No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

IRIS LAMARR ANDERSON — PETITIONER
(Your Name)

VS.

SECTY D.O.C. MARK INCH - STATE OF FLORIDA - ATTORNEY GENERAL - ET, AL. — RESPONDENT(S)

PROOF OF SERVICE

I, IRIS LAMARR ANDERSON #222991, do swear or declare that on this date, JULY 16, 20 20, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

SUPREME COURT C/O CLERK OF COURT - ONE FIRST ST. N.E. - WASHINGTON DC. 20543

ATTORNEY GENERAL OFFICE - 444 SEABREEZE BLVD. STE 500 - DAYTONA BEACH, FLA. 32118

I declare under penalty of perjury that the foregoing is true and correct.

Executed on JULY 16, 20 20

(Signature)

[redacted] ARBITRARY AND UNPRECEDENTED. THE FEDERAL COURTS HAS ACKNOWLEDGE ON NUMEROUS OCCASSIONS THAT A "FUNDAMENTAL ERROR" CAN BE RAISED AT ANYTIME, SEE; OGLESBY V. STATE, 911 So.2d 1288 (1st DCA 2005)(QUOTING, STATE V. FLORIDA, 894 So.2d 941 (FLA. 2005). AND, IN SUCH THE FLORIDA SUPREME COURT INTERPRETED A "FUNDAMENTAL ERROR" AS; 1.) AN ERROR THAT REACHES TO THE FOUNDATION OF THE CASE. AND, 2.)* IS EQUAL TO A DENIAL OF DUE PROCESS. SEE; F.B.(SUPRA)." THE ADEQUACY OF A STATES PROCEDURAL BAR TO THE ASSERTION OF A FEDERAL QUESTION IS ITSELF A FEDERAL QUESTION", LEE V. KENNA, 534 U.S. 362, 122 S.Ct. 877, 151 L.Ed.2d 820(2002). SO CLEARLY THE U.S.D.C.'s ORDER WAS BASED UPON AN "UNREASONABLE APPLICATION OF THE LAW". A FUNDAMENTAL MISCARRIAGE OF JUSTICE WILL OCCUR IF THIS CLAIM IS NOT ADDRESSED ON THE MERITS. BECAUSE ANY REASONABLE COURT AND FAIRMINDED JURIST WOULD FIND THE U.S.D.C.'s AND STATE COURTS ASSESSMENT OF THE CONSTITUTIONAL CLAIMS DEBATABLE OR WRONG.

IN GROUND FIVE'S- THE FIFTH(5TH) DCA'S PER CURIAM AFFIRMANCE OF THE LOWER COURTS PROCEDURALLY BARRING HIS "FUNDAMENTAL ERROR" CLAIMS IN GROUNDS 1-4 AS MERITLESS VIOLATED PETITIONERS DUE PROCESS RIGHTS. WHEN DENIED BY THE U.S.D.C WAS BASED ON AN "UNREASONABLE APPLICATION OF STATE AND FEDERAL LAW", THRU AN ARBITRARY AND UNPRECEDENTED DECISION "UNREASONABLE" ENTERED, IN CONFLICT WITH THE "AEDPA", INWHICH PROVIDES IN PERTINANT PART: AN APPLICATION FOR A WRIT OF HABEAS CORPUS ON BEHALF OF A PERSON IN CUSTODY, PURSUANT TO THE CUSTODY OF A STATE COURT SHALL NOT BE GRANTED UNLESS IT APPEARS THAT; (B)(i) THERE IS A ABSENCE OF AVAILABLE STATE CORRECTIVE PROCESS.(2)... IN THE INSTANT GROUND/PETITIONER CLAIM HE ARGUED SUCH, BY ASSERTING THAT THE 5TH DCA FAILED TO APPLY THE APPROPRIATE APPLICATOON OF THE STATE LAW AS INTERPRETED AND ARGUED IN PETITIONERS' MEMORANDUM OF ARGUMENTS (RE 2 DOCKET TEXT).

THE DISTRICT COURTS RULING CLEARLY VIOLATED THE OPINION OF; ROLAND V. SECR DEPT. OF CORR, 2019 U.S. DIST. LEXIS 40581; INWHICH HELD: THE ELEVENTH CIRCUIT CONCLUDED THAT DISTRICT COURTS MUST APPLY THE PLAIN LANGUAGE OF § 2254(d) AND ANSWER THE "PRECISE QUESTION" RAISED IN A CLAIM BASED ON THE STATE COURTS ULTIMATE LEGAL CONCLUSION, AND SHOULD NOT EVALUATE OR "RELY UPON THE CORRECTNESS OF THE STATE COURTS PROCESS OF REASONING." THE QUESTION IS; IS GROUNDS 1-4 FUNDAMENTAL ERRORS?, AND, IF SO DID THE

* SEE McCOY V. NEWSOME, (SUPRA).

5TH DCA OF THE STATE OF FLORIDA VIOLATE PETITIONERS 14TH AMENDMENT DUE PROCESS RIGHTS WHEN ENTERING A "UNREASONABLE DECISION" OF PER CURIAM AFFIRMANCE. AND, REFUSING TO CORRECT OR TAKE JUDICIAL NOTICE OF MANIFEST ERRORS OF LAW AND FACTS. "IT IS THE D.C.A.'S RESPONSIBILITY TO CORRECT A MANIFEST INJUSTICE," U.S.C.A. AMEND. 5, LAGO V. STATE, 975 So. 2d 613 (3RD DCA 2008). BUT, YET CONSISTANT WITH AN UNREASONABLE DETERMINATION OF THE FACTS AND THE LAWS GOVERNING THE USE OF SUCH EVIDENCE, THE 5TH DCA[2] AND THE U.S.D.C. ENTERED AN ORDER BASED UPON ARBITRARY AND UNPRECEDENTED PROCEDURES. THEREFORE A FUNDAMENTAL MISCARRIAGE OF JUSTICE WILL OCCUR IF THE CLAIM IS NOT ADDRESSED ON THE MERITS, WHEREBY A REASONABLE JURIST WOULD FIND THE DISTRICT COURTS ASSESSMENT OF THE CONSTITUTIONAL CLAIMS DEBATABLE.

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(2) BEING THE STATE COURT OF LAST RESORT AND JURISDICTION, LEAVING PETITIONER WITH NO OTHER MEANS OF APPEAL.

● FLA. STATS. 817.155 - "FRAUDULENT PRACTICES" (3RD DEGREE FELONY)

A PERSON MAY NOT, IN ANY MATTER WITHIN THE JURISDICTION OF THE DEPARTMENT OF STATE; KNOWINGLY AND WILLFULLY FALSIFY OR CONCEAL A MATERIAL FACT, MAKE ANY FALSE, FACTICIOUS OR FRAUDULENT STATEMENT OR MAKE OR USE ANY FALSE DOCUMENT [PROBABLE CAUSE ARREST AFFIDAVIT AND THE INFORMATIONS CHARGING DOCUMENT]. KNOWING THE DOCUMENT TO CONTAIN ANY FALSE, FACTICIOUS OR ANY FRAUDULENT STATEMENT. [EMPHASIS ADDED]

Conclusion

In Conclusion There Can Be no Refuting The Pertinent Facts And Documented Evidence of This Case. That Are Fully Developed In The Record Before The Court. There Can Be no Refuting That it Was Arbitrary And Unprecedented, For The State of Florida To Procedurally Bar, Petitioner's "Fundamental Error Claims". When it has Been Ebstablished Thru not only State Case Precedent. But, Ebstablished Thru Federal Case Precedent As well, That A "Fundamental-Error", Can Be Raised At Anytime. Because; (1) it is An Error that Reaches to the Foundation of the Case. And, (2) This [Fundamental Error] is Also A Denial of Due Process. The State Courts And United States District Court, Made A "Plain Error" in Denying Petitioners Habeas Corpus, Based on the unreasonable Determination of the Facts And Evidence Rendered At Trial And Pre-Trials, Pre-Requisite Requirements Governing F.R.Crim.P. 3.140(g). The State of Florida "Lacked Subject Matter Jurisdiction", to Prosecute Petitioner. And, The Courts Pursuant To Acting In Accordance With This Intrinsic Fraud on Court, Committed By The Prosecutor, Also Lacked Subject Jurisdiction To enter A Judgement or A Sentence.

The United States District Court, Thru An "Unreasonable Application of the Law", Made An Unreasonable Determination of the Facts, In light of the Evidence "Illegally" Presented In The State Court Proceedings. Clearly; Infecting The "Unreasonable Decision" to Deny Petitioner's Habeas Corpus Relief And A Certificate of Appealability.

Although The Attorney General In And For The State of Florida, Has Yet To File A Notice of Concession of Error, it cannot be Refuted That Petitioners Imprisonment is "Manifest Injustice", That Questions The Integrity of Florida's Judicial System. Therefore, A Fundamental Miscarriage of Justice Will occur if the Claims Are not Addressed on the Merits, By This Honorable Court, To Correct Manifest Errors of Laws And Facts. Ebstablishing Actual And Factual Innocence.

THE U.S.D.C. THRU OUT THIER ORDER DENYING HAS CONTINUALLY STATED; "ANDERSON'S CLAIMS ARE UNEXHAUSTED!", THIS STATEMENT WAS CLEARLY MADE THRU AN ABITRARY AND" UNREASONABLE APPLICATION OF THE LAW." EVEN THE RESPONDENTS CONTENDED THAT ALL FIVE OF ANDERSON'S PETITIONS GROUNDS WERE NOT PROPERLY PRESENTED AS FEDERAL CLAIMS IN STATE COURT ARE NOW PROCEDURALLY BARRED. AND NOW ARE DUE TO BE DISMISSED

FROM THE BEGINNING OF "ANDERSON'S" MALICIOUS PROSECUTION, THE STATE COURT HAS DENIED, BASED ON ARBITRARY AND UNPRECEDENTED DETERMINATIONS OF THE LAWS AND FACTS, INWHICH IT APPEARS THEY CAN DO SUCH CONCERNING THIER OWN LAWS. HOWEVER ONCE ANDERSON ASSERTED "FUNDAMENTAL ERROR" CLAIMS, IT BECAME A TWO EDGED SWORD, MEANING; THE STATE MAY DELIBERATELY OVERLOOK AN DENY, 1.) THE ERROR THEY COMMITTED THAT REACHED DOWN INTO THE FOUNDATION OF THE CASE OR TRIAL PROCEEDINGS. BUT, THE STATE "CANNOT IGNORE", 2.) THE DENIAL OF ANDERSONS DUE PROCESS RIGHTS. THAT WERE VIOLATED THRU COMMITTING THESE ERRORS. INWHICH ONCE ANDERSON ASSERTED "FUNDAMENTAL ERROR" FOR ALL (5) FIVE GROUNDS. ANDERSON PURSUANT TO F.B. (SUPRA)[3], PROPERLY PRESENTED ALL (5) FIVE GROUNDS AS FEDERAL CLAIMS IN STATE COURTS." THE U.S.D.C. IS BOUND BY STATE COURTS, INTERPRETATION OF THIER OWN LAWS, WHEN SITTING IN HABEAS CORPUS". THIS CASE PRECEDENT IS WELL UNDERSTOOD AND COMPREHENDED IN EXISTING LAW, BEYOND ANY POSSIBILITY FOR FAIRMINDED DISAGREEMENT. BUT YET, THE U.S.D.C. HAS VENTURED FAR AND BEYOND THE MAIN CRUX OF ANDERSON'S HABEAS CORPUS (5) FIVE GROUNDS FOR RELIEF, TO THE POINT OF MANIFEST ERRORS OF LAWS AND FACTS. AS SET FORTH IN ANDERSONS "ORIGINAL MEMORANDUM OF ARGUMENTS", USING THE STATE'S OWN INTERPRETATION OF THIER OWN LAWS, AS INTERPRETED BY THIER COURTS, PROVING ANDERSON WAS "DENIED FUNDAMENTAL ERROR", AS INTERPRETED IN McCOY V. NEWSOME, (SUPRA), BY THE UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT.

IN GROUND ONE IT'S ARBITRARY AND UNPRECEDENTED FOR ANDERSON TO BE IMPRISONED FOR HAVING SEXUAL INTERCOARSE WITH A MINOR, PENETRATING HER VAGINA AND FATHERING A CHILD. WHERE THE JURY ONLY HAD FINDINGS OF "UNION WITH". BY THE FLORIDA COURTS OWN INTERPRETATION OF THIER LAWS. AS ARGUED IN ANDERSON'S ORIGINAL MEMORANDUM

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3. BALDWIN V. REESE, 541 U.S. 27, 158 L Ed 2d 64 (2004)

OF ARGUMENTS, ANDERSON IS IMPRISONED ON "A LEGALLY INADEQUATE THEORY". THIS IN FACT WAS ANDERSON'S GROUND ONE (1) CLAIM THAT HAS BEEN TOTALLY IGNORED. IN EVERY GROUND, THRU EVERY COURTS ARBITRARY AND UNPRECEDENTED DENIALS, THEY HAVE SAID THAT THE GROUNDS WERE WITHOUT MERIT, WHILE YET NO-WHERE IN THE STATE OF FLORIDA'S COURT'S INTERPRETATION OF THIER OWN LAWS, HAVE THEY BEEN ABLE TO HONESTLY AND FAIRLY REFUTE ANY CLAIM WITHOUT MISCONSTUING THE FACTS AND OVERLOOKING DOCUMENTED EVIDENCE, AS WELL AS FLA. STATS. BEING VIOLATED BY OFFICERS OF THE COURT, TO OBTAIN AN ARREST, CONVICTION, JUDGEMENT AND SENTENCE. WHEN ANDERSON ARGUED A CLAIM, HE KEPT TO THE FACTS, THE EVIDENCE AND CONTROLLING LAWS. WHEN THE LOWER TRIBUNALS DENIED, THEY OVERLOOKED THE FACTS, MISCONSTRUED THE EVIDENCE AND USED A VAGUE LAW TO MISLEAD. AS IN ANDERSON'S GROUND (4) FOUR, WHERE THE STATE SAID THEY DON'T NEED A VICTIMS SWORN COMPLAINT, THEY CAN USE THE DETECTIVES PROBABLE CAUSE ARREST AFFIDAVIT. AS ANDERSON STATED IN THE FOREGOING, THIS WAS ARBITRARY AND UNPRECEDENTED DUE TO THE EVIDENCE; THE ONLY WAY A DETECTIVES "PLAA" CAN BE USED TO MEET F.R. CRIM. P. 3.140(G) IS IF HE'S "A MATERIAL WITNESS". SUCH AN ARBITRARY AND UNPRECEDENTED ACT BY THE STATE TO CORRUPT AND FORESTALL ANDERSON'S LEGAL PROCEEDINGS, SHOWS THAT ANDERSON'S ENTIRE IMPRISONMENT IS WITHOUT MERITS. BASED ON THE STATE OF FLORIDA'S COURTS OWN INTERPRETATION OF THIER LAWS. EBSTABLISHING FUNDAMENTAL ERRORS AND ANDERSONS FEDERAL NATURE OF HIS FUNDAMENTAL ERROR CLAIMS, BEING EQUAL TO A DENIAL OF DUE PROCESS. ANDERSON PRAYS THAT THIS COURT NOT ONLY GRANTS HIM A "COA" BUT, ALSO RULE UPON THE MERITS OF HIS FUNDAMENTAL ERROR CLAIMS, IN A FAIR AND HONEST MANNER TO CORRECT MANIFEST ERRORS OF LAWS OR FACTS, THAT HAVE BEEN RELIED UPON BY THE STATE COURTS AND THE U.S.D.C. IN THIER "UNREASONABLE DECISIONS" RENDERED. AND, IN SUCH RESTORE THE INTEGRITY OF THE LEGAL JUSTICE SYSTEM AS A WHOLE.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE COPY OF THE FOREGOING WAS PLACED IN PRISON OFFICIALS HANDS TO BE MAILED TO:

THE ATTORNEY GENERAL AT 444 SEABREAZE BLVD. 5TH FL., DAYTONA BEACH, FLORIDA. 32118

ON THIS 20TH DAY OF MAY, 2020

BY:

/S/: [signature]

PRINT: IRIS L. ANDERSON

VERIFICATION BY WRITTEN DECLARATION PURSUANT TO FLORIDA STATUTE § 92.525(2000)

I, IRIS LAMARR ANDERSON DO HEREBY DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE TO THE BEST OF MY KNOWLEDGE,

EXECUTED ON THIS DAY OF MAY 20, 2020

RESPECTFULLY BY:

/S/: [signature]

Exhibit F

ORIGINAL

Complaint/Arrest Affidavit/Continuation

Court Case No.

Agency Case No. O-2012 - 133318

Defendant Name: Last	First	Middle	Date of Birth
ANDERSON	IRIS	LAMARR	05 - 07 - 1965

PROBABLE CAUSE AFFIDAVIT:

(specify probable cause for each charge)

SEE; F.S. 817.155

Before Me, the undersigned authority personally appeared Detective Mike Hilton D17 who being duly sworn, alleged on information and belief, that on the N/A day of July ,20 08 ,in Ocala, Marion County, Florida, the defendant did:

APPEARS TO BE TWO VICTIMS

knowingly and unlawfully commit the act of Sexual Battery by Person of Custodial Authority on Victim Under 12 Years of Age - Domestic Violence when he had forced sexual intercourse with his 15 year old step-daughter/victim, as they lived together as a family. The sexual encounter resulted in the victim becoming pregnant. To wit:

On 7/26/12, I was assigned to assist Officer C. Smith and Officer L. Camacho with this case. Upon speaking to Ofc. Camacho he indicated that he had initially contacted the victim, , by phone at which time he requested that she meet with him in person. Ofc. Camacho reported to me that after meeting with he stated that in July of 2008 she was living at 1013 NE 13th St. Ocala, FL with her mother, Annetta Anderson, and her step-father/suspect, Iris Anderson. At the time was 15 years old. Ofc. Camacho explained to me that reported that on one occasion in July of 2008 I. Anderson entered her bedroom during the night time hours. reported that I. Anderson then forced himself on her and committed a sexual battery. She reported to Ofc. Camacho that as a result of the sexual battery she became pregnant with her daughter, Breanna Anderson.

After speaking to Ofc. Camacho I conducted a recorded interview of Upon speaking to she repeated what Ofc. Camacho had explained to me. She stated that prior to the battery committed by Anderson she had never had sexual intercourse with anyone. continued and stated that the incident in July of 2008 was the only time I. Anderson had ever battered her sexually. She stated that she repeatedly told I. Anderson to stop but as she did so he became more forceful until he had finished. stated after I. Anderson had finished he took a shower and went back to his room. She stated that she was not sexually active at any point prior to the birth of her daughter. stated she did not report the incident to anyone because she was afraid. She stated I. Anderson threatened that if she told anyone that he would kill her.

continued and stated that she eventually moved out of her mother's home and that she tried to avoid I. Anderson. She stated that she had recently fell on hard times and had to move back into the same house with her mother and I. Anderson. She stated after moving in I. Anderson had started threatening to take her daughter away from here since he was the biological father. stated she was afraid of losing her daughter and decided to report the incident that occurred in July 2008.

At approximately 1700 hours on 7/26/12 I made contact with I. Anderson at his residence at 14577 SW 24th Ct. Rd. He agreed to accompany me to the Ocala Police Department for an interview. Prior to starting the interview I read I. Anderson his Miranda Warning from a card. He stated he understood his rights and agreed to speak me. I. Anderson denied ever having sexual contact with at any point in time. He denied that Breanna Anderson was his daughter. I. Anderson stated that is out of control and is a poor parent. He provided a DNA sample to be compared to the child's. At the conclusion of the interview I was unable to develop probable cause for the arrest of I. Anderson and he left the Police Department.

FILED IN OFFICE CLERK OF CIRCUIT COURT MARION COUNTY, FL JAN 16 A 6:12

SWORN to and SUBSCRIBED before me this 16TH day of JANUARY 20 13

DET. 4835

AFFIANT

Notary Public (Certified Officer) (circle one)

Ocala Police Department

ARRESTING AGENCY

SEAL

Exhibit F

ORIGINAL

Complaint/Arrest Affidavit Continuation

Court Case No.

Agency Case No. O- 2012 - 133318

Defendant Name: Last	First	Middle	Date of Birth
ANDERSON	IRIS	LAMARR.	05 - 07 - 1965

PROBABLE CAUSE AFFIDAVIT:
(specify probable cause for each charge)

Before Me, the undersigned authority personally appeared Detective Mike Hilton D17 who being duly sworn, alleged on information and belief, that on the N/A day of July ,20 08 ,in Ocala, Marion County, Florida, the defendant did:

On 7/27/12, [redacted] brought Breanna to the Police Department at which time I collected a DNA sample from her. The sample along with I. Andersons were submitted into evidence and a work order was completed to have both samples compared by FDLE. Copies of [redacted] and I. Anderson's interviews were also submitted into evidence.

On 1/2/13, the results of the DNA comparison on Breanna Anderson and Iris Anderson were received from the FDLE Lab. The findings were that there is a 99.99% probablility that the Defendant, Iris Anderson, was in fact the father of Breanna.

Based on the fact that the defendant was married to the victim's mother at the time of the incident and the victim lived in the same household as the defendant when the forced intercourse took place the writer believes that probable cause exists for the arrest of Iris Anderson for Sexual Battery by Person of Custodial Authority on Victim Under 12 Years of Age - Domestic Violence.

It should be noted that I contacted Iris Anderson by phone and informed him of the DNA results. Anderson voluntarily agreed to turn himself in. On 1/16/13 Anderson met me at the Ocala Police Department at which time he was arrested and transported to the Marion County Jail without incident.

FILED
CRIMINAL DIVISION
2013 JAN 17 A 6:12
DAVID R. ELLSPERMANN
CLERK CIRCUIT COURT
MARION COUNTY, FL

SWORN to and SUBSCRIBED before me
this 16TH day of JANUARY
20 13

DET. [redacted] 4033
AFFIANT

Notary Public (Certified Officer)
(circle one)

Ocala Police Department
ARRESTING AGENCY

SEAL

OPD Form 020A - Rev. SJT Jun. 2009

P.31

THE LAB REPORT SAYS BREANNA, IRIS AND HARLEY ? CLEARLY FALSE EVIDENCE

OR HARLEYS DNA?

24 hrs. later after Affidavit Sworn to defendant turned himself in and yet the charge/offense was wrong/perjurous!, clearly this was intentionally done

"SHAM PROSECUTION!!"

IN The Circuit Court of The Fifth Judicial Circuit (Exhit. A)
In And For Marion County, Florida

Harley Boyer, Petitioner / Plaintiff
vs
Iris Anderson, respondent / Defendant

CASE NO: 2012-2554-DR-FG
Criminal Case # Pending

EXHIBIT H

To whom it may Concern:

Comes Now Ms. Harley Lynn Boyer the alledged (Victim) in an Ongoing Investigation of Sexual Battery / Lewd Luscivious Acts on a minor by Mr. Iris L. Anderson The alledged (Defendant) of the above mentioned case / investigation.

An in so doing I would Like to State for the Record that I "DO NOT" wish to prosecute and or Testify against Mr. Iris L. Anderson (Defendant)

On July 26, 2012 I Ms. Harley Lynn Boyer reported a Crime from 2008 (July) to the Ocala Police Dept. (Det. Mike Hilton). Det. Hilton encouraged me to seek an injunction, On July 27, 2012 The injunction was served on Mr. Iris Anderson and set for a hearing on August 9, 2012 (I didn't realize what an injunction legally was). On August 9, 2012 myself and The Defendant left home together headed to the "Hearing." I Tried to explain to The residing Judge that The Defendant was Not a threat for myself and/or Our daughter. The residing Judge ignored my Plea and Ordered The Injunction against the defendant. The defendant even asked could the injunction be delayed so "He" (defendant) could get me back home safely to Our daughter?...

(Exht. A)

The Judge replied sternly with a "NO" An thereby I was stranded Thirty-Five (35) miles away from home and my Three (3) yr. old daughter

At that point: I became a "Victim" of the Marion County Florida Judicial System and Therefore:

Exhibit A

I Ms. Harley Lynn Boyer (Victim) do hereby being of Sound mind and Body "Invoke" my Constitutional Rights pursuant to The U.S. Constitution and in so doing State as follows:

"I do not wish to prosecute and or testify against Mr. Iris L. Anderson (The defendant)" and furthermore I would not like to be harassed and/or Contacted further Concerning this matter..

Thanks for Your Time & Consideration

Respectfully, Submitted

Notary Public State of Fla
Vincent B Gillings Jr
My Commission EE05[illegible]
Expires 01/31/2015

/s/ Harley Lynn Boyer

Ms. HARley Lynn Boyer

14577 S.W. 24th Ct. Rd.

OCALA, FLa. 34473

August 13, 2012.

cc:

State Attorney office

Public Defender office

Clerk of Court

* Attorney Generals Office

ACLU

Det. Hilton was shown . . is statement on 1-16-13 at the time I turned myself over to him for such said warrant

13-0264 (Exht. B)

This statement was not included in my discovery Packet (pursuant to Brady act)

JAN. 16, 2013

To: States Attorney's Office
Honorable Brad King
110 N.W. First Ave
Suite 5000
Ocala, Fla. 34475

~~CASE NO. 0-2012-133318~~
CASE NO. 2013-207-CF-A-4

Frm: Ms.
14577 S.W. 24th Ct. Rd.
Ocala, Fla. 34473

EXHIBIT

To whom it may Concern:
My name is (alledged Victim) and Im writing to give a legal statement being of that of Sound mind and Body.

On July 26, 2012 I made a police report against my daughters father Mr. Isis L. Anderson at that time I was upset because he was threatening to take Custody of our (3) three yr. old daughter from me. The charges was wrote up as Sexual battery (I was 15½). Im Twenty yrs. old and very intelligent, I researched those charges and in all fairness "Sexual Battery" is a false allegation, because I was not forced (I can defend myself) I was not coerced (Im Smarter than that). To be frankly honest I Consented too the sexual Act.

No the baby wasn't intended BUT she is my heart and Mr. Anderson is her Sole provider, for housing, medicines, medical-vision-and dental insurance

-1-

13-0264
(Exht. B)

Well im not here to b a cheerleader for him being a good provider for his daughter? but honestly isn't it about my daughter, to lock him up and make him lose his job, would merely mean the state has made my daughter the real Victim, Please I ask u too think about "Our" daughter in all that u do... because we both made the decision to have sex on that day.

Exhibit

Thanks for Your Time & Consideration

Respectfully Submitted

Ms. —

14577 S.W. 29th Ct. Rd.
Ocala, Fla. 34473

Notary Public State of Florida
O'Donald B Clark III
My Commission EE115692
Expires 07/26/2015

-2-

Case # 2013-207-CF-A-Y

EXHBT J

To whom it may Concern:

Although Mr. Bryon Aven represents the State of Florida, Mr. Iris Anderson represents himself and I am the third party in all of this, I have filed my waiver of right to prosecute (August 29, 2012) and still five(5) months later im being threatened and forced against my will to testify for Mr. Aven? why?,

On February 1, 2013 every statement that was taken from me was against my will and violated my rights, Even the bond reduction (Feb. 8, 2013) testimony rendered by myself for the prosecution was done not of my will but because of the threats rendered on Feb 1, 2013 by Mr. Aven.

Therefore I demand to be Exempt from any further proceedings and for statements from feb 1, 2013, Feb 8, 2013 to be viewed as illegally obtained pursuant to my waiver of Right to prosecute filed August 29, 2012.

2013 MAR -6 PM 4:52
CLERK CIRCUIT COURT
MARION COUNTY, FL
FILED
CRIMINAL DIVISION

Rules of Professional Conduct
4.4 Respect for Rights of Third Parties

a.) In representing a client a lawyer may not use means that have no substantial purpose other than embaress, delay or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person.

Thanks for Your Time & Consideration

Respectfully, Submitted

/s/

Print

14577 S.W. 24th Ct. Rd.
Ocala, Fla. 34473

P.3b

U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

IRIS L. ANDERSON vs. SEC'Y DEPT. OF CORR., ET AL.,. Appeal No. 20-10260-B

11th Cir. R. 26.1 (enclosed) requires that a Certificate of Interested Persons and Corporate Disclosure Statement must be filed by the appellant with this court within 14 days after the date the appeal is docketed in this court, and must be included within the principal brief filed by any party, and included within any petition, answer, motion or response filed by any party. **You may use this form to fulfill this requirement.** In alphabetical order, with one name per line, please list the trial judge(s), and all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

(please type or print legibly):

ASST. ATTORNEY GENERAL ALLISON L. MORRISON - 444 SEABREEZE BLVD. 5TH FLOOR - DAYTONA BEACH, FLA. 32118

SECRETARY MARK INCH, D.O.C. - 501 S. CALHOUN ST. - TALLAHASSEE, FLA. 32399-2500

GOVERNOR (FLA.) RON DESANTIS - THE CAPITOL - TALLAHASSEE, FLA. 32399-0001

*HARLEY BOYER (ALLEGED VICTIM/FIANCÉ) - 3351 SW 92 LANE - OCALA, FLA. 34476

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-10260-B

IRIS LAMARR ANDERSON,

Petitioner-Appellant

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ORDER:

Iris Lamarr Anderson, a Florida prisoner serving a 30-year sentence for sexual battery by a person in familial or custodial authority on a victim between the ages of 12 and 18, moves for a certificate of appealability ("COA") and leave to proceed *in forma pauperis* ("IFP") to appeal the district court's denial of his *pro se* 28 U.S.C. § 2254 habeas corpus petition.

Anderson raised five claims in his § 2254 petition. First, Anderson argued that there was insufficient evidence of penetration to uphold the jury's verdict. He previously raised this claim in his state postconviction proceedings, and the state courts denied the claim as procedurally barred because he did not raise it on direct appeal. This claim was procedurally barred from federal habeas review, as the state postconviction court explicitly denied this claim solely on state procedural grounds that were firmly established and regularly followed. *Ward v. Hall*,

APPENDIX C
P.38

592 F.3d 1144, 1156 (11th Cir. 2010); ; *see also* Fla. R. Crim. P. 3.850(c) ("This rule does not authorize relief based on grounds that could have or should have been raised . . . on direct appeal of the judgment and sentence."); *Moore v. State*, 768 So. 2d 1140, 1141-42 (Fla. 1st Dist. Ct. App. 2000) (stating that a claim in a Rule 3.850 motion is procedurally defaulted if it was raised, or could have been raised, on direct appeal). Additionally, Anderson did not allege cause and prejudice to overcome the procedural default. *McKay v. United States,* 657 F.3d 1190, 1196 (11th Cir. 2011). No COA is warranted on Claim One.

Second, Anderson argued that the arrest warrant was defective. He previously raised this issue in his state postconviction proceedings, and the state courts denied this claim as procedurally defaulted because Anderson did not raise this claim in his *pro se* appellate brief in his direct appeal. The district court denied this claim as procedurally barred. This determination was correct because the state postconviction court denied this claim solely on adequate and independent state procedural grounds, *Ward*, 592 F.3d at 1156, and Anderson did not allege cause or prejudice to overcome the default, *McKay,* 657 F.3d at 1196 . No COA is warranted on Claim Two.

Third, Anderson argued that the state committed "intrinsic fraud on the court" based on various allegations of prosecutorial misconduct. Anderson previously presented these claims in his state postconviction proceedings, the state court denied this claim on the merits to the extent it raised a *Brady*[1] violation, and it denied the remaining claims as procedurally defaulted because they were not raised on direct appeal. As to the *Brady* violation, the state court correctly determined that he could not demonstrate prejudice, even if the state had withheld evidence of the victim's consent, because consent was not a defense to the charged crime. Fla. Stat. Ann.

[1] *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding that the suppression of evidence favorable to the accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good or bad faith of the prosecution).

§ 794.011(8). The remaining claims were procedurally barred from federal habeas review because they were denied solely on adequate and independent state procedural grounds, *Ward*, 592 F.3d at 1156, and Anderson did not allege cause or prejudice to overcome the default, *McKay*, 657 F.3d at 1196 . No COA is warranted on Claim Three.

Fourth, Anderson argued that the state trial court lacked subject matter jurisdiction. He raised this claim in his state postconviction proceedings, but cited only to state law and rules of procedure. Thus, his federal claim was unexhausted, *Snowden v. Singletary*, 135 F.3d 732, 735 (11th Cir. 1998), and he did not allege cause and prejudice to overcome the procedural bar, *Gray v. Netherland*, 518 U.S. 152, 161-62 (1996). No COA is warranted on Claim Four.

Fifth, Anderson argued that the state appellate court violated his due process rights by failing to follow Florida and Supreme Court precedent in *per curiam* affirming the lower court's denial of the claim in his application for a writ of habeas corpus. No COA is warranted on Claim Five because defects in state collateral proceedings do not provide a basis for federal habeas relief. *Carroll v. Sec'y, Dep't of Corr.*, 547 F.3d 1354, 1365 (11th Cir. 2009).

Finally, no COA is warranted on the denial of Anderson's motion for reconsideration under Fed. R. Civ. P. 59(e) and 60(b), as he did not present newly discovered evidence that would entitle him to relief, and otherwise reiterated his previous arguments. *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007); *Jackson v. Crosby*, 437 F.3d 1290, 1294 (11th Cir. 2005).

Accordingly, Anderson's motion for a COA is DENIED because he failed to make the requisite showing. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). His motion for leave to proceed IFP is DENIED AS MOOT.

/s/ Kevin C. Newsom
UNITED STATES CIRCUIT JUDGE

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Golden-Collum Memorial Federal Building & U.S. Courthouse
207 NW Second Street
Ocala, Florida 34475
(352) 369-4860

Elizabeth M. Warren
Clerk of Court

Lisa Fannin
Division Manager

DATE: January 21, 2020

TO: Clerk, U.S. Court of Appeals for the Eleventh Circuit

IRIS LAMARR ANDERSON,

Petitioner,

v. **Case No: 5:16-cv-460-Oc-35PRL**

SECRETARY, DEPARTMENT OF CORRECTIONS and FLORIDA ATTORNEY GENERAL

Respondents.

U.S.C.A. Case No.: **NEW APPEAL**

Enclosed are documents and information relating to an appeal in the above-referenced action. Please acknowledge receipt on the enclosed copy of this letter.

- Honorable Mary S. Scriven, United States District Judge appealed from.
- Appeal filing fee was not paid. Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals. If you are filing informa pauperis, a request for leave to appeal in forma pauperis needs to be filed with the district court.
- Certificate of Appeal ability was denied. Order enclosed.
- Certified copy of Notice of Appeal, docket entries, judgment and/or Order appealed from. Opinion was not entered orally.

ELIZABETH M. WARREN, CLERK

By: s/L. Burget, Deputy Clerk

APPENDIX D
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UNITED STATES DISTRICT COURT 2020 JAN 21 PM 12:29
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

IRIS L. ANDERSON,
PETITIONER.

VS.

CASE NO: 5:16-CV-00460-MSS-PRL

STATE OF FLORIDA, SEC. D.O.C.,
ATTORNEY GENERAL,,
RESPONDENT.

/

NOTICE OF APPEAL

COMES NOW, IRIS L. ANDERSON, PETITIONER, PRO SE. AND, IN SO DOING FILES THIS NOTICE OF APPEAL, PURSUANT TO FED. R. APP. PROC. RULE 22(b)(1), CONCERNING THIS COURTS ORDER DENYING MOTION FOR RECONSIDERATION RENDERED ON JANUARY 2, 2020. THIS NOTICE OF APPEAL, PURSUANT TO FED. R. APP. PROC. RULE 22(b)(2), SHOULD BE TAKEN AS A REQUEST ADDRESSED TO THE JUDGES OF THE COURT OF APPEALS, WHEREBY PETITIONER IS SEEKING THE GRANTING OF A CERTIFICATE OF APPEALABILITY AND, REQUESTS THIS HONORABLE CLERKS OFFICE TO TRANSFER THE RECORDS OF THIS CASE TO THE COURT OF APPEALS AS PERSCRIBED IN FED. R. APP. PROC. RULE 22(b)(1).

RESPECTFULLY SUBMITTED
BY:
S/:
PRINT: IRIS L. ANDERSON #222991

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IRIS L. ANDERSON #222991
HAMILTON CORRECTIONAL INSTITUTION-ANNEX
11419 SW COUNTY ROAD 249
JASPER, FLA. 32052

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CORRECTIONAL INSTITUTION
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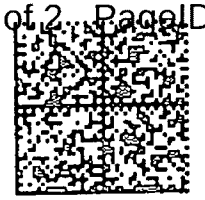

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C/O CLERK of COURT
207 NW SECOND STREET ROOM 337
OCALA, FLA. 34475

LEGAL MAIL

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APPEAL, CLOSED, HABEAS, OCAP-2

U.S. District Court
Middle District of Florida (Ocala)
CIVIL DOCKET FOR CASE #: 5:16-cv-00460-MSS-PRL
Internal Use Only

Anderson v. Secretary, Department of Corrections et al
Assigned to: Judge Mary S. Scriven
Referred to: Magistrate Judge Philip R. Lammens
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 07/11/2016
Date Terminated: 08/16/2019
Jury Demand: None
Nature of Suit: 530 Habeas Corpus (General)
Jurisdiction: Federal Question

Petitioner

Iris Lamarr Anderson

represented by **Iris Lamarr Anderson**
#222991
Hamilton Correctional Institution - Annex
11419 Kelly Road 249
Jasper, FL 32052
PRO SE

V.

Respondent

Secretary, Department of Corrections

represented by **Allison Leigh Morris**
Office of the Attorney General
Suite 500
444 Seabreeze Blvd
Daytona Beach, FL 32118
386/238-4990
Fax: 386/238-4997
Email: crimappdab@myfloridalegal.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Respondent

Florida Attorney General

represented by **Allison Leigh Morris**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/11/2016	1	PETITION for Writ of Habeas Corpus - State filed by Iris Lamarr Anderson.

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		(2 service copies provided) (DFD) (Entered: 07/11/2016)
07/11/2016	2	MEMORANDUM in support re 1 Petition for writ of habeas corpus filed by Iris Lamarr Anderson. (2 service copies provided) (DFD) (Entered: 07/11/2016)
07/11/2016	3	APPENDIX re 2 Memorandum in support by Iris Lamarr Anderson. (2 service copies provided) (DFD) (Entered: 07/11/2016)
07/11/2016	4	MOTION for Leave to Proceed in forma pauperis with affidavit by Iris Lamarr Anderson. (DFD) Motions referred to Magistrate Judge Philip R. Lammens. (Entered: 07/11/2016)
07/15/2016	5	**ORDER granting 4 Motion for Leave to Proceed in forma pauperis, Order to Respond to habeas petition and Notice to petitioner. Petitioner has 45 days to reply to the petition response. The Clerk is directed to serve the petition. Signed by Magistrate Judge Philip R. Lammens on 7/13/2016. (LAB)** (Entered: 07/15/2016)
07/20/2016	6	**NOTICE of designation under Local Rule 3.05 - track 1. Signed by Deputy Clerk on 7/20/2016. (MJT)** (Entered: 07/20/2016)
07/28/2016	7	NOTICE of Appearance by Allison Leigh Morris on behalf of Florida Attorney General, Secretary, Department of Corrections (Morris, Allison) (Entered: 07/28/2016)
07/28/2016	8	NOTICE of compliance re 6 Related case order and track 1 notice by Iris Lamarr Anderson. (LAB) (Entered: 07/29/2016)
10/11/2016	9	MOTION for Extension of Time to File Response/Reply as to 1 Petition for writ of habeas corpus by Florida Attorney General, Secretary, Department of Corrections. (Morris, Allison) Motions referred to Magistrate Judge Philip R. Lammens. (Entered: 10/11/2016)
10/11/2016	10	**ENDORSED ORDER granting 9 Motion for Extension of Time to File Response/Reply. The Response is due on or before December 12, 2016. Petitioner's Reply is due 45 days thereafter. Signed by Magistrate Judge Philip R. Lammens on 10/11/2016. (CLF)** (Entered: 10/11/2016)
12/13/2016	11	RESPONSE to 1 Petition for writ of habeas corpus by Florida Attorney General, Secretary, Department of Corrections.(Morris, Allison) (Entered: 12/13/2016)
12/23/2016	14	REPLY re 11 Response to habeas petition by Iris Lamarr Anderson. (LAB) (Entered: 12/27/2016)
12/27/2016	12	NOTICE by Florida Attorney General, Secretary, Department of Corrections (Morris, Allison) (Entered: 12/27/2016)
12/27/2016	13	APPENDIX by Florida Attorney General, Secretary, Department of Corrections. (Attachments: # 1 Appendix File 1 of 13, # 2 Appendix File 2 of 13, # 3 Appendix File 3 of 13, # 4 Appendix File 4 of 13, # 5 Appendix File 5 of 13, # 6 Appendix File 6 of 13, # 7 Appendix File 7 of 13, # 8 Appendix File 8 of 13, # 9 Appendix File 9 of 13, # 10 Appendix File 10 of 13, # 11

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		Appendix File 11 of 13, # 12 Appendix File 12 of 13, # 13 Appendix File 13 of 13)(Morris, Allison) Modified on 12/29/2016 (BMN).***COURTESY CD copy received and filed in court file 12/29/16 (BMN)*** (Entered: 12/27/2016)
01/13/2017	15	NOTICE of change of address by Iris Lamarr Anderson. (LAB) (Entered: 01/13/2017)
02/10/2017	16	NOTICE of change of address by Iris Lamarr Anderson. (LAB) (Entered: 02/10/2017)
07/25/2017	17	USCA ORDER denying as unnecessary Motion for leave to file successive habeas petition. Signed by USCA Judge. Entered on docket 7/20/17. USCA number: 17-12991-J. (LMF) (Entered: 07/25/2017)
09/27/2018	18	MOTION for miscellaneous relief, specifically for Petitioner to be Released on his own Recognizance While Awaiting Final Disposition of Pending Habeas Corpus by Iris Lamarr Anderson. (RLK) Motions referred to Magistrate Judge Philip R. Lammens. (Entered: 09/28/2018)
10/10/2018	19	**ORDER denying 18 Motion to be Released on his Own Recognizance While Awaiting Final Disposition of Pending Habeas Corpus. Signed by Magistrate Judge Philip R. Lammens on 10/10/2018. (CRR)** (Entered: 10/10/2018)
01/04/2019	20	Case Reassigned to Judge Timothy J. Corrigan. New case number: 5:16-cv-460-Oc-32PRL. Senior Judge Wm. Terrell Hodges no longer assigned to the case. (SMS) (Entered: 01/04/2019)
03/04/2019	21	Case Reassigned to Judge Mary S. Scriven. New case number: 5:16-cv-460-Oc-35PRL. Judge Timothy J. Corrigan no longer assigned to the case. (SMS) (Entered: 03/04/2019)
04/18/2019	22	NOTICE of change of address by Iris Lamarr Anderson. (RLK) (Entered: 04/18/2019)
04/22/2019	23	NOTICE of change of address by Iris Lamarr Anderson. (MLS) (Entered: 04/23/2019)
05/16/2019	24	NOTICE of change of address by Iris Lamarr Anderson. (RLK) (Entered: 05/16/2019)
08/16/2019	25	**ORDER DENYING Anderson's petition for writ of habeas corpus 1. The CLERK is directed to enter judgment against Anderson and to CLOSE the case. A certificate of appealability is DENIED. Leave to appeal in forma pauperis is DENIED. Signed by Judge Mary S. Scriven on 8/16/2019. (CLF)** (Entered: 08/16/2019)
08/16/2019	26	JUDGMENT entered. Civil appeals checklist attached. (Signed by Deputy Clerk) (RLK) (Entered: 08/16/2019)
08/29/2019	27	MOTION for Reconsideration re 25 Order dismissing case and denying certificate of appealability by Iris Lamarr Anderson. (LAB) Motions referred to Magistrate Judge Philip R. Lammens. (Entered: 08/29/2019)

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01/02/2020	28	**ORDER denying 27 Motion for Reconsideration. Signed by Judge Mary S. Scriven on 1/2/2020. (CLF)** (Entered: 01/02/2020)
01/21/2020	29	NOTICE OF APPEAL as to 28 Order on Motion for Reconsideration, re 26 Judgment - prisoner, 25 Order dismissing case by Iris Lamarr Anderson. Filing fee not paid. (LAB) (Entered: 01/21/2020)

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

IRIS L. ANDERSON,

Petitioner,

v. **Case No: 5:16-cv-460-Oc-35PRL**

SECRETARY, DEPARTMENT OF CORRECTIONS, et al.,

Respondents.
_____/

ORDER

Iris L. Anderson, a state inmate proceeding *pro se*, initiated this case by filing a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1.) Anderson is currently confined at Hamilton Correctional Institution, where he is serving a 30-year sentence for sexual battery on a person between 12 and 18 years of age by a person in familial or custodial authority. (Respondents' Appendix, Doc. 13, Exh. A, p. 1; Exh. C, pp. 315-17.) Anderson fathered a child with his minor stepdaughter, resulting in his prosecution. (Exh. C, pp. 177-81.) His conviction and sentence were upheld following appellate and collateral review in the state courts. (Exhs. G, O, U, Y, CC, LL.)

In his present petition, Anderson raised five grounds for relief: (1) the guilty verdict was not supported by sufficient evidence because there was no specific finding of penetration; (2) the evidence used to convict him was illegally obtained because the probable cause affidavit supporting the arrest warrant contained falsities; (3) the prosecutor committed intrinsic fraud upon the court; (4) the prosecutor and the trial court lacked subject matter jurisdiction because the information was insufficient; and

(5) the appellate court's affirmance of his conviction and sentence violated his due process rights. (Docs. 1, 2.) On August 16, 2019, this Court denied Anderson's petition, finding the claims to be unexhausted and without merit. (Doc. 25.)

In his motion for reconsideration, (Doc. 27), Anderson makes the following arguments:

Ground 1: The Court committed clear error and manifest injustice will occur because the Court denied his claim. (Doc. 27, p. 2.) The Court ignored newly discovered evidence in the form of a December 17, 2012, Florida Department of Law Enforcement lab report that Anderson's DNA was compared to the victim and her child and there is a 99.99% chance he is the father of the child. (Doc. 18, p. 20.)

Grounds 2-5: Anderson re-argues the merits arguments raised in his petition. (Docs. 1, 27.)

Anderson has pointed to no new evidence or raised new arguments that would warrant reconsideration of the Court's order denying his petition and denying a Certificate of Appealability. He has merely re-asserted the claims already raised in his petition and pointed to lab report that shows he fathered a child with the victim. Neither of these approaches warrants reconsideration of the judgment. Accordingly, Anderson's motion for reconsideration (Doc. 27) is **DENIED.**

DONE AND ORDERED at Ocala, Florida, this 2nd day of January, 2020.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

IRIS L. ANDERSON,
PETITIONER.

·VS·

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS
AND ATTORNEY GENERAL, ET, Alia.,
RESPONDENT.

(?) NEW CASE NO: 5:16-LV-00460-MSS-PRL
(1-4-19) CASE NO: 5:16-LV-00460-TJC-PRL
ORIGINAL CASE NO: 5:16-LV-460-Oc-10PRL

/

MOTION FOR RECONSIDERATION AND GRANTING CERTIFICATE OF APPEALABILITY

COMES NOW IRIS L. ANDERSON PETITIONER, PRO SE. AND IN SUCH FILES A MOTION FOR RECONSIDERATION AND GRANTING CERTIFICATE OF APPEALABILITY PURSUANT TO THE ABOVE NUMBERED CAUSE(S) ORDER DENYING HABEAS CORPUS RENDERED BY THIS COURT ON AUGUST 16, 2019. AND, IN SUPPORT OF THE FORE-GOING MOTION STATES THE FOLLOWING;

A.) A MOTION FOR RECONSIDERATION IS TYPICALLY GOVERNED BY RULE 59(e) OF THE FEDERAL RULES OF CIVIL PROCEDURE, WHICH ALLOWS A PARTY TO MOVE TO ALTER OR AMEND A JUDGEMENT WITHIN TWENTY-EIGHT DAYS OF ENTRY. FED. R. CIV. P. 59(e). THE PURPOSE OF A MOTION FOR RECONSIDERATION IS TO CORRECT MANIFEST ERRORS OF LAW OR FACT OR TO* PRESENT NEWLY DISCOVERED EVIDENCE. HARSCO CORP. V. ZLOTNICKI, 779 F.2d 906, 909

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(3RD CIR. 1985). FEDERAL RULES OF CIVIL PROCEDURE 60(b) ALSO PERMITS RECONSIDERATION OF A DISTRICT COURT ORDER OR JUDGEMENT BASED ON LIMITED NUMBER OF CIRCUMSTANCES....

WHEREAS, THE PETITIONER ASSERTS THE FOREGOING MOTION PURSUANT TO FED.R. CIV. P. 60(b) UNDER THE FOLLOWING GROUNDS FOR RECONSIDERATION.

1. AN INTERVENING CHANGE IN CONTROLLING LAW
2. THE AVAILABILITY OF "NEW EVIDENCE," AND
3. THE NEED TO CORRECT CLEAR ERROR OR PREVENT MANIFEST INJUSTICE.

B.) IN GROUND ONE THE COURTS ORDER DENYING CONSTITUTED A "CLEAR ERROR" BECAUSE;

ANDERSON "DID NOT" CONTEND THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE JURY'S GUILTY VERDICT !, ANDERSON'S GROUND ONE CLEARLY STATED; JURY GUILTY VERDICT RESTS ON A "LEGALLY INADEQUATE THEORY". IN OTHER WORDS; WITHOUT PENETRATION (INWHICH THE JURY HAD NO SPECIFIC FINDINGS) HOW COULD A CHILD HAVE BEEN FATHERED "LEGALLY" BY ANDERSON.? FURTHERMORE;

IN GROUND ONE THE COURTS ORDER DENYING CONSTITUTES "MANIFEST INJUSTICE" BECAUSE;

ON OR ABOUT SEPT. 25, 2018 THE PETIONER INTRODUCED NEWLY DISCOVERED EVIDENCE INWHICH THIS COURT HAS OVERLOOKED, CLEARLY ESTABLISHING THAT ANDERSON'S "DNA" RESULTS INTERED AT TRIAL WAS "ILLEGAL" AND THE STATE COURT COMMITTED A "GIGLIO" VIOLATION AND A "BRADY VIOLATION". INWHICH ASSERTS INTERVINING CHANGE OF CONTROLLING LAW, THAT THE PETITIONER "DID IN FACT" APPRISE THE STATE COURTS THE OPPORTUNITY TO CORRECT AND IN SUCH EXHAUSTING STATE REMEDY. WHILE YET THIS COURT HAS FAILED

* PURSUANT TO THE NEW EVIDENCE PRESENTED TO THIS COURT ON 9-25-18, THE PETITIONER ARGUED FACTUAL/ACTUAL INNOCENCE, PURSUANT TO THE STATES, "GIGLIO AND BRADY" VIOLATIONS CARRIED OUT AT HIS TRIAL. THEN FALSE TESTIMONY, DNA RESULTS AND AUDIO VIDEO'S. WHILE YET THIS COURT HAS OVERLOOKED...

TO ADDRESS, CLEARLY ESTABLISHING RECONSIDERATION.
SEE McNAIR V. LAMPBELL, 416 F.3d 1291, 1302 (11TH CIR. 2005)
THEREFORE; IN TAKING INTO CONSIDERATION THE *NEWLY DISCOVERED EVIDENCE W/ THE "CONTROLLING LAW(S)", THE APPLICANT HAS MADE A SUBSTANTIAL SHOWING OF HIS DENIAL OF A CONSTITUTIONAL RIGHT TO MERIT A "CERTIFICATE OF APPEALABILITY." AND, EVEN WITHOUT NEWLY DISCOVERED EVIDENCE, THE SUBSTANTIAL SHOWING OF HIS DENIAL OF A CONSTITUTIONAL RIGHT TO MERIT A CERTIFICATE OF APPEALABILITY WAS MADE IN HIS ORIGINAL ARGUMENT TO THE STATE COURTS, WHEREBY HE ASSERTED THE FLA. SUPREME COURTS RULING IN WEAVER V. STATE, 957 So.2d 588 (2007) AND, F.B. V. STATE, 852 So.2d 226 (2003) (SUCH A COMPLETE FAILURE OF THE EVIDENCE, MEETS THE REQUIREMENT OF "FUNDAMENTAL ERROR", THAT IS; "AN ERROR THAT REACHES TO THE FOUNDATION OF THE CASE"; AND IS EQUAL TO A DENIAL OF DUE PROCESS).

IN LAYMAN TERMS IT IS UNCONSTITUTIONAL FOR MR. ANDERSON TO BE IMPRISONED FOR SEXUAL BATTERY ALLEGING HE IMPREGNATED AND FATHERED A CHILD?, WITHOUT JURY FINDINGS OF PENETRATION, TO ESTABLISH SEXUAL INTERCOURSE. WITHOUT DNA RESULTS TO ESTABLISH PATERNITY AND WITH THE VICTIMS COMPLAINT AGAINST THE PROSECUTOR, WHERE HE THREATENED TO TAKE HER "TWO" DAUGHTERS, IF SHE DIDN'T TESTIFY?!!!, A CLEAR AND OBVIOUS "PLAIN ERROR", THIS COURT OVERLOOKED.... ANDERSON' DENIAL OF A FAIR TRIAL.

IN GROUND TWO:

THIS COURT ORDER DENYING HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW (AS PRESENTED TO THE STATE COURTS) IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THE FLA. SUPREME AND UNITED STATES SUPREME COURT. WHEREFORE, CREATING THE NEED TO CORRECT "CLEAR ERROR" FOR PREVENT MANIFEST INJUSTICE. BY APPLYING THE AVAILABILITY OF THE NEWLY DISCOVERED EVIDENCE, PRESENTED TO THIS COURT ON SEPT. 25, 2018 UNDER CASE NO: 5:16-CV-460-OC-10PRL, IN A MOTION TO BE RELEASED ON

PETITIONERS OWN RECOGNIZANCE, INWHICH WAS RE-ASSIGNED CASE NO: 5:16-CV-00460-TJC-PRL ON JAN. 4, 2019. AND, NOW UNDER THE ABOVE NUMBERED CAUSE OF CASE NO: 5:16-CV-00460-MSS-PRL. WHERE THIS COURT FAILED TO TAKE JUDICIAL NOTICE OF THE INTERVINING CHANGE OF CONTROLLING LAW, AS PRESENTED IN STATE COURT BY PETITIONER'S CASES GROUND TWO BEING ON ALL (4's) FOURS WITH SILVERTHORNE LUMBER COMPANY V. UNITED STATES, 251 U.S. 385 (1920). ESTABLISHING NOT ONLY THE FRUITS OF THE POISONOUS TREE DOCTRINE, BUT PETITIONERS RELIEF GRANTED. THIS COURTS DECISION MERELY IMPARTS THE STATE POSITION TO OBTAIN A CONVICTION,[1] WHILE OVERLOOKING THE ONGOING "BRADY VIOLATION" AND EVIDENCE SPOILATION AS ARGUED IN NEWLY DISCOVERED EVIDENCE.

IN LAYMAN TERMS, BE IT BY ACCIDENT OR ON PURPOSE IT CANNOT BE REFUTED, THAT PETITIONER ARREST FOR SEXUAL BATTERY ON VICTIM UNDER 12 YEARS OLD, WAS A FALSE ARREST AND ONCE THIS "ILLEGALLY EXECUTED" PROBABLE CAUSE ARREST AFFIDAVIT WAS GIVEN TO THE PROSECUTOR, INWHOM READ AND LEARNED OF THIS CASE THRU, DEALING IN FRAUDULENT PRACTICES, THE CONVICTION, MUST BE OVERTURNED. THE APPLICANTS ARGUMENT IN STATE COURT MADE A SUBSTANTIAL SHOWING OF HIS DENIAL OF A CONSTITUTIONAL RIGHT TO MERIT A CERTIFICATE OF APPEALABILITY.

GROUND THREE

IN THE COURTS ORDER DENYING, THERE IS "PLAIN ERROR" BY THIS COURT, IN NOT ACKNOWLEDGING THE NEWLY DISCOVERED EVIDENCE, TO CORRECT THE STATE COURTS MANIFEST ERRORS AND SUPPORT PETITIONERS CLAIMS OF PROSECUTORIAL MISCONDUCT, BY KNOWINGLY PRESENTING FALSE TESTIMONY AND EVIDENCE TO THE JURY TO MISLEAD, WHILE DESTROYING A CRUCIAL PIECE OF EVIDENCE OBTAINED BY DET. HYLTON, THAT WOULD'VE EXONNERATED PETITIONER. THIS COURT ORDER DENYING IS BASED ON; "A WILLFUL LACK OF KNOWLEDGE TO PROTECT THE STATE FROM LIABILITY" OR "CULTIVATED IGNORANCE". THEREFORE, MOTION FOR RECONSIDERATION SHOULD BE GRANTED. AND, ALSO A CERTIFICATE OF APPEALABILITY

1. WHILE YET THIS COURT OVERLOOKED THAT UNDER THE U.S. SUPREME COURTS DECISIONS IN APPRENDI, BLAKELY AND CUNNINGHAM, SUCH SENTENCE ELEVATING FACTS "MUST" BE FOUND BY A JURY, NOT A JUDGE, AND "ESTABLISHED" BEYOND A REASONABLE DOUBT. CUNNINGHAM V. CALIFORNIA, 127 S.CT. 856 (U.S. 2007).

IN GROUND FOUR

A MOTION FOR RECONSIDERATION IS WARRANTED AS "THE NEED TO CORRECT A CLEAR ERROR OR PREVENT MANIFEST INJUSTICE". THE COURT STATED:

ANDERSON' FAILURE TO APPRISE THE STATE COURTS OF THE FEDERAL CONSTITUTIONAL NATURE OF THIS CLAIM LEAVES IT UNEXHAUSTED ON FEDERAL HABEAS REVIEW 28 U.S.C. §2254(b)(1). (SEE: PG. 12 OF 15 ORDER DENYING)

-WHILE YET IN ANDERSON' GROUND FOUR ARGUMENT - GROUND 4(F).

ANDERSON STATED; THE STATE LACKS SUBJECT MATTER JURISDICTION TO TRY THE DEFENDANT IN THIS CASE. AN ISSUE OF SUBJECT MATTER JURISDICTION IS ONE OF "FUNDAMENTAL ERROR" AN CAN BE RAISED AT ANYTIME, STATE V. FLORIDA, 894 So.2d 941 (FL.05).

SEE F.B. V. STATE, 852 So.2d 226(2003)

FL. S. CT. HELD.

> A COMPLETE FAILURE OF THE EVIDENCE, MEETS THE REQUIREMENT OF "FUNDAMENTAL ERROR"....
> ....."AND IS EQUAL TO A DENIAL OF DUE PROCESS"

IN OTHER WORDS; "FUNDAMENTAL ERROR" EQUALS A DENIAL OF DUE PROCESS "A FEDERAL CONSTITUTIONAL NATURE OF A CLAIM". THIS COURTS FAILURE TO TAKE JUDICIAL NOTICE OF VICTIM NOTARIZED, SIGNED AND FILE STATEMENT EXONNERATING PETITIONER OF THE SEXUAL BATTERY CHARGE AND CLEARLY SHOWING THE PROSECUTOR LIED UNDER OATH IS "PLAIN ERROR" MANIFEST INJUSTICE. AND, IN SUCH THE APPLICANT HAS MADE A SUBSTANTIAL SHOWING OF HIS DENIAL OF A CONSTITUTIONAL RIGHT (DUE PROCESS) TO MERIT A CERTIFICATE OF APPEALABILITY.

IN GROUND FIVE

THE COURTS ORDER DENYING CONSTITUTED "CLEAR" "ERROR" BECAUSE;

ANDERSON CLEARLY SHOWED BY "SUPREME COURT RULINGS" THAT THE PER CURIAM AFFIRM BY THE DCA VIOLATED NUMEROUS

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

IRIS LAMARR ANDERSON,

Petitioner,

v. **Case No. 5:16-cv-460-Oc-35PRL**

SECRETARY, DEPARTMENT OF CORRECTIONS, et al.,

Respondents.
_____/

ORDER DENYING PETITION

This cause comes before the Court on Iris Lamarr Anderson's *pro se* petition for the writ of habeas corpus under 28 U.S.C. § 2254. Anderson challenges his conviction for sexual battery on a person between 12 and 18 years of age by a person in familial or custodial authority. (Doc.1.) The State concedes that the petition is timely. (Doc. 11, pp. 7-9). Because the Court may resolve the petition based on the record, an evidentiary is not warranted. *See* Rule 8(a), Rules Governing Section 2254 Cases in the United States District Courts.

BACKGROUND

In 2013, a Marion County jury convicted Anderson of one count of sexual battery on a person between 12 and 18 years of age by a person in familial or custodial authority, occurring between June 2008 and April 2009.[1] (Respondents' Appendix, Doc.

[1] Petitioner was convicted under Fla. Stat. § 794.011(8)(b): "Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who . . . Engages in any act with that person while the person is 12 years of age or older but younger than 18 years of age which constitutes sexual battery

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13, Exh. A, p.1; Exh. C (Trial Transcript), pp. 298-99) (hereafter "Exh."). At the trial in June 2013, the victim testified as follows: She was 15 years old when she had consensual sex with Anderson, her stepfather. She and Anderson shared a daughter who was 4 years old at the time of trial. (Exh. C, pp. 177-81.) A crime lab analyst from the Florida Department of Law Enforcement testified that after comparing the DNA of Anderson and the victim's daughter, there was a 99.99 percent chance he was the girl's father. (*Id.* at pp. 234-35, 243-44.) Evidence was also presented that Anderson acknowledged paternity in a court proceeding and paid child support. (*Id.* at pp. 183-85.)

The trial court sentenced Anderson to 30 years imprisonment. (Exh. C., pp. 315-17.) On appeal, Anderson's court-appointed counsel filed a brief pursuant to *Anders v. California*, 386. U.S. 738 (1967), and Anderson filed additional *pro se briefs.* (Exhs. D, E, F.) The state appellate court *per curiam* affirmed the conviction and sentence. *Anderson v. State*, 129 So.3d 1081 (Fla. 5th DCA 2013), (Exh. G.)

Anderson filed numerous post-conviction motions under the Florida Rules of Criminal Procedure, as well as habeas petitions, in the state appellate and trial courts, all of which were unsuccessful. *See* Exh. U (Rule 3.800); Exh. O (Rule 3.850); Exh. CC (habeas); Exh. Y (Rule 3.800); Exh. LL (habeas).

In his present petition, Anderson raises five grounds for relief: (1) the guilty verdict was not supported by sufficient evidence because there was no specific finding of penetration; (2) the evidence used to convict him was illegally obtained because the probable cause affidavit supporting the arrest warrant contained falsities; (3) the prosecutor committed intrinsic fraud upon the court; (4) the prosecutor and the trial

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under paragraph (1)(h) commits a felony of the first degree . . . " Section 794.011(1)(h) defines sexual battery as "oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object . . ."

court lacked subject matter jurisdiction because the information was insufficient; and (5) the appellate court's affirmance of his conviction and sentence violated his due process rights. (Docs. 1, 2.)

STANDARD OF REVIEW

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") requires a prisoner who challenges "a matter 'adjudicated on the merits in State court' to show that the relevant state-court 'decision' (1) 'was contrary to, or involved an unreasonable application of, clearly established Federal law,' or (2) 'was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.'" *Wilson v. Sellers*, 138 S. Ct. 1188, 1191 (2018) (quoting 28 U.S.C.§ 2254(d)). A habeas petitioner "meets this demanding standard only when he shows that the state court's decision was 'so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.'" *Dunn v. Madison*, 138 S. Ct. 9, 11 (2017) (quoting *Harrington v. Richter*, 562 U.S. 86, 103 (2011)). *See also Meders v. Warden, Ga. Diagnostic Prison*, 900 F.3d 1330, 1344 (11th Cir. 2018) ("[I]f some fairminded jurists could agree with the state court's decision, although others might disagree, federal habeas relief must be denied.") (citation and quotation marks omitted).

EXHAUSTION AND PROCEDURAL DEFAULT

The requirement of exhausting state remedies as a prerequisite to federal review is satisfied if the petitioner "fairly presents" his claim in each appropriate state court and alerts that court to the federal nature of the claim. 28 U.S.C. § 2254(b)(1); *Picard v. Connor*, 404 U.S. 270, 275-76 (1971). The prohibition against raising unexhausted claims in federal court extends not only to broad legal theories of relief, but also to the specific

assertions of fact that might support relief. *Kelley v. Sec'y for Dep't of Corr.*, 377 F.3d 1317, 1344 (11th Cir. 2004).

A federal claim is subject to procedural default where the petitioner failed to properly exhaust it in state court and it is obvious that the unexhausted claim would now be barred under state procedural rules. *See Bailey v. Nagle*, 172 F.3d 1299, 1302-03 (11th Cir. 1999). A procedural default may be excused if the petitioner establishes (1) cause for the default and prejudice, or (2) a fundamental miscarriage of justice. *Id.* at 1306. The fundamental-miscarriage-of-justice exception is "exceedingly narrow in scope" because it requires proof of actual innocence, not just legal innocence. *Johnson v. Alabama*, 256 F.3d 1156, 1171 (11th Cir. 2001).

DISCUSSION

Respondents contend that all five grounds in Anderson's petition were not properly presented as federal claims in state court, are now procedurally barred, and therefore are due to be dismissed. (Doc. 11, pp. 10-11.) In his Reply, Anderson argues that because the issues in his present federal habeas petition were all fundamental errors, they could be raised at any time in the state court proceedings and, therefore, he did properly exhaust his claims in state court. (Doc. 14.)

Grounds One

In Ground One, Anderson contends that there was insufficient evidence to support the jury's guilty verdict because there was no specific finding by the jury of penetration. (Doc. 1, p. 5; Doc. 2, pp. 3-7.) Anderson raised Ground One in his August 27, 2015, state habeas petition. (Exh. LL.) The state court found that the claim was procedurally barred because it should have been brought on direct appeal. (Exh. LL, pp. 41-46.) To the extent Anderson did raise this claim in his *pro se* briefs on direct appeal, he made no reference to

federal law or the Constitution in support of Ground One.

For a habeas petitioner to fairly present a federal claim to state courts:

> It is not sufficient merely that the federal habeas petitioner has been through the state courts . . . nor is it sufficient that all the facts necessary to support the claim were before the state courts or that a somewhat similar state-law claim was made. Rather, in order to ensure that state courts have the first opportunity to hear all claims, federal courts have required a state prisoner to present the state courts with the same claim he urges upon the federal courts. While we do not require a verbatim restatement of the claims brought in state court, we do require that a petitioner presented his claims to the state court such that a reasonable reader would understand each claim's particular legal basis and specific factual foundation.

McNair v. Campbell, 416 F.3d 1291, 1302 (11th Cir. 2005) (internal quotations and citations omitted). As part of such a showing, the claim presented to the state courts "must include reference to a specific federal constitutional guarantee, as well as a statement of the facts that entitle the petitioner to relief." *Reedman v. Thomas*, 305 F. App'x 544, 545–46 (11th Cir. 2008) (internal citation omitted). Anderson's failure to apprise the state courts of the constitutional nature of this claim leaves it unexhausted on federal habeas review. 28 U.S.C. § 2254(b)(1).

Even if Anderson had exhausted this claim, it is without merit. Anderson contends that the evidence was insufficient to support his conviction because there was no specific finding by the jury of penetration. (Exh. A, p. 235; Exh. C, p. 303.) The jury found Anderson guilty of sexual battery on a child older than 12 but younger than 18 years old by a person in familial or custodial authority. (Exh. A, p. 235.) The jury was instructed that to find Anderson guilty, it must find that the State proved, beyond a reasonable doubt, three elements. As to penetration, the jury was instructed: "Iris Anderson penetrated or had union with the vagina of [redacted] . . . Union means contact." (Exh. C, pp. 280-81.) The statute

under which Anderson was convicted defines sexual battery as "oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object . . ." Fla. Stat. § 794.011(1)(h). The victim testified that she had sex with Anderson, and evidence was presented that he fathered her child. Anderson has not demonstrated that a rational trier of fact would be unable to find guilt beyond a reasonable doubt based on the evidence presented at trial.

Further, at sentencing, the State modified his scoresheet, reducing his sentencing points to reflect sexual contact versus penetration. (Exh. A, p. 232-33; Exh. C, pp. 302-03.) Ground One is unexhausted and without merit.

Ground Two

In Ground Two, Anderson argues that his conviction was obtained illegally because the January 16, 2013, probable cause affidavit supporting his arrest warrant "contained numerous material omissions." (Doc. 1, p. 7.) Anderson takes issue with the detective's use of the terms "domestic violence," "forced sexual intercourse," and "victim." (Doc. 2, p. 9.) The probable cause affidavit contains a chronology of his investigation, starting with assignment to the case on July 26, 2012, when he interviewed the victim and she stated that in July 2008, Anderson forced her to have sex with him and threatened to killer her if she told anyone. (Exh. A, pp. 3-4.) That same day, the detective interviewed Anderson, who denied any wrongdoing and provided a DNA sample. (*Id.*) On July 27, 2012, a DNA sample from the victim's daughter was collected and submitted to the Florida Department of Law Enforcement for analysis. (*Id.*) On January 2, 2013, the results of the DNA comparison were received, and there was a 99.9% probability Anderson was the father. (*Id.*)

Anderson correctly points out that the arrest affidavit contains an error when it states

that Anderson "did: knowingly and unlawfully commit the act of Sexual Battery by a person of Custodial Authority on Victim **Under** 12 years of Age – Domestic Violence when he had forced sexual intercourse with his 15 year old step-daughter/victim." (Exh. A, p. 3)(emphasis added). Anderson also states that the following facts were omitted from the affidavit: (1) an August 9, 2012 injunction against him preventing contact with the victim was lifted on August 29, 2012; (2) on September 12, 2012, the victim told the detective the sex was consensual; and (3) there was no "victim" because "the victim and defendant had moved on with their lives living together and raising their family." (Doc. 2, p. 9.)

Anderson raised this claim in his August 27, 2015, state habeas petition. (Exh. LL.) The state court found the claim to be inappropriate in a habeas petition because it should have been brought on direct appeal (Exh. LL, pp. 41-46.) Anderson did not raise this claim in his *pro se* briefs on direct appeal. (Exhs. E, F.) In Ground Two of his *pro se* brief, he argued that the trial court's denial of a motion to stay violated his "constitutional rights of due process of the appeals process . . . as well as a right to a fair trial." (Exh. E, p. 7; Exh. F, p. 2.) Anderson sought the stay because the denial of his pre-trial, *pro se,* motions to dismiss his criminal case were pending in the appellate court. The basis of those motions was that the arrest was not supported by probable cause. Anderson did not properly raise the issue in Ground Two of the present petition in the state courts, and it is now procedurally barred. However, even if he had done so, his claim is due to be denied.

Anderson's claim that the detective made deliberate misrepresentations of material fact in the affidavit of probable cause to obtain the arrest warrant arises under the Fourth Amendment and *Franks v. Delaware*, 438 U.S. 154 (1978) (holding that "where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the

warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held.") The Eleventh Circuit has held that claims such as Anderson's—"contending that the investigating police officer had made deliberate misrepresentations of material facts in the affidavit of probable cause used to obtain the arrest warrant"—are barred by *Stone v. Powell*, 428 U.S. 465 (1976) if the habeas petitioner had a full and fair opportunity to litigate the claim in state court. *Harris v. Dugger*, 874 F. 2d 756, 761 (11th Cir. 1989).

In state court, Anderson filed a pre-trial motion to dismiss contending the probable cause affidavit for his arrest contained false statements. (Exh. A, pp. 149-56.) The trial court denied this motion on April 19, 2013, stating:

> Defendant basically argues because the alleged victim was not under 12 years of age, he was unlawfully arrested and apparently all evidence obtained from his arrest warrant forward should be suppressed.
>
> The Defendant is not entitled to relief. It is the State of Florida, through the State Attorney's Office, that determines, post-arrest, which charge to file against a given defendant as the result of the arrest. Second, it is clear that the detective should have the word "over" instead of "under" age 12 as evidenced by the next line of the paragraph in the Probable Cause Affidavit of which the Defendant complaints, which states the alleged victim is 15 years old.

(Exh. A, pp. 157-58.)

Anderson also filed a motion to suppress, seeking to suppress a DVD interview of the victim, all office statements, and the probable cause affidavit. (*Id.* at pp. 161-62.) The trial court denied that motion:

> On April 30, 2013, the Defendant appeared before this Court with the prosecutor and, as part of the review of the State's discovery, viewed, with the Court and the prosecutor, the statement on the DVD given by the victim. Based upon the review of the DVD, there is no grounds to suppress the alleged victim's statement. It was clearly made freely and voluntarily. Second, the Probable Cause Affidavit is typically not admitted into evidence. Furthermore, there is nothing in the Probable Cause

> Affidavit which would justify the evidence contained in the Affidavit being suppressed. The Probable Cause Affidavit indicates, among other things, that the alleged victim was 15 years of age at the time she had sex with the Defendant, who is her step-father and, as the Defendant is aware, the sexual relationship resulted in his minor daughter being born. Notably, in one of the Defendant's most recent letters to the prosecutor, a copy of which was sent to this Court and which has now been filed in the Court file, the Defendant acknowledges that, at the April 30 hearing, he had a chance to observe what he refers to as his minor daughter on the DVD. Additionally, whether the alleged victim has inconsistencies in her statement is not grounds for suppression.

(*Id.* at p. 185.) While Anderson appealed these motions prior to trial, he did not raise these issues in his direct appeal. He was afforded a full and fair opportunity to litigate the claim but failed to do so. Therefore, even he had properly exhausted this claim, it is barred from federal habeas review by *Stone v. Powell*.

Finally, even to the extent Anderson could argue that he could overcome the *Stone v. Powell* bar, he has failed to show that he was subject to a false arrest. "An arrest does not violate the Fourth Amendment if it is supported by probable cause." *Barr v. Gee*, 437 Fed. Appx. 865, 867 (11th Cir. 2011) (unpublished) (citing *Skop v. City of Atlanta, Ga.*, 485 F.3d 1130, 1137 (11th Cir. 2007)). "Probable cause to arrest exists when law enforcement officials have facts and circumstances within their knowledge sufficient to warrant a reasonable belief that the suspect had committed or was committing a crime." *Id.* (quotation omitted). *See also Estrada v. Dep't of Corrections*, 2012 WL 1231990 (2012) (rejecting habeas petitioner's attack on validity of his arrest due to a deficient probable cause affidavit). The error and omissions Anderson takes issue with do not render his arrest unconstitutional.

Ground Three

In Ground Three, Anderson argues that his conviction was obtained by the

prosecutor's "intrinsic fraud" on the court. (Doc. 1, p. 8; Doc. 2, pp. 11-15.) Anderson claims that the prosecutor forced the victim to testify; committed a *Brady* violation by withholding the victim's statement that the sex was consensual; communicated with jurors during deliberations and withheld the jury's finding that no penetration occurred until after the jury was dismissed; and committed perjury while filing the charging information by omitting the essential element of force and misstating the victim's age. (*Id.*)

Anderson raised these claims in his Rule 3.850 motion (Exh. O) and in his state habeas petition (Exh. LL). In both instances, his claims were deemed procedurally barred. Because Anderson did not properly exhaust these claims in the state court, they are precluded from federal habeas review. However, even if Anderson had properly exhausted these claims, they are without merit.

In denying his Rule 3.850 motion, the post-conviction court did address the alleged violation of *Brady v. Maryland*, 373 U.S. 83 (1963), finding that no *Brady* violation occurred: "The Defendant claims that the victim's suppressed statement would show that the act was consensual. Consent is not a defense to the crime the Defendant was charged with. Therefore, this claim is without merit." (Exh. P; p. 4) (citation omitted). In the order denying his state habeas petition, the trial court again found the claims procedurally barred, but did discuss them:

> In his third ground, the Defendant claims his conviction was obtained by the State committing fraud on the Court. Specifically, the Defendant claims the State committed prosecutorial misconduct by using the Defendant's false arrest, and the knowledge gained from the probable cause affidavit, to prosecute him; committing a *Brady* violation; denying the Defendant his right to confront his accused by proceeding to trial with no victim; seeking a PRR [Prison Releasee Reoffender] sentence on an offense that does not include a violence element; and withholding the jury findings of no penetration. Claims of prosecutorial misconduct are issues that could have been, and should have been, raised on direct appeal. *McAffee v. State*, 925 So. 2d 1069 (Fla. 2d DCA 2006). Therefore, relief

through a petition for writ of habeas corpus is not appropriate for this kind of allegation.

The Court notes that the Defendant previously raised some of the above grounds in prior post-conviction motions. In his motion for post-conviction relief, pursuant to Rule 3.850, *Fla. R. Crim. P.*, the Defendant claimed the State committed a *Brady* violation. In the September 16, 2014 order, this Court found the Defendant's claim to be without merit. In his motion to correct illegal sentence, pursuant to Rule 3.800(a), *Fla. R. Crim. P.*, the Defendant claimed he was illegally sentenced as a PRR because sexual battery is not a forcible felony. On June 30, 2015, this Court denied the Defendant's motion.

The Defendant also claims the State committed prosecutorial misconduct by omitting the essential element of force from the charging document. The Defendant is mistaken that the Information charging him with sexual battery by a person in familial or custodial authority on a victim older than 12, but less than 18, years of age omitted any of the essential elements. The essential elements of sexual battery by a person in familial or custodial authority on a victim older than 12, but less than 18, years of age are (1) the victim was 12 years of age or older but less than 18 years of age; (2) the defendant stood in a position of familial or custodial authority with regard to the victim; and (3) the defendant committed an act upon the victim in which the penis of the defendant penetrated or had union with the vagina of the victim. §794.011(8)(b), *Fla. Stat.* There is no force element in the offense of sexual battery by a person in familial or custodial authority on a victim older than 12, but less than 18, years of age. The information charging the Defendant . . . states,

> [the Defendant] did unlawfully engage in an act with [the victim] . . . a person twelve (12) years of age or older, but less than eighteen (18) years of age, which constituted sexual battery, to wit: by causing his penis to penetrate or unite with the vagina of the victim, while, IRIS LAMARR ANDERSON was in a position of familial or custodial authority to [the victim] . . .

See attached Information. Because the information charging the Defendant with sexual battery by a person in familial or custodial authority on a victim older than 12, but less than 18, years of age included all of the essential elements, the Defendant's claim is without merit.

(Exh. LL, p. 43-45.)

Anderson's claims in Ground Three are unexhausted, and even if they were properly exhausted, are without merit, for the reasons set forth in the state court opinions. (Exhs. P,

U, LL.)

Ground Four

In Ground Four, Anderson argues that because the State's information against him was deficient, the court lacked subject matter jurisdiction to enter judgment against him. (Doc. 1, pp. 7-8; Doc. 2, pp. 16-17.) Anderson raised this claim in his August 27, 2015, state habeas petition, arguing that the information was not sworn to by the victim. (Exh. LL.) In that petition, he made no reference to the U.S. Constitution or federal law in support of this claim. (*Id.* at pp. 17-20.) Rather, he argued that the information was inconsistent with Florida case law and Rule 3.140(g) of the Florida Rules of Criminal Procedure. (*Id.*) The state court, interpreting Florida law, concluded that "[a] sworn statement from the victim is not required. An arrest affidavit from the arresting officer is sufficient to satisfy . . . Rule 3.104(g)" and "the information properly invoked this Court's jurisdiction over [Anderson's] case." (*Id.* at pp. 45-46.) Anderson's failure to apprise the state courts of the federal constitutional nature of this claim leaves it unexhausted on federal habeas review. 28 U.S.C. § 2254(b)(1). *See McNair*, 416 F.3d at 1302.

Even if Anderson had exhausted this claim, it is without merit. Under the Sixth Amendment, a criminal defendant has a right to reasonable notice of the charge against him. *In re Oliver*, 333 U.S. 257 (1948) (A person's right to reasonable notice of the charge against him is applied to the states through the Fourteenth Amendment.) However, the sufficiency of a state indictment or information is not a matter for federal habeas corpus relief unless it can be shown that the indictment or information is so defective that the convicting court had no jurisdiction. *Murphy v. Beto*, 416 F.2d 98 (5th Cir.1969); *Branch v. Estelle*, 631 F.2d 1229 (5th Cir.1980); *DeBenedictis v. Wainwright*, 517 F.Supp. 1033, 1036 (S.D. Fla. 1981).

In this case, the state court determined the information was sufficient under state law. (Exh. LL, pp. 45-46.) A state's interpretation of its own laws or rules provides no basis for federal habeas corpus relief because no federal constitutional question is presented. 28 U.S.C. § 2254(a); *Estelle v. McGuire*, 502 U.S. 62, 67 (1991) ("[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions."). Nor has Anderson shown that the information was so defective as to deprive the convicting court of jurisdiction. Ground Four is without merit.

Ground Five

In Ground Five, Anderson argues that when the Fifth District Court of Appeal affirmed the denial of his August 27, 2015, state habeas petition, it violated his due process rights. (Doc. 1, p. 16; Doc. 2, p. 19-22.)[2] Anderson then re-argues the four claims raised in the state habeas petition and in the present federal habeas petition. (*Id.*) The analysis of Grounds One-Four above considers the Fifth DCA's decision and, to that extent, Ground Five is duplicative.

To the extent Ground Five can be construed as a separate federal due process claim arising from the Fifth DCA's decision, that federal claim is without merit. The Fifth DCA permitted Anderson to argue his appeal before it, and its decision to affirm the lower court's decision was not contrary to, or involved an unreasonable application of, clearly established Federal law, nor was it based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

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[2] Respondents suggest that this claim was presented for the first time on federal habeas review. (Doc. 11, p. 11.) Although the records are not included in the Respondents' Appendix, the Court takes judicial notice of Florida Supreme Court cases *Anderson v. Dep't of Corrections,* SC16-1135 (dismissing Anderson's petition for review for lack of jurisdiction on June 29, 2016); and *Anderson v. Fla. Dep't of Corrections*, SC17-186 (dismissing Anderson's petition seeking belated discretionary review on Feb. 3, 2017). Fed. R. Evid. 201. Petitioner sought review from the Florida Supreme Court, arguing that the Fifth District Court of Appeal's affirmance of the denial of his state habeas petition violated his due process rights. Accordingly, Ground Five

To the extent that Ground Five can be construed as a claim of cumulative error, the assertion also fails. Anderson has not shown an error of constitutional dimension with respect to any federal habeas claim. Therefore, he cannot show that the cumulative effect of the alleged errors deprived him of fundamental fairness in the state criminal proceedings. *See Morris v. Sec 'y, Dep't of Corr.*, 677 F.3d 1117, 1132 (11th Cir. 2012) (refusing to decide whether post-AEDPA claims of cumulative error may ever succeed in showing that the state court's decision on the merits was contrary to or an unreasonable application of clearly established law, but holding that petitioner's claim of cumulative error was without merit because none of his individual claims of error or prejudice had any merit); *Forrest v. Fla. Dep't of Corr.*, 342 F. App'x 560, 565 (11th Cir. 2009); *Hill v. Sec'y, Fla. Dep't of Corr.*, 578 F. App'x 805 (11th Cir. 2014)(same). Anderson is not entitled to federal habeas relief on Ground Five.

CONCLUSION

Accordingly, Anderson's petition for the writ of habeas corpus (Doc. 1) is **DENIED**. The **CLERK** is directed to enter a judgment against Anderson and to **CLOSE** this case.

DENIAL OF BOTH A CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL IN FORMA PAUPERIS

IT IS FURTHER ORDERED that Anderson is not entitled to a certificate of appealability. A prisoner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition. 28 U.S.C. § 2253(c)(1). Rather, a district court must first issue a certificate of appealability ("COA"). Section 2253(c)(2) limits the issuing of a COA "only if the applicant has made a substantial showing of the denial of a

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was exhausted in the state courts and is discussed herein on the merits.

constitutional right." To merit a certificate of appealability, Anderson must show that reasonable jurists would find debatable both the merits of the underlying claims and the procedural issues. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir. 2001). Because he fails to show that reasonable jurists would debate either the merits of the claims or the procedural issues, Anderson is not entitled to a certificate of appealability, and he is not entitled to appeal *in forma pauperis*.

Accordingly, a certificate of appealability is **DENIED**. Leave to appeal *in forma pauperis* is **DENIED**. Anderson must obtain permission from the circuit court to appeal *in forma pauperis*.

DONE AND ORDERED in Ocala, Florida, this 16th day of August, 2019.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

IRIS LAMARR ANDERSON,

Petitioner,

v. **Case No: 5:16-cv-460-Oc-35PRL**

SECRETARY, DEPARTMENT OF CORRECTIONS and FLORIDA ATTORNEY GENERAL

Respondents.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Pursuant to the Court's Order entered on August 16, 2019, the petition for Writ of Habeas Corpus is denied.

ELIZABETH M. WARREN, CLERK

s/L. Kirkland, Deputy Clerk

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Additional material from this filing is available in the Clerk's Office.