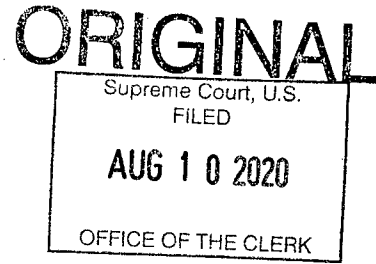


No. 20-5625



**IN THE
SUPREME COURT OF THE UNITED STATES**

RICKY WILLIAMS - *Petitioner*
(Your Name)

VS.

STATE OF FLORIDA - *Respondent(s)*

on

PETITION FOR A WRIT OF CERTIORARI

to

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(Name of Court that last ruled on merits of your case)

PETITION FOR A WRIT OF CERTIORARI

RICKY WILLIAMS
(Your Name)

F.D.O.C. # 639781
GULF CORRECTIONAL INSTITUTION
500 IKE STEELE ROAD
WEWAHITCHKA, FLORIDA 32465

QUESTION(S) PRESENTED

1. Did the Court of Appeal employ the correct legal standard in determining Petitioner was not entitled to issuance of a certificate of appealability?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

[] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari to review the judgment below.

OPINIONS BELOW

☒ For cases from **Federal Courts**:

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is;

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☐ is unpublished.

The opinion of the United States District Court appears at Appendix C to the petition and is;

☐ reported at 2019 U.S. Dist. LEXIS 223143 (S.D. Fla. 2019); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **State Courts**:

The opinion of the highest State Court to review the merits appears at Appendix ____ to the petition and is;

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☐ is unpublished.

The opinion of the _____ Court appears at Appendix ____ to this petition and is;

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☐ is unpublished.

JURISDICTION

☒ For cases from **Federal Courts:**

The date on which the United States Court of Appeals decided my case was 3.30, 2020.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 5.11.20, and a copy of the order denying rehearing appears at Appendix B.

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

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

☐ For cases from **State Courts:**

The date on which the highest State Court decided my case was _____.
A copy of that decision appears at Appendix _____.

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

☐ An extension of time to file the Petition for a Writ of Certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

Petitioner was charged by Information by the Seventeenth Judicial Circuit of Florida, Broward County, in Case No. 10-007927-CF-10A, with Strong Armed Robbery in violation of section 812.13, Florida Statutes (2009).

On the advice of state appointed counsel, who prior to trial, advised the Petitioner to reject a more favorable 7-year plea offer from the State because according to counsel, the victim was not a Native American, and nowhere to be found; hence, no victim, no case.

On November 16, 2010, Petitioner's case proceeded to trial. During the voir dire, defense counsel asked the prospective venireman,

"Does anyone here have any strong feelings that would impact their decision or ability to serve as a juror on issues related to drug?"

Should drugs become an issue, if you hear anything related to drugs, would that effect your ability to sit as a juror in this case?

To this line of questioning, prospective Jurors Castro, Lazcano, Blacker, Sullivan and Gray, all gave responses indicating, it would affect their ability to sit as an impartial juror. Defense then successfully moved the State Trial Court to remove prospective Jurors Lazcano, Blacker, Sullivan and Gray for cause. He did not seek to have Juror Castro removed for cause, or asked of him any follow-up questions. Nor ~~was Juror~~ did defense counsel exercise a peremptory challenge with respect to Juror Castro, but allowed him to sit as a juror.

At trial, Jose Valle, the purported victim, testified, on the night in question, he was walking in public. Two black men approached him. The bigger guy (identified as the Petitioner) grabbed him, choked him, and threw him on the ground. The robbers according to him took his wallet and \$140 (consisting of \$100 dollar bill and 2 \$20 dollar bills).

Valle claimed that he was not drunk.

Detective Trevor Goodwin, of the Broward County Sheriff's Office, testified that he interviewed the Petitioner that night. The video of the interview was played. During the interview, Petitioner initially said that he did not know anything about a robbery and did not see anything happen. Petitioner then said that Valle wanted to buy marijuana and got mad because Petitioner did not have any.

Also during the interview, Petitioner initially denied touching Valle. Detective Goodwin

then stated that the investigators found Petitioner's DNA on Valle. After that, Petitioner stated that he "could have touched" Valle. Further, Petitioner stated that Valle had grabbed him and that Valle was "very drunk."

Detective Goodwin testified that he falsely told Petitioner that the investigators found his DNA on Valle as a "detective ploy." The ploy worked because Petitioner "went from not knowing him to I made contact with him."

Detective Goodwin recovered eight \$1 bills on Petitioner.

Petitioner did not testify or call any witnesses.

Petitioner was found guilty by the jury. The State Trial Court adjudicated Petitioner guilty and sentenced him to 30 years State Prison.

On direct appeal, the Fourth District Court of Appeal of Florida, per curiam affirmed ~~the~~ without a written opinion, the Petitioner's conviction and sentence. Williams v. State, 96 So.3d 709 (Fla. 4th DCA 2012).

Subsequently, Williams filed a timely Rule 3.850 motion for postconviction relief. It was denied on August 8, 2017. The denial order was also per curiam affirmed without a written order on appeal. Williams v. State, 227 So.3d 595 (Fla. 4th DCA 2017).

Petitioner ~~then~~ filed ~~for habeas~~ a timely habeas corpus petition in the United States District Court Southern District of Florida. Case No. 17-62420-cv-UNGARO. Therein, he raised 13 grounds for relief. On October 1, 2019, Magistrate Judge Reid issued a Report recommending that the petition should be denied; and that no COA should issue. Williams v. Sec'y, Dep't of Corrections, 2019 U.S. Dist. LEXIS 171363 (S.D. Fla. 2019).

Of relevance, and germane sub judice, Petitioner alleged in Claim 2 that his trial counsel rendered ineffective assistance in failing to impeach Valle's credibility with a prior inconsistent Valle had made to Deputy Sheriff Lee Martin on the night in question, to the effect that the 8 \$1 bills that were found in Petitioner's possession, after his arrest, was money taken from him by the robbers. This prior previous statement, without doubt, impeached Valle's trial testimony claiming that he was robbed that night of a \$100 dollar bill and 2 \$20 dollar bills. In fact, at trial, Valle specifically testified that no singles were taken from him.

Petitioner's defense was seriously prejudiced, in that had trial counsel, had Deputy Martin inform the jury, consistent with the investigative report he prepared, that Valle had stated to him, that the 8 \$1 bills that were found on Petitioner's arrest, the jury would have seen that Valle was obviously not being truthful about what, if anything was stolen from him. This in turn would have led the jury to discredit Valle's account that anything was actually stolen from him, and returned a verdict of not guilty or attempted robbery or even simple battery.

In reaching the merits of this claim, ~~the~~ Magistrate ^{Judge Reid} concluded, "...the jury could have believed Valle's trial testimony versus the prior inconsistent statement." ^⑩

FN1. Respondent does not deny that Valle did, in fact, make the prior inconsistent.

Additionally, Magistrate Judge Reid, determined, "had counsel so impeached (a clear acknowledgement by the judge that the prior inconsistent statement would have impeached Valle) Valle, the state could have introduced statements Valle made during a sworn, videotaped

interview with investigators after the robbery "to rebut an express or implied charge ... of ... recent fabrication." Fla. Stat. § 90.801(2)(b). During that interview, Valle stated that the robbers "took \$140... and his wallet." Thus, it is arguable that counsel reasonably decided not to so impeach Valle. "

Petitioner filed a timely objection. He contended, "Magistrate Judge Reid does not explain how or why, the jury who tried Petitioner's guilt, 'could have believed Valle's trial testimony versus the prior inconsistent statement.' "

Petitioner also argued that, "This is not the context Fla. Stat. § 90.801(2)(b), applies to. Moreso, the introduction of Valle's videotaped interview would not have in any shape or form, diminished the impeachment value of defense counsel's use of his prior inconsistent statement. "

On December 30, 2019, U.S. District Judge Ursula Ungaro, ordered that the Report is ratified, adopted, and affirmed; overruled Petitioner's objections; and than no COA shall issue. Williams v. Sec'y, Dep't of Corrections, 2019 U.S. Dist. LEXIS 223143 (S.D. Fla. 2019).

In Claim 3, Petitioner alleged that trial counsel rendered ineffective assistance in also failing to impeach Valle with other prior inconsistent statements. Magistrate Judge Reid found that "Petitioner has not identified these alleged inconsistencies." And further, that "this claim would fail even if it were adequately alleged." ②

FN2. This determination was made before the proposed amendment to this claim was put forth in Petitioner's objections.

Petitioner objected and asked for leave to amend to supply the missing ~~allegations~~ ^{alleged} inconsistencies. Namely, that Valle also told Detective Goodwin that Petitioner took \$120 dollars from him. Hence, ~~the jury hearing~~ had the jury learned, that Valle made two prior inconsistent statements regarding the actual amount, that was purportedly stolen ~~from~~, there exists an even stronger reasonable probability, that the outcome of the trial would have been different. No ruling was made on the amendment request.

In Claim 4, Petitioner alleged that trial counsel was ineffective in failing to strike Juror Castro, who had, along with four other prospective jurors, indicated, if the case had anything to do with drugs, it would affect his ability to sit as an impartial juror.

The district court in denying this claim, determined "here, it is arguable that defense counsel's failure to strike Castro was not deficient. Petitioner stated that he participated in jury selection and found the jury acceptable. His consent to the selected jury 'is probative of the reasonableness of the chosen strategy and of trial counsel's performance...' Furthermore, while Castro said that drugs could affect his ability to sit as a juror, he did not elaborate. (bold underlined text)

Thus, on the whole, the record indicates that counsel did not question Castro's ability to be a fair and impartial juror. Accordingly, there is a reasonable argument that counsel's failure to move to strike Castro was not deficient. "

In Claim 9, Petitioner alleged that trial counsel rendered ineffective assistance in misadvising him to reject a more favorable 7-year plea offer. Petitioner contended that counsel advised him to reject the offer because Valle was "nowhere to be found." And that without Valle's testimony, the State could not convict him.

Magistrate Judge Reid initially determined that the "claim is conclusory and fails for this reason alone." She also recommended deferring to the postconviction court's rejection of this claim, which reasoned that trial counsel's alleged advice did not fall below an objective standard of reasonableness because the absence of a critical prosecutorial witness would be a

relevant factor an attorney would consider when advising his or her client whether to plead guilty.

Petitioner objected, and requested leave to amend and proffered the following supporting facts:

"William contends trial counsel's advice to reject the 7-year plea offer based on his failure to locate the victim (whereabouts) was unreasonable and predicated on trial counsel's failure to have performed an adequate investigation.

For instance, defense counsel should have moved the State trial court for an order requiring the State to provide a better address and/or an order directing the State to have produced Valle for the purpose of taking his deposition or else Valle would not be allowed to testify. Instead, defense counsel approached the defense of Petitioner under the false assumption that Valle would not be located. . . . This was not a strategic prediction. This was a failure of trial counsel to ascertain whether the victim could be located. "

Judge Ungaro in denying relief determined,

"The Report further posits that counsel's alleged misadvice was not deficient because as an essential prosecution witness, it is arguable that counsel reasonably advised Petitioner to reject the plea offer, absent Valle's testimony, the prosecution could not prove its case.

Simply put, advice, although incorrect in retrospect, does not necessarily rise to the level of ineffective assistance of counsel. "

Judge Ungaro also determined that Petitioner had not sufficiently alleged prejudice as outlined in *Alcorn v. State*, 121 So. 3d 419, 430 (Fla. 2013).

Petitioner submitted a timely Motion for Certificate of Appealability to the Eleventh Circuit Court of Appeals. (Attached Exhibit F). He contended that he satisfied the standard required by this Court for issuance of a COA. ³ On March 30, 2020, U.S. Circuit FN3. Petitioner adopts and incorporates, in their entirety, all the facts and matters presented in the attached Motion for Certificate of Appealability, herein.

Judge William H. Pryor, Jr., denied the motion, concluding that Petitioner had failed to make a substantial showing of a constitutional right.

Petitioner filed a timely Motion for Reconsideration. (Attached Exhibit G). ⁴ On May

FN4. Petitioner also adopts and incorporates, in their entirety, all the matters and arguments presented in the attached Motion for Reconsideration, herein.

11, 2020, the motion was denied.

The instant petition now ensues.

REASONS FOR GRANTING THE PETITION

The Eleventh Circuit's determination that Petitioner was not entitled to issuance of a COA conflicts with this Court's decision rendered in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984), and other Courts of Appeal decisions.

CLAIM 2

The district court acknowledges that on the night in question, Valle told Deputy Martin, that the 8 \$1 bills, which were found on Petitioner after a search incident to his arrest, was money stolen from him.

Yet, at trial, Valle testified, he was robbed of a \$100 bill and 2 \$20 bills. The district court ^{concluded} ~~concluded~~ that,

"On this record, the jury could have believed Valle's trial testimony versus the prior inconsistent statement.

This analysis conflicts with the results reached in *Rhodes v. Vanney*, 751 Fed. Appx. 524, 530 (5th Cir. 2018). Therein, the court determined that "trial counsel's decision to ask the witness about pain medication, but without using the available medical records to impeach him" was constitutionally ineffective assistance of counsel.

Likewise here, trial counsel specifically asked Valle at trial,

Q. No singles, correct?

A. No.

However, defense counsel failed to utilize his prior inconsistent statement to Deputy Martin to impeach him. See also *Beltran v. Cockrell*, 294 F.3d 730 (5th Cir. 2002) (granting habeas corpus relief because evidence had impeachment value).

In *Strickland*, this Court held,

"In representing a criminal defendant, counsel owes the client... a duty to bear such skill and knowledge as will render the trial a reliable testing process."

11688.

Consequently, this Court should exercise its certiorari jurisdiction to resolve this conflict. Because in the Eleventh Circuit, this Court's reasonable probability of a different outcome prejudice standard has been replaced with an unreasonable speculative standard that grievously injures the Sixth Amendment guarantee to effective assistance of counsel.

CLAIM 3

The same argument and reasoning put forth above equally applies to this claim also. Clearly, this additional prior inconsistent statement would have heightened the impeachment value of Valle's prior inconsistent statements.

CLAIM 4

The district court's threshold analysis that Petitioner's "consent to the selected jury is

probative of the reasonableness of the chosen strategy and trial counsel's performance," is in conflict with the Sixth Circuit's holdings in *Miller v. Webb*, 385 F.3d 666 (6th Cir. 2005) and *Hughes v. United States*, 258 F.3d 453, 463 (6th Cir. 2001), wherein it held:

"The question of whether to seat a biased juror is not a discretionary or strategic decision. The seating of a biased juror who should have been dismissed for cause requires reversal of the conviction." Single
Spaced

Citing *United States v. Martinez-Salazar*, 528 U.S. 304, 316, 145 L.Ed.2d 792, 120 S.Ct. 774 (2000).

Secondly, the district court concluded,

"Furthermore, while Castro said that drugs could affect his ability to sit as a juror, he did not elaborate. Immediately, thereafter, counsel asked the jurors if they would like to discuss anything that had come up during jury selection and Castro did not speak. Thus, on the whole, the record indicates that counsel did not question Castro's ability to be a fair and impartial juror. Accordingly, there is a reasonable argument that counsel's failure to move to strike Castro was not deficient." single
Spaced

also is in conflict with *Hughes* and *Miller*. It was precisely because neither the trial court nor defense counsel asked any follow-up questions in effort to rehabilitate Juror Castro or to assure his impartiality, that *Hughes* and *Miller* were granted habeas corpus relief.

Moreover, the other five prospective jurors, whom defense counsel did successfully strike for cause, because they said drugs would affect their ability to sit as a juror, also did not speak. (See attached Exhibit H).

Hence, this Court should be constrained to resolve this conflict.

CLAIM 9

Petitioner in his objections asked for leave to amend this claim and proffered the proposed amendment. Judge Ungaro in overruling Petitioner's objections did not rule on the request. But, in fact found that Petitioner had failed to allege prejudice, which the proposed amendment did do.

In *Mayle v. Felix*, 545 U.S. 644, 655 (2005), this Court interpreted Rule 12 of the Rules Governing Section 2254 Cases in the United States District Courts and Federal Rule of Civil Procedure 15 as allowing leading amendments with leave of court anytime during a proceeding.

The failure to even rule on Petitioner's request for leave to amend, alone merited a COA. The Eleventh Circuit's decision to deny a COA, thus conflicts with *Mayle*, in this respect.

Next, the district court determined,

"The ~~trial~~ court reasoned that trial counsel's alleged advice did not fall below an objective standard of reasonableness because the absence of a critical prosecutorial witness would be a relevant factor an attorney would consider when advising his or her client whether to plead guilty...." single
Spaced

The problem with this analysis however, is that trial counsel did not ascertain prior to rendering his advice, if in fact, Valle, the victim and sole prosecutorial eyewitness, would be absent. This in conflict with this Court's holding in *Strickland*, that,

"These standards require no special amplification in order to define counsel's duty to investigate.... In other words counsel has a duty to make reasonable investigations or to make a reasonable decision that make particular investigations unnecessary."

At 690.

And also conflicts with *Crane v. Jones*, 178 F.3d 309, 314 (5th Cir. 1999) holding that only conscious and informed decisions on trial tactics and strategy cannot be the basis of a constitutionally ineffective assistance of counsel claim. Here, there was nothing whatsoever, informed, about trial counsel's advice in these regards. Hence, this could not have been a strategic decision and the Eleventh Circuit should have issued a COA.

COURT'S CERTIORARI JURISDICTION

In *Hohn v. United States*, 524 U.S. 236, 118 S.Ct. 1969, 141 L.Ed.2d 242 (1998), this Court held that it has jurisdiction to review decisions of the courts of appeal denying applications for certificates of appealability.

More specifically, in *Ayestas v. Davis*, Dir., Texas Dept. of Crim. Justice, 584 U.S. —, 138 S.Ct. —, 200 L.Ed.2d 376, 390 (2018), this Court held in relevant part,

"When lower courts deny a COA and the court concludes their reason for doing so was flawed, the court may reverse and remand so that the correct legal standard may be applied," S S

Sub judice, Petitioner respectfully puts forth that the Eleventh Circuit's decision to not issue a COA is flawed. According this Court should accept jurisdiction and answer the important questions presented in this case.

CONCLUSION

This Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Isa Richy Williams

Date: 8-6-20