly made.

Under penalty of perjury, the victim's statement of facts would have greatly differed from her original statement where the victim, who had a substantial history of exchanging and selling prescription medication with the petitioner did without fear or coercion, hand the petitioner a bottle of thirty-nine (39) Roxicodone , claimed it was fifty (50) and demanded money for fifty (50) pills, initiating an argument between the victim and the petitioner which then escalated when the victim picked up a weapon, the long bladed scissors, and attempted to use them to harm the petitioner who reacted by defending herself.

Had this case been minimally investigated by defense counsel, and the evidence inspected, there would also have been a determination that the safe, which was opened by the victim, was not broken as stated in the police report, further showing discrepancies and questioning the validity of said evidence. The accumulation of facts that were never investigated prejudiced the outcome of the case because had the victim been questioned under oath, she would have admitted initiating the potential use of a weapon against the petitioner, thereby casting doubt of her credibility and opening the petitioner to use the defense of self-defense, which would have prevailed at trial. Had this information been available, the petitioner would have made an intelligent decision, rejected the plea offer and proceeded to trial where there was a possibility of being

found guilty of a lesser degree offense and receiving a reduced sentence. The victim was available to testify.

The Petitioner's father, brother and sister would have testified to petitioner's long term and continued mental health problems, however counsel never attempted to retain an expert for evaluation, interview the mental health professionals who were available and had treated the petitioner in the past, prepare a social and mental health history, or retain an investigator to interview witnesses. Having done so would have established that the petitioner suffered from varied disorders, relayed a traumatic history beginning with being sexually victimized at age seven (7) and continuing through her adult life, grieving the loss of her only child's father whom she found unresponsive, eight months prior on April 8, 2007, losing then regaining custody of her infant daughter, battling the long term and extensive drug addiction to a myriad of substances and severe dependency of opioid based prescription medications, and the accumulative effects resulted in the petitioner having a substantially impaired capacity to conform her behavior to the requirements of the law at the time of the offenses, corroborating a defense of insanity, either permanent or intermittent.

Clinical psychologist Michelle Weil and Dr. Eric Ressner, psychiatrist, treated the petitioner from age eleven (11) to twenty-three (23). The relevance and substance of their testimonies would have provided a professional history of the petitioner's mental conditions; trauma suffered, drug dependency, and varied diagnosis. A minimal investigation and their sworn testimonies would have established that the petitioner has significant mental infirmities, diseases, and defects, diminished capacity, producing

an inability to form the specific intent to commit crimes, thereby being integral in defenses, trial preparations and introduction of mitigating circumstances.

The omission of testimonies from mental health professionals and available records prejudiced the outcome by depriving the petitioner of her due process right to have defense strategies and trial preparations available, to be evaluated by no less than two (2) qualified mental health experts, and the ability thereof to make a knowing, voluntary, and informed decision and based on the evidence, to either proceed to trial or accept a plea offer. All these witnesses were available to testify and the omission of their testimonies greatly prejudiced the petitioner.

Moreover, counsel failed to request additional records and documentation that were available, but never obtained. For example, the petitioner's involuntary admission through the Baker Act, from St. Mary's Institute for Mental health at St. Mary's Medical Center in West Palm Beach, Florida on August 17, 2006 for attempted suicide, while approximately seven (7) months pregnant were also integral to the preparation of trial defense strategies and mitigating evidence and the lack of this information impacted the outcome of the proceedings.

Deposing witnesses, requesting discovery, investigating the substance of possible testimony from prospective witnesses and obtaining expert witness testimony is an essential part of effective assistance. And a court is required to hold an evidentiary hearing when a lawyer fails to call witnesses.

In Salazar v. U.S., 319 Fed. Appx. 875 (11th Cir. 2009) the court held:

“district court’s ruling on defendant’s motion to vacate 360 months sentence for drug conviction was required to hold an evidentiary hearing on claim that defendant’s lawyer was ineffective for failing to call two witnesses who were with him at the time of arrest, since testimony of these witnesses if credited were police officers, could have cleared him of all charges.”

Also David v. Booker, 589 F. 3d 302 (6th Cir. 2009); Harrison v. Quarterman, 496 F. 3d 419 (5th Cir. 2007); Meus v. State, 968 So. 2d 708 (Fla. 2d DCA 2007); Yarborough v. State, 871 So. 2d 1026 (Fla. 1st DCA 2004)

State Courts have held in Duins v. State, 227 So. 3d 694 (Fla. 5th DCA 2017) that:

Failure to investigate or call an exculpatory witness presents a *prima facie* showing of entitlement to relief, subject to rebuttal by evidence from the record or testimony at an evidentiary hearing.”

Counsel’s decision not to investigate, depose and call witnesses as well as not present mitigating circumstances was not sound trial strategy. In fact, it was highly prejudicial to the Petitioner and denied her of a substantive due process right. Moreover, Counsel’s deficient performance fell below a reasonable objective standard of prevailing professional norms, where it undermined the outcome of the Petitioner’s proceedings.

Had Counsel investigated, deposed and called witnesses as well as requested and obtained discovery and investigated and prepared to present mitigating circumstances to the court, there is a reasonable probability that the outcome of the Petitioner’s proceedings would have differed.

The Petitioner has satisfied the prongs of Strickland and unequivocally demonstrated that her Fifth, Sixth and Fourteenth Amendment rights to a fair proceeding, effective assistance of counsel and Due process of law have been violated. This Honorable Court should issue a Writ.

XIII. Was the Petitioner's right to a fair proceeding effective assistance of counsel and due process violated when the trial court denied Petitioner's claim that the cumulative effect of counsel's error deemed him ineffective?

When addressed individually and especially cumulatively, Petitioner's claims rise to the level of fundamental error and Petitioner's constitutional right to Due Process of the law and effective assistance of counsel was violated. The proceedings against Petitioner were wrought unknown with inconsistencies and prejudices as a result of counsel's neglect and errors.

The Petitioner has demonstrated both deficiency and prejudice in accordance with Strickland and Petitioner's claims are not conclusively refuted by the record. The petitioner is entitled to the relief sought, but for counsel's errors, she would not have entered a plea but instead would have proceeded to trial and the outcome of her case would have greatly differed.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully Submitted



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