No.: 20-5105

ORIGINAL

In The
Supreme Court of the United States
_____ Term, _____

DAVID SCOTT TEMPLE v. DARREL VANNOY, Warden

On Petition for a Writ of Certiorari to

U.S. FIFTH CIRCUIT COURT OF APPEALS

David Scott Temple #562616
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Angola, Louisiana 70712-9818

July 3, 2020

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QUESTIONS PRESENTED

1. **Reasonable jurists would determine that Mr. Temple was denied effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and *Strickland v. Washington*.**
2. **Reasonable Jurists would argue that the trial court abused its discretion in its acceptance of Mr. Temple's guilty plea.**

INTERESTED PARTIES

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In The
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DAVID SCOTT TEMPLE v. DARREL VANNOY, Warden

Petition for Writ of Certiorari to the U.S. Fifth Circuit Court of Appeal

Pro Se Petitioner, David Scott Temple respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the U.S. Fifth Circuit Court of Appeal (Docket No.: 19-30633), entered in the above entitled proceeding on April 6, 2020; that the issues presented to the Federal Courts were: (1) Reasonable Jurists would determine that was denied effective assistance of counsel; and, (2) Reasonable Jurists would argue that the trial court abused its discretion in its acceptance of Mr. Temple's guilty plea.

REQUEST FOR JUDICIAL NOTICE

On April 1, 2020, the Louisiana State Penitentiary was placed on a limited lock-down due to the Covid-19 Pandemic. With this limited lock-down, the Legal Programs Department has allowed for all Offender Counsel Substitutes and the Law Library to be locked down, effectively halting any and all legal assistance and/or access to legal materials.

At the present time, all legal aid at the Louisiana State Penitentiary is effectively closed, disallowing any research or access to any materials needed to advance pleadings. The Offender Counsel Substitutes, who provide assistance in the submission of meaningful litigation, do not have access to Mr. Temple, his legal materials, or the Law Library.

Recently, the Louisiana State Penitentiary has allowed the Counsel Substitutes very limited access to their computer files in order to assist the Offenders whose cases have been assigned to them.

Mr. Temple respectfully requests that this Honorable Court deem this request timely.

NOTICE OF PRO-SE FILING

Mr. Temple requests that this Honorable Court view these Claims in accordance with the rulings of *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). Mr. Temple is a layman of the law and untrained in the ways of filings and proceedings of formal pleadings in this Court. Therefore, he should not be held to the same stringent standards as those of a trained attorney.

Mr. Temple has remained in continued custody since his arrest, and is currently an inmate at Louisiana State Penitentiary at Angola, Louisiana, Darrel Vannoy, Warden. Mr. Temple requests that his *Pro-Se* efforts herein be liberally construed as he has made a good faith effort to follow form. See, *United States v. Glinsey*, 209 F.3d 386, 392 (5th Cir. 2000).

OPINIONS BELOW

The opinion(s) of the U.S. Fifth Circuit Court of Appeal Docket No.: 19-30633.

JURISDICTION

The judgment of the U.S. Fifth Circuit Court of Appeal, was entered on April 6, 2020. This Court's Certiorari jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

As Mr. Temple has virtually no record other than the guilty plea colloquy from August 12, 2015 for one Count of Aggravated Second Degree Battery and one Count of Second Degree Kidnapping.

According to Mr. Temple, trial had commenced on August 12, 2015, with the State presenting two (2) witnesses prior to the lunch break, but after selection of the jury. After the break, defense counsel informed the Court that Mr. Temple wished to withdraw his previous plea of not guilty and enter a plea of guilty. Defense counsel also informed the Court that after a discussion with Mr. Temple, the State, and Mr. Temple's parents, Mr. Temple was now ready to plead guilty to the charges, with a multiple bill enhancement for Second Felony Offender for a sixty (60) year sentence.

During the guilty plea colloquy, Mr. Temple informed the Court that he had a sixth grade education, he was an alcoholic, he had assistance obtaining his driver's license, and that his occupation and profession was being a "Cowboy."

On November 24, 2015, Mr. Temple filed into the 22nd Judicial District Court, a Motion for Production of Documents in an attempt to obtain his ***Boykin*** transcript from his guilty plea. However, on December 3, 2015, the Honorable Allison H. Penzato, denied the motion stating, "No particularized need has been shown for production of the trial transcript."

On December 21, 2015, Mr. Temple filed an Application for Post-Conviction Relief for an Out-of-Time Appeal, only to be sent the ***Boykin*** transcripts from August 12, 2015, with no Answer from the PCR Application concerning his Appeal.

On March 30, 2016, Mr. Temple filed an Application for Post-Conviction Relief and Motion for Production of Documents Under Particularized Need. On May 10, 2016, the district court denied him relief with written reasons. On May 23, 2016, Mr. Temple timely filed his Notice of Intent to Seek Writs to the district court.

On May 26, 2016, Mr. Temple filed for Supervisory Writs to the Louisiana First Circuit Court of Appeals. On September 22, 2016, the Court of Appeals denied relief.

On October 5, 2016, Mr. Temple timely filed for Supervisory Writs to the Louisiana Supreme Court. On January 12, 2018, the Louisiana Supreme Court denied relief.

On February 12, 2018, Mr. Temple filed for Habeas Corpus relief in the U.S. District Court of Louisiana, which was denied on July 30, 2019. Mr. Temple then file for his Certificate of Appealability to the U.S. Fifth Circuit Court of Appeal, which was denied on April 6, 2020.

Mr. Temple now timely seeks Writ of Certiorari to this Honorable Court, humbly requesting that this Honorable Court invoke its Supervisory Authority of Jurisdiction over the lower courts, and after a thorough review, find that his Claims are deemed good and proper, and determine that relief can be

granted for the following reasons to wit:

STATEMENT OF THE FACTS

As there is no Record or transcript from the Court, a Statement of Facts is not possible for the writer of this. However, this is a request for a collateral review from guilty pleas by Mr. David Scott Temple that occurred on August 12, 2015. The writer of this is relying solely on the guilty plea transcript that Mr. Temple was able to obtain from the Court, the attorney's file, and Mr. Temple's "*Recalled Memory*" of the proceedings.

Mr. Temple appeared before the 22nd Judicial District Court on August 12, 2015 for trial proceedings. After the jury was selection and two State witnesses testified, Mr. Temple withdrew his former plea of not guilty and plead guilty.

The 22nd Judicial District Court and the Louisiana First Circuit Court of Appeals abused their discretion in denying Mr. Temple the right to obtain the remainder of the transcript of his proceedings after Mr. Temple has properly requested such. It appears to be some unethical reason for the Courts to deny the Record to Mr. Temple.

REASONS FOR GRANTING THE WRIT

In accordance with this Court's *Rule X, § (b) and (c)*, Mr. Temple presents for his reasons for granting this writ application that:

Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a Writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers.

A state court of last resort (Louisiana Supreme Court) has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.

A United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court or U.S. Court of Appeals.

Mr. Temple has submitted documented proof that his trial counsel failed to complete any type of investigation in this matter; and merely relied on the State's discovery to proceed to trial. In fact, according to the State's information, Mr. Temple and the victim in this matter were both highly intoxicated at the time of this incident; yet, counsel failed to argue for mitigating factors in this case.

IV. Specific Issue(s).

1. **Reasonable jurists would determine that Mr. Temple was denied effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution and *Strickland v. Washington*.**
2. **Reasonable jurists would argue that the state courts abuse their discretion in accepting the guilty pleas from Mr. Temple as willingly and knowingly made.**

LAW AND ARGUMENT

CLAIM 1

Mr. Temple was denied effective assistance of counsel due to counsel's failure to investigate and prepare a viable defense, in violation of *Strickland v. Washington*; Sixth and Fourteenth Amendments to the U.S. Constitution; and, Louisiana Constitution of 1974, Article I, §§ 2, 13, 16, and 19.

Standard of Review:

The Standards of Strickland and Cronic

A claim of ineffective assistance of counsel is analyzed under the standards enunciated in *Strickland v. Washington*, 466 U.S. 668, 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) and in many cases, *United States v. Cronic*, 466 U.S. 648, 662 (1984). The difference between the ineffectiveness of counsel in cases governed by *Strickland* and those governed by *Cronic* is a difference in "kind" other than simply "degree" and the *Cronic* standard applies only if counsel's failure to test the prosecution's case is "complete." See *Bell v. Cone*, 535U.S. 685, 122 S.Ct. 1843, 1851, 152 L.Ed.2d 914 (2002).

Three types of cases warrant *Cronic's* presumption of prejudice analysis. The first is the complete

denial of counsel, in which the "accused is denied the presence of counsel 'at a critical stage'." *Bell*, 122 S.Ct. at 1851 (quoting *Cronic*, 466 U.S. at 659, 104 S.Ct. 2039.) The second is when counsel "'completely fails to subject the prosecution's case to meaningful adversarial testing.'" *Id.* (quoting *Cronic*, 466 U.S. at 659, 104 S.Ct. 2039). The third is when counsel is placed in circumstances in which competent counsel very likely could not render assistance. **Mr. Temple submits that Trial Counsel failed to subject the State's case to any meaningful adversarial testing, and that failure was complete.** Therefore, Mr. Temple submits that the *Cronic* standard, where prejudice is presumed, *Id* at 658, should also have been applied to this case, and the Court's failure to apply the *Cronic* standard was contrary to established law and unreasonable.

Mr. Temple submits that appointed conflict counsel, Ernest Barrow III, is a licensed and experienced attorney, and presumed to know the law. Counsel was also fully informed of Mr. Temple's illiteracy prior to the commencement of the trial and ultimate plea bargain. It appears as if defense counsel was only contemplating, or hoping for, a plea bargain in this case.

Mr. Temple submits that based upon the facts and circumstances presented, this was akin to having no counsel at all. Trial Counsel "**completely failed**" to subject the prosecution's case to meaningful adversarial testing. Counsel's failure was "complete" from the onset of the proceedings and thereafter. *United States v. Cronic*, 466 U.S. 648, 662 (1984).

Mr. Temple submits that he established that counsel was incompetent and the performance fell below an objective standard of reasonableness measured by prevailing professional norms meeting the two prongs of *Strickland* and the additional standards enunciated in *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010), and *Hernandez v. United States*, 778 F.3d 1230 (11th Cir. 2015). Mr. Temple further submits that he has met the standard enunciated in *United States v. Cronic*, supra.

Simply put, counsel in this matter relied solely on the facts as presented by the State. There was basically no investigation by defense counsel into the matter of any type of viable defense. The sad part

of this matter is the fact that Mr. Temple's best defense was right there in the State's records in an abundance: **INTOXICATION**. Even during the guilty plea colloquy, Mr. Temple informed the Court that he was "drunk and had not realized what he had done."

After a review of the record and guilty plea colloquy, it appears that defense counsel took advantage of Mr. Temple's low educational level and low understanding of the law. Mr. Temple had informed his counsel that he had a sixth grade education, and that he had been Socially Promoted to that level by the school due to this learning disabilities. Mr. Temple had also informed counsel that his job was listed as "Cowboy" due to the fact that he had not even obtained a GED, and was unable to qualify for any other type of job.

WHEREFORE, for the above reasons, Mr. Temple respectfully request that after a fair and impartial review of the pleadings and Record, this Honorable Court conclude that Mr. Temple was denied effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution.

Argument to Issue One:

NOTE: Mr. Temple is preparing this solely from his memory, the attorney file and the guilty plea colloquy he has recently obtained. As Mr. Temple is unable to read and write, he is obtaining assistance from an Offender Counsel Substitute at the Louisiana State Penitentiary. It must also be noted that Mr. Temple has been unable to obtain the transcript from the start of his trial. After jury selection and testimony of two State witnesses, Mr. Temple withdrew his not guilty plea and entered a plea of guilty to the charges. Additionally, Mr. Temple subsequently plead guilty to the Habitual Offender Bill of Information with the understanding that he would receive a sixty (60) year sentence, to be served at hard labor with the Louisiana Department of Public Safety and Corrections.

Mr. Temple was denied effective assistance of counsel during the course of the proceedings and the trial. The Courts have abused their discretion in failing to consider the merits of the Claims, and

Exhibits which proved that trial counsel failed to adequately investigate and represent him. Counsel's unprofessional errors prejudiced Mr. Temple, and the outcome of these proceedings are not reliable.

According to the limited documentation that Mr. Temple was able to obtain from the Public Defender's Office of the 22nd Judicial District Court, there was evidence of a possible "intoxication" defense to the crime charged. As these charges (Aggravated Second Degree Battery and Second Degree Kidnapping) are "Specific Intent" charges, an "intoxication" defense may be instated for mitigation.

Furthermore, Mr. Temple had included a copy of the 22nd Judicial District Court Public Defender's Statement in Support of Compensation and Expenses of Appointed Counsel. In this particular statement, Mr. Barrow stated that he had completed a total of 16.5 hours of work on this case, which included the 10.5 hours for the trial proceedings (See: Statement, Exhibit "1").

Also, in the attorney file, Mr. Temple has determined that the investigation by the State shows a record replete with evidence of alcoholism, or drunkenness at the time of the alleged incident on the part of both Mr. Temple and the alleged victim.

The United States Supreme Court has recently made two pertinent rulings concerning ineffective assistance of counsel on guilty pleas. In ***Lafler v. Cooper***, 132 S.Ct. 1376 (3/21/12); and, ***Missouri v. Frye***, 132 S.Ct. 1399 (3/21/12), the United States Supreme Court held that a defendant is guaranteed effective assistance of counsel during the course of a guilty plea. However, in this case, Mr. Temple was not afforded effective counsel during the guilty plea.

Question: Does a defendant still has an equal protection claim if he pleas guilty? Possibly. He has to raised ineffective assistance of counsel. But should also raise the claim straight out.

In both ***Cooper*** and ***Frye***, the United States Supreme Court settled a long standing conflict of law. Does the ***Strickland*** standard of effective assistance of counsel extend to the guilty plea where counsel provided erroneous advice?

The High Court maintained that there **is not** a constitutional right to a guilty plea [however], once a

plea bargain is introduced, then the right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution is upheld. Furthermore, the Supreme Court ruled that the "right to effective assistance of counsel applies to [all] critical stages of the criminal proceedings." *Frye*; *Cullen v. Pinholster*, 131 S.Ct. 1388.

To prevail on an ineffective assistance of counsel Claim, the performance prong of *Strickland v. Washington*, supra, requiring a defendant to show "that counsel's representation fell below an objective standard of reasonableness." *Id.*, at 688, 104 S.Ct. 2052. To establish *Strickland* prejudice, a defendant must show that there is a reasonable probability that for counsel's unprofessional error, the result of the proceeding would have been different. *Id.*, at 694, 104 S.Ct. 2052. "In context of a plea, a defendant must show the outcome of the plea process would have been different with competent advice." *Frye*, *ante*, at 1388-1389, 132 S.Ct. 1399 (noting that *Strickland*'s inquiry as applied to advice with respect to plea bargain turns on whether the result of the proceedings would have been different. *Strickland*, at 694).

A guilty plea represents a break in the chain of events which has preceded it in the criminal process. When a criminal defendant pleas guilty, he cannot thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. The defendant may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was outside the "range of competence demanded of attorneys in criminal case." *Tollett v. Henderson*, 411 U.S. 258, 267, 93 S.Ct. 1602, 1608, 36 L.Ed.2d 235 (1973).

A guilty plea is open to attack on the ground that counsel did not provide the defendant with "reasonable competent advice." *Cuyler v. Sullivan*, 446 U.S. 335, 343, 100 S. Ct. 1708, 64 L.Ed.2d 333 (1980).

Mr. Temple contends that he was denied the right to effective assistance of counsel during these proceedings. Due to counsel's ineffectiveness, Mr. Temple was virtually forced to plead guilty to the

charges as counsel had failed to interview witnesses, investigate the allegations, or prepare a defense before the commencement of trial.

Mr. Temple contends that trial counsel was not prepared for trial, nor had counsel prepared Mr. Temple for trial, misled trial court in that he prepared Mr. Temple for trial. Counsel never discussed the case with Mr. Temple. In fact it appears that defense counsel subpoenaed no witnesses for the trial.

Mr. Temple contends that he was unskilled to make such determinations [especially] the very morning of a trial. Had counsel advocated, or been prepared to advocate for Mr. Temple, then he would have been prepared to test the prosecution's case and Mr. Temple would have insisted upon proceeding to trial; opposed to yielding to the advice of attorney that he needed to plead guilty to the charges and the Multiple Offender Bill of Information for a sentence of sixty (60) years.

Courts throughout Louisiana, including both Federal and United States Supreme Court have routinely upheld the fact that in order for practicing attorney to be rendered effective, he/she must at the very least conduct a minimum investigation.

This argument is supported by *U.S. v. Gray*, 878 F.2d 702:

> "Thus, the Court of Appeals, we are in agreement that failure to conduct an investigation generally constitute a clear instance of ineffectiveness."

Mr. Temple contends that counsel was so ineffective that he sat idly by while the prosecutor led his client (Mr. Temple) to the henchmen without so much as uttering a word.

Quoting *U.S. v. Cronic*, 466 U.S., at 659:

> "If counsel entirely fail to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights, that make the adversarial process itself presumptively unreliable." (See: ***Boykin*** transcript, p. 5, lines 7-32).

Mr. Temple contends that counsel failed to adequately advise him of his constitutional rights, Sixth Amendment, to face and/or confront/cross-examine his accusers. Had Mr. Temple understood that he had such a right, it would be at the very least questionable (if not ridiculous), Mr. Temple would have insisted on going to trial.

In *Hill v. Lockhart*, 474 U.S. 52, 88 L.Ed.2d 203, Judge White offered:

> "If it is necessary, in my view, to focus on the 'plea statement' signed by Petitioner. The statement is a standardized form to be completed by defense counsel, in consultation with his client and submitted to the court for consideration. The form calls for specific information [the insertion] in the opposite spaces."

Mr. Temple contends that the bedrock that the whole judicial framework rest on is hinged on the Sixth and Fourteenth Amendment rights to Confrontation and Due Process. If any counsel neglects such a right as fundamental, they cannot possibly render effective assistance of counsel.

Acknowledging the extreme importance of this right, the United States Supreme Court has held: "That a person who happens to be a lawyer is present at trial alongside the accused ... is not enough to satisfy the constitutional command." The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair. *Strickland v. Washington*, 466 U.S. at 685.

Thus, the Courts have recognized that "the right to counsel is the right to effective assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771 n. 14, 90 S.Ct. 1441, 1449 n. 14, 25 L.Ed.2d 763, 773 (1970).

In *State v. Myles*, 389 So.2d 12, 28-31 (La. 1980), the Supreme Court of Louisiana found ineffective assistance of counsel on the face of the appellate record under circumstances very similar to this case. Trial counsel rested without additional evidence, failed to object to inadmissible evidence, and failed to object to erroneous instructions. Id. at 28-29. See also: *United States v. Otero*, 848 F.2d 835, 837, 839 (7th Cir. 1988); *Deutscher v. Whitley*, 884 F.2d 1152, 1162 (9th Cir. 1989); *Duckworth v. Dillon*, 751 F.2d 895 (7th Cir. 1984); *Goodwin v. Balkcom*, 684 F.2d 794 (11th Cir. 1982)(ineffective assistance found where counsel failed to: (1) investigate; (2) raise a challenge to the petit jury selection system; (3) raise illegality of the arrest; (4) interview crucial witnesses; and (5) object to an improper

Witherspoon excusal); *Blake v. Zant*, 513 F. Supp. 772 (S.D.Ga. 1981)(ineffective counsel in capital cases; standards applied with particular care; showing of prejudice not always required); *State v. Harvey*, 692 S.W.2d 290 (Mo. 1985)(counsel's non-participation at the trial without the client's express consent is ineffective assistance of counsel).

> While a defendant must ordinarily show that counsel's ineffective assistance resulted in actual prejudice, such a showing may be exempted where counsel's ineffectiveness is so pervasive as to render a particularized prejudice inquiry unnecessary. *Frett v. State*, 378 S.E.2d 249, 251 (S.C. 1988)(citing *House v. Balkcom*, 725 F.2d 608 (11th Cir. 1984)).

"At the heart of effective representation is the independent duty to investigate and prepare." *Goodwin v. Balkcom*, 684 F.2d 794, 805 (11th Cir. 1982); accord *Porter v. Wainwright*, 805 F.2d 930, 933 (11th Cir. 1986); *Tyler v. Kemp*, 755 F.2d 741 (11th Cir. 1985); *Douglas v. Wainwright*, 714 F.2d 1532 (11th Cir. 1983), *vacated*, 104 S.Ct. 3575, 82 L.Ed.2d 874 (1984), *adhered to*, 739 F.2d 531 (1984). As the Court held in *Wade v. Armontrout*, 798 F.2d 304 (8th Cir. 1986): Investigation is an essential component of the adversary process. "Because [the adversarial] testing process generally will not function properly unless counsel has done some investigation into the prosecution's case and into various defense strategies ... 'counsel has a duty to make reasonable investigations . . .'" *Id.* at 307 (quoting *Kimmelman v. Morrison*, 477 U.S. 365, 106 S. Ct. 2574, 2589, 91 L. Ed. 2d 305 (1986) (quoting *Strickland v. Washington*, 466 U.S. 668, 691, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984)).

However, the mere presence of an attorney does not satisfy the constitutional guarantee of counsel. As the Supreme Court has often noted, an accused is entitled to representation by an attorney, whether retained or appointed. "Who plays the role necessary to ensure that the trial is fair." *Morrison*, 477 U.S. at 377, 106 S.Ct. at 2584, quoting *Strickland v. Washington*, 466 U.S. 668, 685, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 274 (1984). "In other words, the right to counsel is the right to effective assistance of counsel, citing *Evitts v. Lucey*, 469 U.S. 387, 395-96, 105 S.Ct. 830, 835-36, 83 L.Ed 2d 821 (1985).

The State had provided "Open File Discovery" to counsel. The attorney file was complete

concerning the pictures, interviews, and other evidence. However, there was NO further investigation on the part of the defense attorney. Everything contained in the attorney file came from the District Attorney's Office through discovery. It appears that defense counsel in this matter simply relied on the State's investigation.

Defense counsel "did not **chose** strategically or otherwise, to pursue one line of defense over another. Instead, he simply abdicated his responsibility to advocate his client's cause." *Nealy v. Cabana*, 764 F.2d 1173, 1178 (5th Cir. 1985)(emphasis in original); see also: *King v. Strickland*, 714 F.2d 1481, 1490 (11th Cir. 1983), *vacated*, 104 S.Ct. 3575, 81 L.Ed.2d 358 (1984), *adhered to*, 748 F.2d 1462 (1984)(counsel ineffective where some mitigating evidence presented, but lack of preparation of other evidence); *Johnson v. Estelle*, 704 F.2d 232 (5th Cir. 1983)(failure to investigate sanity defense); *Windom v. Cook*, 423 F.2d 721 (5th Cir. 1970)(effective representation includes counsel's familiarity with the case and proper investigation); *Coles v. Peyton*, 389 F.2d 224 (4th Cir. 1968)(no investigation or prosecutrix's character or search for potential witnesses); *People v. LaBree*, 34 NY.2d 257, 313 N.E.2d 730 (1974)(lack of preparation rendered trial "farce and mockery").

In support of Mr. Temple's Claim of counsel's failure to prepare or investigate, Mr. Barrow had prepared a 22nd Judicial District Court Public Defender Office Statement in Support of Compensation and Expenses of Appointed Counsel. In this Report, Mr. Barrow states that he performed the following services:

Under No. 1;		
7/06/15	Attended pretrial w/ client	1.0 hours
5/27/15	Attended pretrial w/o client	0.5 hours
Under No. 2;		
8/6/15	Review of discovery for trial; telephone conference w/ ADA	1.75 hours
8/6/15	Meeting with client in jail	1.25 hours
6/4/15	Received and reviewed file from PDO	1.5 hours
Under No. 3;		
8/10	Picked jury	5.0 hours
8/12	Motions (404B); Opening statements, 2 witnesses	

Guilty plea and sentencing 5.5 hours

(See: Statement in Support of Compensation and Expenses)

According to Mr. Barrow's own Statement in Support returned to the Public Defender's Office, Mr. Barrow stated that he only reviewed or investigated this matter for a total of **4.5** hours in preparation for trial. Mr. Barrow further stated that he had interviewed Mr. Temple for **1.25** hours in the jail, a mere four (4) days prior to picking the jury for trial. There is no record of any other interview with Mr. Temple noted by Mr. Barrow. Furthermore, Mr. Barrow stipulates that he spent a total of **16.5 hours** on this case, which included the **10.5 hours** for the trial proceedings (See: 8/10 and 8/12).

Had Mr. Barrow reviewed the file provided by the State thoroughly in this matter, he would have known that there was evidence for an intoxication defense.

Mr. Temple contends that the counsel failed to investigate any viable defense that could be presented during the course of the trial. According to Mr. Temple's lay memory, the only time that counsel discussed the pending trial with him was a few days before the commencement of trial. At that time, the only discussion Mr. Temple can recall between him and his counsel was, "What size clothes do you wear?"

Mr. Temple avers that had counsel prepared and investigated prior to the commencement of trial, counsel would have known that Mr. Temple could assert an Intoxication defense. LSA-R.S. 14:15 (2), which explains that the culpability of an offender who is intoxicated at the time of the offense would be significantly lowered, especially when the alleged offense relies on a "Specific Intent" or "Specific Knowledge" in order to convict.

LSA-R.S. 14:15. Intoxication, states in pertinent part:

> The fact of an intoxicated or drugged condition of the offender at the time of the commission of the crime is immaterial, except as follows:
>
> (2) Where the circumstances indicate that an intoxicated or drugged condition has precluded the presence of a specific criminal intent or of special knowledge required in a particular crime, this fact constitutes a defense to a prosecution for that crime.

> It is also well settled that intoxication may, in some cases, be so great as to negate the specific intent or knowledge necessary in some crimes, and in this instance the defense of intoxication may be raised. **Clark and Marshall, Law of Crimes** (4th ed. 1940) 135, § 95.

Had counsel conferred with Mr. Temple, counsel would have known that Mr. Temple had a long history of alcohol abuse. Mr. Temple's parents and friends would have testified to this fact had counsel investigated and prepared for trial. Even during the course of the guilty plea colloquy, Mr. Temple informed the Court that he was "drunk" at the time of the offense, that he didn't really remember what had occurred, and that he was very sorry for what had happened. Had counsel investigated, even minimally, counsel would have discovered that Mr. Temple's occupation as being a "Cowboy;" that Mr. Temple had an alcohol problem; that Mr. Temple had a sixth grade education; Mr. Temple even had to have assistance with his drivers license test due to his illiteracy.

Furthermore, during the course of the guilty plea colloquy, Mr. Barrow informed the Court that, "And that he wanted to apologize to the victims and that -- and tell the Court certain that he -- about his alcoholism and his memory and why after seeing some of the evidence he thought that he should spare the victim and the Court the rest of this trial" (See: Guilty Plea Tr.p. 4, lines 11-17).

On the 22nd Judicial District Court Bond Reduction Questionnaire, it was noted on number 10 that Mr. Temple was alcohol dependent. However, counsel failed to consider this defense.

On November 25, 2014, Ms. Ladner (the alleged victim) completed a St. Tammany Parish Sheriff's Office Judicial Risk Assessment Form. Mr. Temple would like this Honorable Court to especially note question 6 (a), where Ms. Ladner had checked off that Mr. Temple had a Substance abuse problem (See: Exhibit "__").

Had Mr. Barrow reviewed the file provided by the State thoroughly in this matter, he would have known that there was evidence for an intoxication defense.

Specific criminal intent exists when the defendant "actively desired the prescribed criminal consequences to follow his act ..." Whereas, general criminal intent exists when the defendant "in the

ordinary course of human experience, must have averted to the prescribed criminal consequences as reasonably certain to result from his act ..." LSA-R.S. 14:10.

"In prosecution for Simple Burglary wherein defendant introduced evidence of intoxication to negate specific intent, thus increasing the importance of a correct instruction on intent, trial court's instruction as to specific intent was fatally defective and prejudicial, requiring reversal of the conviction, where trial court diluted initially correct instructions so as to require only that defendant voluntarily and knowingly did the act and the act was intentional rather than unintentional or accidental. LSA-R.S. 14:10; 14:10(1), 14:15; 14:62; 15:445." *State v. Dardar*, 353 So.2d 713 (La. 1977).

A defendant charged with a specific intent crime is entitled to an intoxication instruction when the evidence would support a finding that the defendant was in fact intoxicated and that was a result there was a reasonable doubt that he lacked specific intent. *U.S. v. Robertson*, 606 F.3d 943 (C.A. 8 (N.D.) 2010); **110k774**.

Reversal was required, in prosecution for Aggravated Sexual Abuse of a Child, where district court failed to apply jury instruction on voluntary intoxication or drug use to count which charged defendant with attempting to commit sexual abuse; evidence that defendant may have been heavily intoxicated at time he committed the charged crimes bore on whether he had the requisite specific intent. 18 U.S.C.A. §§ 1153, >2241 (c), >2246 (2)(A, B, D). *U.S. v. Kenyon*, 481 F.3d 1054 (C.A. 8 (S.D.) 2007); 110k1173.2(3). Sixth and Fourteenth Amendments to the United States Constitution.

In *Deutscher v. Whitley*, 884 F.2d 1152 (9th Cir. 1989)(decision vacated and remanded by Supreme Court several times; last opinion which **again** finds IAC in *Deutscher v. Angelone*, 16 F.3d 981 (9th Cir. 1994). Trial counsel ineffective in penalty phase of capital trial for not investigating and presenting mitigating evidence despite sentencing argument that defendant must have had some mental problems. Adequate investigation would have revealed diagnoses of schizophrenia, pathological intoxication, and

organic brain damage; commitments to mental institutions; and a history of good behavior in institutional settings.

In *Harich v. Wainwright*, 813 F.2d 1082 (11th Cir. 1987), the Court held that petitioner had stated a claim of ineffectiveness if an intoxication defense had not been pursued because "counsel misunderstood the law . . ." *Id.* at 1089; see also *Commonwealth v. Grassmyer*, 402 A.2d 1052, 1054 (Pa. 1979); *Presley v. State*, 388 So.2d 1385 (Fla. DCA2 1980).

"To be considered effective, counsel has a duty to make at least a minimum investigation of the law, especially on such an important issue as sentencing mitigation . . ." *Burley v. Cabana*, 818 F.2d 414, 417 (5th Cir. 1987). For example, in *Presley v. State*, supra, defense counsel had expressed his erroneous belief that "voluntary intoxication is not a defense in these matters." *Id.* 1386. Since the crimes charged were specific intent crimes, this was clearly wrong, and formed the basis for reversal on grounds of ineffectiveness. *Id.*

Ineffective assistance... failure to investigate intoxication defense; *Martin v. Maggio*, 711 F.2d 1273 (1983).

In *Murray v. Carrier*, 477 U.S. 478, 496 (1986) the court stated:

> "The right to effective assistance of counsel... may in a particular case be violated by even an isolated error of counsel if that error is sufficiently egregious and prejudicial."

In *Lafler*, the Court held that *Strickland* is appropriate "clearly established federal law" to apply to Claims of ineffective assistance of counsel in plea-bargaining, even when the Claim relates to a foregone plea. See: *Lafler*, 132 S.Ct., at 1384. By applying this holding in *Lafler*, a habeas petition subject to AEDPA, the Court necessarily implied that this holding applies to habeas Petitioners whose cases are final on Direct Review, i.e., that the holding applies retroactively. The state district court ruling without the benefit of an evidentiary hearing, rejected Mr. Temple's Claim based on unsupported procedural bars. But, based on *Lafler* and *Frye*, neither a trial free of constitutional flow not a voluntary and intelligent guilty plea wipes clean any deficient performance by defense counsel during

plea-bargaining. Yet, Louisiana state district courts fail to adhere to their own standards and hold an evidentiary hearing. La.C.Cr.P. Art. 930.

The United States Supreme Court explicitly envisioned the possibility of an evidentiary hearing in the course of demonstrating a Claim of ineffective assistance of counsel during plea-bargaining. In *Lafler*, the Court noted that an evidentiary hearing may sometimes be required to show prejudice. See: 132 S.Ct. 1389.

In this situation, the Court may conduct an evidentiary hearing to determine whether the defendant (Mr. Temple) has shown a reasonable probability that but for counsel's errors he would have accepted the plea; and that the holdings in *Lafler* and *Cooper* retroactively apply.

According to the Record, Mr. Temple was guilty of the following offenses, for the reasons cited herein:

LSA-R.S. 34.7. Aggravated Second Degree Battery.

A. (1) Aggravated second degree battery is a battery committed with a dangerous weapon when the offender intentionally inflicts serious bodily injury.

LSA-R.S. 14:44.1. Second Degree Kidnapping

A. Second Degree Kidnapping is the doing of any of the acts listed in Subsection B wherein the victim is:

(3) Physically injured or sexually abused.

B. For the purpose of this Section, kidnapping is:

(3) The imprisoning or forcible secreting of any person.

Mr. Temple contends that Aggravated Second Degree Battery and Second Degree Kidnapping are crimes of "specific intent," and would be subjected to the provisions of R.S. 14:15, if proven by the defense. However, as must be noted, defense counsel failed to investigate into the possibility of any type of defense in this matter.

As noted in *Missouri v. Frye*, --- U.S. ---, 132 S.Ct. 1399, 1407, 182 L.Ed.2d 379 (2012), "plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process...that must be met to render the adequate

assistance of counsel that the Sixth Amendment requires in the criminal process at criminal stages."

To establish an inadequate assistance of counsel claim based on defense counsel's responsibilities during the plea process, the defendant must show that if his counsel had not made the error of which he complains (in this case failing to advise that he faced automatic life sentence if he pled guilty), there was a "reasonable probability" that he would have gone to trial rather than having pled guilty. ***Hill v. Lockhart***, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). See also ***Padilla v. Kentucky***, 559 U.S. 356, 369, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010); ***Koracs v. United States***, 744 F.3d 44, 51 (2d Cir. 2014). The defendant must also show that to reject the plea bargain and go to trial would have been "rational under the circumstances." ***Padilla v. Kentucky***, supra, 559 U.S. at 372, 130 S.Ct. 1473; ***Hernandez v. United States***, 778 F.3d 1230, 1234 (11th Cir. 2015).

A guilty plea is a serious and sobering occasion inasmuch as it constitutes a waiver of the fundamental rights to a jury trial, ***Duncan v. Louisiana***, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491, to confront one's accusers, ***Pointer v. Texas***, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923, to present witnesses in one's defense, ***Washington v. Texas***, 388 U.S. 14, 87 S.Ct. 1920, 18 L.Ed.2d 1019, to remain silent, ***Mallory v. Hogan***, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653, and to be convicted by proof beyond all reasonable doubt, ***In Re Winship***, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368.

Since ***Kercheval v. United States***, 274 U.S. 220, 47 S.Ct. 582, 71 L.Ed. 1009 (1927)("A plea of guilty differs in purpose and effect from a mere admission or an extra judicial confession; it is itself a conviction...Out of just consideration for persons accused of crime, courts are careful that a plea of guilty shall not be accepted unless made voluntarily **after proper advice** and with **full understanding of the consequences**.")(Emphasis added). On timely application, the court will vacate a plea of guilty shown to have been unfairly obtained or given through ignorance, fear, or inadvertence. *Id* at 224, 47 S.Ct. at 583. Mr. Temple avers that the guilty pleas were unfairly obtained and based upon wholly incorrect advice of counsel due to the fact of his illiteracy.

Plea bargaining is an essential part of our criminal justice system and is "a highly desirable part for many reasons." *Santobello v. New York*, 404 U.S. 257, 260-61, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971) accord *Blackledge v. Allison*, 431 U.S. 63, 71, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). A plea bargain must present favorable terms, otherwise, a defendant would never enter a plea because there would be no bargain. Mr. Temple avers that he had not been properly advised, and did not have **full understanding of the consequences. Had Mr. Temple been properly advised, and had an understanding of the consequences, he would not have pled guilty**. Mr. Temple avers that there is no reason for any defendant to plead guilty to a sixty year sentence (virtual "life" without the benefit of parole). Mr. Temple entered the pleas because Counsel failed to fully advise him of all of the consequences of such.

Mr. Temple submits that Defense Counsel was incompetent and grossly ineffective from the onset of the proceedings and thereafter. A claim of ineffective assistance of counsel is analyzed under the two prong test enunciated in *Strickland v. Washington*, 466 U.S. 668, 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Under the first prong, a defendant must show that counsel's performance "fell below an objective standard of reasonableness" measured by "prevailing professional norms, and that counsel's "deficient performance prejudiced him." *Id* at 687, 104 S.Ct. 2052. The question is whether an attorney's representation amounted to incompetence under 'prevailing professional norms,' not whether it deviated from best practices or most common custom. *Strickland*, 466 U.S. at 690, 104 S.Ct. 2052. To establish the second prong, a defendant must show that the deficient performance prejudiced the defense to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id* at 694, 104 S.Ct. 2052.

In the context of a guilty plea, the prejudice prong of the test requires a showing "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have

insisted on going to trial." *Premo v. Moore*, 562 U.S. 115, 129, 131 S.Ct. 733, 178 L.Ed.2d 649 (2011) (quoting *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)). The defendant must also show that to reject the plea bargain and go to trial would have been "rational under the circumstances." *Padilla v. Kentucky*, supra; *Hernandez v. United States*, supra.

Plea Bargaining

In 2012, the U.S. Supreme Court decided two cases that specifically address the importance of effective assistance of counsel in plea negotiations. In *Lafler v. Cooper*, 132 S.Ct. 1376 (2012), the Court noted:

> "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea bargaining process.
>
> In *Missouri v. Frye*, --- U.S. ---, 132 S.Ct. 1399, 1407, 182 L.Ed.2d 379 (2012), the Court noted:
>
> "plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process...that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at criminal stages."

Plea bargaining is an essential part of our criminal justice system and is "a highly desirable part for many reasons." *Santobello v. New York*, 404 U.S. 257, 260-61, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971) accord *Blackledge v. Allison*, 431 U.S. 63, 71, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Plea bargaining flows from "the mutuality of advantage" to defendants and prosecutors, each with his own reasons for wanting to avoid trial." *Brady v. United States*, 397 U.S. 742, 752, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970).

When a guilty plea is entered, it is defense counsel's **DUTY** to assist actually and substantially the defendant in deciding whether to plea guilty and to ascertain whether the plea is entered knowingly and voluntarily. Counsel must be familiar with the facts and the law in order to advise the defendant meaningfully of the options available. This includes the responsibility of investigating potential defenses that the defendant can make INFORMED decision. Counsel's advice need not be the best, but

it must be within the realm of competence demanded of attorneys representing defendants in criminal cases at that time. *Bradbury v. Wainwright*, 658 F.2d 1083, 1087 (5th Cir. 1981), cert. denied, 456 U.S. 992, 102 S.Ct. 73, L.Ed.2d 1288 (1982).

"The plea colloquy forms a part of the proceedings which may be inspected for error patent on the face of the record. *State v. Godejohn*, 425 So.2d 750 (La. 1983). The entry of a guilty plea must be a free and voluntary choice on the part of the defendant. Before accepting the plea, the trial court must inform the defendant of his right to trial by jury, the right of confrontation, and right against compulsory self incrimination. *Boykin v. Alabama*, 394 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *State v. Smith*, 513 So.2d 544 (La. 2nd Cir. 1987). The defendant must also be informed of what the plea connotes and its consequences. "Consequences" include the permissible range of sentences. *Boykin v. Alabama*, supra, fn.7. *State ex rel. LaFleur v. Donnelly*, 416 So.2d 82 (La. 1982); *State v. Smith*, supra; *State v. Graham*, 513 So.2d 419 (La. App. 2nd Cir. 1987); *State v. Domangue*, 476 So.2d 986 (La. App. 1st Cir. 1985). When the record does not indicate that defendant was informed of the permissible range of sentences, his plea cannot be considered as voluntarily and intelligently made, and the conviction must be vacated. *State v. Young*, supra. *State v. Watts*, 550 So.2d 711, 712 (La. App. 2nd Cir. 1989).

"... If the quality of counsel's service falls below a certain minimum level, the client's guilty plea cannot be knowing and voluntary because it will not represent an informed choice." *Herring v. Estelle*, 491 F.2d 125, 128 (5th Cir. 1974).

Argument to Issue Two:

The Court abused its discretion in accepting the guilty pleas from Mr. Temple as willing and knowing. Sixth and Fourteenth Amendments to the United States Constitution; Louisiana Constitution of 1974, Article I §§ 2, 3, 13, 16, and 19; *Boykin v. Alabama*.

Mr. Temple contends that the Court abused its discretion with the acceptance of his guilty plea to the charges and of his guilty plea to the Habitual Offender Bill of Information.

In *Boykin v. Alabama*, 395 U.S. 238, 243-44, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), the United States Supreme Court held on appeal of a criminal conviction that "It was error, plain on the face of the record; for the trial judge to accept Petitioner's guilty plea without an affirmative showing that it was intelligent and voluntarily." Rather, the trial court should "canvass the matter with the accused to make sure he has a full understanding of what the plea connotes and of it's consequences." Concerning the record of such a guilty plea on appeal, the court found that because a guilty plea constitutes a waiver of several constitutional rights, including the privilege against self incrimination, the right to trial by jury, and the right to confront one's accuser, the prosecution was required to "spread on the record the prerequisites of a valid waiver" of the rights.

Thus, the court held that it could not presume a voluntary and knowing waiver of these three rights "from a silent record" to insure an adequate record on review, the court stated: A trial court would be "best advised to conduct an on the record examination of the defendant which should include, inter alia, an attempt to satisfy that the defendant understands the nature of the charge, his right to a trial by jury, the acts sufficient to constitute the offenses for which he is charged and the permissible range of sentence." *Boykin*, 395 U.S. at 244 n.7 89 S.Ct. at 1713, n.7 [quoting *Commonwealth Ex Rel. West v. Rundle*, 428 Pa. 102, 237 A.2d 146, 197-98 (PA. 1968).

In an attempt to comply with *Boykin*, Louisiana Supreme Court held in *State ex rel. Jackson v. Henderson*, 260 La. 90, 255 So.2d 85 (La. 1971); [A] Post Conviction proceeding, that a guilty plea will be considered knowingly and voluntarily made only if the accused was informed of and made an [Articulated] waiver of his right to jury trial, his right to confront his accusers, and his privilege against self incrimination. See also, *State ex rel. Leblanc v. Henderson*, 261 La. 315, 259 So.2d 557 (La. 1972); *State v. Lewis*, 367 So.2d 1155 (La. 1979); and *State v. Holden*, 375 So.2d 1372 (La. 1979).

Mr. Temple states, his Due Process rights afforded to him by the Sixth and Fourteenth Amendments of the United States Constitution, the Louisiana Constitution of 1974, Article 1, Section 2, 3, 19, and

22, protects him in the process of a ***Boykin*** proceedings.

The record herein presented demonstrates that the guilty plea proceeding in this case is "error on the face of the record." and Due Process mandates that the guilty plea should be set aide as constitutionally infirm and should not be enhanced under LSA-R.S. 15:529.1.

The evidence herein presented to this court is a certified copy of the record that was used as evidence by the State of Louisiana to enhance Mr. Temple's sentence to life without benefit of parole. Note: Mr. Temple has made numerous request for the transcripts.

Mr. Temple contends, jurisdiction is proper before this court ***State v. Galliano*** 396 So.2d 1288 at 1289 (La. 1981) gives this court the authority to set aside a constitutionally infirm guilty plea; considering the state evidence, certified record, which is, now the same herein presented for the court to review.

The Record in this matter shows that Mr. Temple informed the Court that he had a sixth grade education; he suffered from alcoholism; that he did not remember the incident due to the fact that he was highly intoxicated at the time; that he had to have assistance in obtaining a driver's license; and that he listed his job as a "Cowboy."

Simply put, Mr. Temple contends the Court that with the circumstances as they are presented here, the Court could not have made a proper determination that this guilty plea was knowing and intelligent.

Mr. Temple was informed by Counsel during the break that, "You need to go ahead and plead guilty for a sixty year term because if the trial is completed, you're going to get a lot more time." Mr. Temple was informed to "Just inform the Judge that you understand; and say 'yes' to the questions when she asks you."

WHEREFORE, after a review of the Record and the argument above, this Honorable Court must make the determination that Mr. Temple's guilty plea was not willing and knowing in the context of the Law. This Court must make that determination and remand this matter for an evidentiary hearing in

order to completely allow Mr. Temple to present evidence and testimony in support of his Claims of his constitutional violations.

SUMMARY

It appears that Mr. Temple was taken advantage of due to his illiteracy and his inability to understand what was happening during the commencement of the trial. Mr. Temple has requested the transcript of the Voir Dire, Opening Statements, and the first State witnesses who had testified in the trial in order to make a proper determination as to whether his attorney's advice to plead guilty was in his best interest.

This case has an appearance of impropriety in the fact that Mr. Temple is illiterate and unable to viably understand exactly what had occurred on the date of August 12, 2015. Mr. Temple understands that he had picked a jury, two witnesses had been presented by the State. After that, he is unsure as to the events leading to him pleading guilty in this matter. In order to obtain assistance, he must be able to obtain the transcripts of the proceedings prior to him pleading guilty.

According to the guilty plea transcript that Mr. Temple received, the attorney specifically stated that he had conferred with Mr. Temple and his family prior to Mr. Temple changing his plea from not guilty to guilty. As there is no way to review the testimony of the State's first two witnesses, Mr. Temple is unable to properly build the foundation for his Claims on collateral review.

Mr. Temple has properly addressed the Issue of the guilty plea being voluntary and knowingly accepted. The Court had abused its discretion in the acceptance of such from Mr. Temple. After a review of the guilty plea colloquy, the Court **failed** to note that Mr. Temple had stated that his job was a "cowboy." The Court also **failed** to take into consideration that Mr. Temple had stated that he was unable to read and write. However, the Court stated that since he had passed his driver's license test, and had taken care of his own bills, Mr. Temple was adequately educated and able to make this decision without further inquiry from the Judge.

Mr. Temple has included a copy of the attorney's Statement in Support of Compensation and Expenses for the Courts to review. According to the Statement, Mr. Temple **WAS NOT** afforded proper representation as Mr. Barrow had informed the Public Defender's Office of his **minute** time he had allotted for the investigation of Mr. Temple's charges.

WHEREFORE, for the reasons stated above, Mr. Temple respectfully requests that after a thorough review, this Honorable Court Grant him relief in this matter.

SUMMARY OF ARGUMENT

It appears that Mr. Temple was taken advantage of due to his illiteracy and his inability to understand what was happening during the commencement of the trial. Mr. Temple has requested the transcript of the Voir Dire, Opening Statements, and the first State witnesses who had testified in the trial in order to make a proper determination as to whether his attorney's advice to plead guilty was in his best interest.

As noted above, Mr. Temple is relying on assistance from an Offender Counsel Substitute at the Louisiana State Penitentiary, where he is currently housed. Although Mr. Temple is currently enrolled in school to learn how to read and write, he is still unable to understand the proceedings that occurred prior to his pleading guilty.

Mr. Temple has informed the Courts that he is illiterate and unable to understand what occurred during the proceedings prior to and during the course of his guilty plea colloquy. In order to obtain assistance from the Offender Counsel Substitutes at the Louisiana State Penitentiary[1], Mr. Temple has been attempting to obtain the transcript from the jury selection and first two witnesses for the State. As of this date, Mr. Temple has been unable to obtain any of the requested documentation from his proceedings.

This case has an appearance of impropriety in the fact that Mr. Temple is illiterate and unable to

[1]Offender Counsel Substitutes are not licensed to practice law, but are merely assigned as Counsels in order to assist other Offenders with their pleadings.

viably understand exactly what had occurred on the date of August 12, 2015. Mr. Temple understands that he had picked a jury, two witnesses had been presented by the State. After that, he is unsure as to the events leading to him pleading guilty in this matter. In order to obtain assistance, he must be able to obtain the transcripts of the proceedings prior to him pleading guilty.

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CONCLUSION

After a review of the Record in this case, Mr. Temple this Honorable Court must determine that Mr. Temple was "Abandoned" by his counsel during a critical stage of the proceedings. Furthermore, had counsel determined that she would not be filing Writs on the Court of Appeal's Ruling, at a minimum, she should have informed Mr. Temple of her decision. As it stands, Mr. Temple was not informed of the

Ruling from the Court, and was not given the opportunity to file Writs Pro-Se.

WHEREFORE, after a careful review of the merits of these Claims, Mr. Temple contends that this Honorable Court will find that reasonable jurists would not allow these convictions to stand.

Respectfully submitted this 3rd day of July, 2020.

David Scott Temple #562616

VERIFICATION

I, David Scott Temple, hereby verify that I have read and understand the statements made in the above and foregoing and that the statements made are true and correct to the best of my knowledge, belief, and information under the penalties of perjury.

David Scott Temple