

20-5723
IN THE SUPREME COURT
OF THE UNITED STATES

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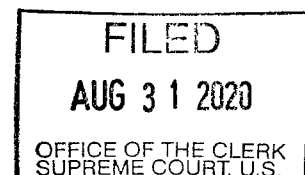
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DEMETRIUS CALHOUN, PETITIONER
VS.
FLORIDA DEPARTMENT OF CORRECTIONS, RESPONDENT

ORIGINAL

ON PETITION FOR WRIT OF CERTIORARI
TO UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIOARI



DEMETRIUS CALHOUN, *PRO SE*
JACKSON CORR. INST.
5563 10TH STREET
MALONE, FLORIDA 32445

NO.

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SUPREME COURT OF THE UNITED STATES

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DEMETRIUS CALHOUN, PRO SE
JACKSON CORRECTIONAL INSTITUTION
5563 10TH STREET
MADISON, FLORIDA 32445

QUESTION(S) PRESENTED

1. WHETHER THE COURTS MISINTERPRETATION OF THE LAW AS INTERPRETED BY SUPREME COURT AS IT APPLIED TO THE FACTS OF PETITIONER'S CASE VIOLATING: ART. 1, 16 AND ART. 1 a OF FLORIDA CONSTITUTION OF DUE PROCESS.
2. WHETHER THE COURTS OVERLOOKED AND/OR MISAPPREHENDED THE FACT THAT PETITIONER RAISED GROUNDS THAT HE WAS DENIED A FAIR AND IMPARTIAL TRIAL WHICH DENIED HIM DUE PROCESS OF LAW UNDER THE 5TH, 6TH AND 14TH AMENDMENT RIGHTS TO DUE PROCESS.
3. WHETHER THE COURTS ARE EXPRESSLY AND IN DIRECT CONFLICT WITH EACH OF THE DECISIONS AND CASE LAW HOLDING WHICH THE PETITIONER ARE NOT BEING AWARDED THE SAME RELIEF AS THOSE SAME IDENTICAL SITUATION DEFENDANTS HAVE BEEN AWARDED RELIEF ON LAW AND FACTS, AND THE SAME DECIS DOCTRINE APPLY TO PETITIONER'S CASE.
4. WHETHER THE COURTS FAILED TO APPLY THE CONTROLLING AUTHORITY ANNOUNCED IN STRICKLAND V. WASHINGTON STANDARD OF BOTH PRONGS DEFICIENCY AND PREJUDICE WHICH THE PETITIONER PROVEN THEREIN IN HIS POST CONVICTION MOTION(S) AND HIS 2254 HABEAS CORPUS MOTION FOR RELIEF.
5. WHETHER THE PETITIONER RAISED QUESTION TO UNDERMINE THE CORRECTNESS OF THE OUTCOME OF THE TRIAL WHICH DENIED HIM DUE PROCESS OF LAW.
6. WHETHER THE COURTS DEPRIVED PETITIONER OF HIS DUE PROCESS RIGHT TO BE HEARD AS TO THE GROUNDS RAISED WITHIN HIS 2254 HABEAS CORPUS MOTION FOR RELIEF.
7. WHETHER U.S. DISTRICT COURT MAGISTRATE JUDGE PATRICK A. WHITE DENIED PETITIONER DUE PROCESS OF LAW BY OVERLOOKING THE LAW AND FACTS AS TO ALLOWING THE PETITIONER TO FILE AN UNLARGED 2254 PETITION.
8. WHETHER THE PETITIONER MET THE SLACK TEST OUTLINED IN SLACK V. McDaniel, 529 U.S. 473, 478 (2000) TO WARRANT ISSUANCE OF A CERTIFICATE OF APPEALABILITY ON APPEAL TO THE UNITED STATES COURT OF APPEALS IN WHICH HE MADE THE REQUISITE SHOWING THEREIN HIS MOTION TO RECONSIDER.

LIST OF PARTIES AND RELATED CASES

- STATE OF FLORIDA V. CALHOUN, CASE # 14-15422A, SEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA. JUDGMENT ENTERED APRIL 17, 2013
- CALHOUN V. STATE OF FLORIDA, CASE # 3713-1245, THIRD DISTRICT COURT OF APPEALS OF FLORIDA. JUDGMENT ENTERED JUNE 3, 2015
- CALHOUN V. STATE OF FLORIDA, CASE # 3715-2385, THIRD DISTRICT COURT OF APPEALS OF FLORIDA. JUDGMENT ENTERED APRIL 1, 2016
- CALHOUN V. STATE OF FLORIDA, CASE # 3716-0226, THIRD DISTRICT COURT OF APPEALS OF FLORIDA. JUDGMENT ENTERED JULY 22, 2016
- CALHOUN V. STATE OF FLORIDA, CASE # 3716-2082, THIRD DISTRICT COURT OF APPEALS OF FLORIDA. JUDGMENT ENTERED DECEMBER 29, 2016
- CALHOUN V. STATE OF FLORIDA, CASE # SC16-2134, FLORIDA SUPREME COURT. JUDGMENT ENTERED FEBRUARY 3, 2017
- CALHOUN V. STATE OF FLORIDA, CASE # 3717-0721, THIRD DISTRICT COURT OF APPEALS OF FLORIDA. JUDGMENT ENTERED MAY 25, 2017
- CALHOUN V. STATE OF FLORIDA, CASE # 3717-1076, THIRD DISTRICT COURT OF APPEALS OF FLORIDA. JUDGMENT ENTERED FEBRUARY 23, 2018
- CALHOUN V. JIMIE L. JONES, CASE # SC18-885, FLORIDA SUPREME COURT. JUDGMENT ENTERED JULY 10, 2018
- CALHOUN V. SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS et al, NO. 15-CV-22568-CMA, U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA. JUDGMENT ENTERED JULY 28, 2015

• CALHOUN V. FLORIDA DEPARTMENT OF CORRECTIONS, NO. 16-CV-24472-KMW, U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA. JUDGMENT ENTERED JANUARY 27, 2017

• CALHOUN V. FLORIDA DEPARTMENT OF CORRECTIONS, NO. 18-CV-22957-CMA, U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA. JUDGMENT ENTERED OCT. 10, 2018

• CALHOUN V. FLORIDA DEPARTMENT OF CORRECTIONS, NO. 18-CV-24435-FAM, U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA. JUDGMENT ENTERED MAY 24, 2019

• CALHOUN V. FLORIDA DEPARTMENT OF CORRECTIONS, NO. 19-10368-C, U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT. JUDGMENT ENTERED MAY 31, 2019

• CALHOUN V. FLORIDA DEPARTMENT OF CORRECTIONS, NO. 19-12331-J, U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT. JUDGMENT ENTERED MAY 19, 2020

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2

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9

U.S. CONSTITUTION § 2254

9

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT CERTIORARI

PETITIONER RESPECTFULLY PRAYS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE JUDGMENT BELOW.

OPINIONS BELOW

THE OPINION OF THE UNITED STATES COURT OF APPEALS APPEARS AT APPENDIX A & C TO THE PETITION AND HAS NOT BEEN PUBLISHED.

THE OPINION OF THE UNITED STATES DISTRICT COURT APPEARS AT APPENDIX B TO THE PETITION AND HAS NOT BEEN PUBLISHED.

JURISDICTION

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS DENIED MY CASE WAS MARCH 20, 2020. A TIMELY PETITION FOR REHEARING WAS DENIED BY THE UNITED STATES COURT OF APPEALS ON THE FOLLOWING DATE MAY 19, 2020, AND A COPY OF THE ORDER DENYING REHEARING APPEARS AT APPENDIX C.

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1254(1).

THE STATE

IN SENATE,
JANUARY 1, 1907.
REPORT OF THE
COMMISSIONER OF THE
LAND OFFICE.

ALBANY: J. B. LEECH, STATE PRINTER, 1907.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT IV. SEARCH AND SEIZURE

THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSON, HOUSES, PAPERS AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANT SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED AND THE PERSON OR THINGS TO BE SEIZED.

AMENDMENT V. GRAND JURY INDICTMENT FOR CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS OF LAW; JUST COMPENSATION FOR PROPERTY

NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

AMENDMENT VI. JURY TRIALS FOR CRIMES, AND PROCEDURAL RIGHTS

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPELLED PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

SECTION 1. ALL PERSON BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR

ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES;
NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR
DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.....

STATEMENT OF THE CASE

PETITIONER CHARGES STEM FROM TWO DIFFERENT CRIMINAL EPISODES THAT OCCURRED IN MIAMI-DADE COUNTY ON MAY 15, 2010 AND MAY 17, 2010, WHERE HE WAS CHARGED WITH ARMED ROBBERY, CONSPIRACY TO COMMIT ARMED ROBBERY AND POSSESSION OF A FIREARM BY A CONVICTED FELON FOR EACH EPISODE. ON MAY 27, 2010 CO-DEFENDANT JIMMY MATHIS GAVE AN INITIAL TAPE STATEMENT TO MIAMI-DADE POLICE DETECTIVE NELSON FAJARDO AND FERNANDO CARVAJAL. A FEW HOURS LATER ASSISTANT STATE ATTORNEY SANTIAGO AROCA, WHOM WAS ASSIGNED AS THE TRIAL PROSECUTOR IN THE UNDERLYING CASE SHOWED UP AT THE MIAMI-DADE POLICE DEPARTMENT AND SPOKE WITH MATHIS DURING AN UNRECORDED CONVERSATION [R. 289-91; T. 1103-6]. SUBSEQUENTLY, MR. AROCA DEPOSED AN AFFIDAVIT WHICH CONTAINED DETURED STATEMENTS THAT WERE SUBSTANTIALLY AND MATERIALLY DIFFERENT FROM WHAT MATHIS SAID ON TAPE. THE AFFIDAVIT WAS SIGNED BY MATHIS AND ALLEGEDLY NOTARIZED BY DETECTIVE NELSON FAJARDO. ON JUNE 1, 2010 MR. AROCA RETRIEVED AN AFFIDAVIT FROM VICTIMS ESTHER LEU AND THEN NOHEMI ZAVALA ON JUNE 4, 2010, WHERE THEY BOTH DID NOT IMPLICATE MR. CALHOUN AS THE PERPETRATOR. USING BOTH VICTIMS AND MATHIS'S AFFIDAVIT CONTAINING THE DETURED STATEMENTS, MR. CALHOUN WAS FORMALLY CHARGED BY INFORMATION [R. 45-64].

[T]HE LAW REQUIRES THAT THE INFORMATION BE BASED ON SWORN FACTS TO BEFORE AN OFFICER HAVING JURISDICTION TO ADMINISTER THE OATH. WHEN A PROSECUTING AGENCY FILES AN INFORMATION AGAINST A DEFENDANT, HE CONCLUSIVELY DETERMINES THAT THE EVIDENCE IS ADEQUATE TO ESTABLISH PROBABLE CAUSE TO PUT THE DEFENDANT ON TRIAL. Id. STATE EX REL. HARDY V. BLOWN, 261 SO. 2d 172 (FLA. 1992) (PREVITT V. STATE, 135 FLA. 226, 104 SO. 860, 863--864 (1938)). THE PROSECUTOR WHO INITIATES AND PREPARES CRIMINAL CASES [FOR FILING OF THE INFORMATION] AND CALLS AND QUESTION THE WITNESSES AND [PREPARES THE INFORMATION] HAS THE DUTY NOT TO PERMIT A PERSON TO STAND TRIAL WHEN HE KNOWS THE PERSON PERMEATES THE INFORMATION. MR. CALHOUN'S RIGHT TO DUE PROCESS WAS VIOLATED WHERE HE HAD TO STAND TRIAL ON AN INFORMATION WHICH THE STATE KNEW WAS BASED PARTIAL ON DETURED TESTIMONY, THE DETURED TESTIMONY WAS MATERIAL AND JEOPARDY HAD NOT ATTACHED. U.S. C.A. CONST. AMEND 5 SEE UNION STATES V. BRANT, 497 U.S. 207 (1990).

AFTER APPROXIMATELY THREE(3) YEARS OF PRE-TRIAL INVESTIGATION, PETITIONER FILED SOME PRE-TRIAL MOTIONS AND THEN PROCEEDED TO JURY TRIAL ON APRIL 2-9, 2013. DURING TRIAL, THE TRIAL COURT AND STATE

¹ THE AFFIDAVIT AUTHENTICITY WAS CALLED INTO QUESTION BECAUSE NOT ONLY DOES IT CONTAIN FALSE STATEMENTS BUT THE OFFICIAL SEAL IS NOT AFFIXED AND PURSUANT A RECENT FREEDOM OF INFORMATION ACT REQUEST IT HAS BEEN DISCOVERED THAT DETECTIVE NELSON FAJARDO WAS NOT A COMMISSIONED NOTARY OF PUBLIC AUTHORIZED IN THE STATE OF FLORIDA TO TAKE OATHS AT THE TIME HE ALLEGEDLY NOTARIZED MATHIS'S AFFIDAVIT AS REQUIRED BY LAW, AND THEREFORE INADMISSIBLE UNDER THE FLORIDA EVIDENCE CODE SECTION 92.50(1) FLORIDA STATUTES.

ATTORNEY BLANKETLY DERIVED MR. CALHOUN OF THE PROCESS OF LAW. FOR INSTANCE, THE TRIAL COURT ORDERED BY FAILING TO CONDUCT A RICHARDSON² HEARING PRIOR TO EXCULPATING A PHOTOGRAPH OF MR. CALHOUN'S BROTHER, JAMES CALHOUN, BASED UPON FINDING THAT A DISCOVERY VIOLATION OCCURRED; TRIAL COURT ORDERED BY ADMITTING EXHIBIT CRIMES EVIDENCE OF A GUN WHICH BECAME A FEATURE OF TRIAL ESPECIALLY WHEN THE PROSECUTION ARGUED IN CLOSING THAT MR. CALHOUN STOLE THE GUN THAT WAS AN UNCHARGED CRIME. SEE MORROW V. STATE, 931 So. 2d 1021, 1023 (Fla. 3d DCA 2006); SEE ALSO WAINWRIGHT V. COOPER, 104 S. Ct. 378 (1983); A NON-TESTIFYING CO-DEFENDANT'S PLEA AGREEMENT AND CORRESPONDING DEFENDANT WAS INADMISSIBLE HEARSAY BECAUSE IT DERIVED DEFENDANT OF HIS SIXTH AMENDMENT RIGHT TO CONFRONTATION OF BRITTON V. UNITED STATES, 391 U.S. 123, 98 S. Ct. 1620, 20 L. Ed. 2d 467 (1967) AND CRAWFORD V. WASHINGTON, 541 U.S. 36 (2004) IN VIOLATION OF THE UNITED STATES CONSTITUTION.³ IT HAS LONG BEEN ESTABLISHED THAT A DEFENDANT RIGHT TO CONFRONT AND CROSS-EXAMINE WITNESSES AGAINST HIM IS AN ESSENTIAL AND FUNDAMENTAL REQUIREMENT FOR A FAIR TRIAL. SEE BARBER V. BAY, 390 U.S. 719, 98 S. Ct. 1318, 20 L. Ed. 2d 255 (1968); THE PROSECUTOR ENGAGED IN MISCONDUCT BY ALLOWING THE ADMISSION OF EVIDENCE THAT WAS DEFAVORABLE. SUCH CONDUCT FALLS WITHIN THE PURVIEW OF CLAYTON V. UNITED STATES, 405 U.S.

² RICHARDSON V. STATE, 246 So. 2d 771 (Fla. 1971).

³ DURING TRIAL THE STATE AMBUSHED DEFENDANT BY AMENDING ITS WITNESS LIST ADDING ADDITIONAL WITNESS ASSISTANT STATE ATTORNEY KERRY CROCKETT OF MIAMI-DADE COUNTY STATE ATTORNEY OFFICE, CONSTITUTING A DISCOVERY VIOLATION. PRIOR TO TRIAL, MRS. CROCKETT WAS NEVER LISTED AS A STATE NOR DEFENSE WITNESS. THE PROSECUTION ADMITTED WITHOUT MRS. K. CROCKETT'S TESTIMONY IT COULD NOT ESTABLISH THE PROPER PRELIMINARY TO INTRODUCE THE PLEA AGREEMENT, PLEA HEARING, TRANSCRIPTS AND AFFIDAVIT OF CO-DEFENDANT MATHEIS'S STATEMENTS, A NON-TESTIFYING DEFENDANT. DEFENSE COUNSEL OBJECTED TO THE TESTIMONY OF MRS. K. CROCKETT AND THE COURT ALLOWED THE TESTIMONY IN ORDER FOR THE STATE TO INTRODUCE CO-DEFENDANT MATHEIS'S STATEMENTS. THE COURT HAS EXPLAINED THAT THE RULES OF DISCOVERY ARE INTENDED TO AVOID SURPRISE AND "TRIAL BY AMBUSH." SHINGLER V. KING DESK CONTROL, 401 So. 2d 1310, 1314 (Fla. 1981); SEIDIO V. STATE, 926 So. 2d 1136 (Fla. 2006). THE ILLINOIS SUPREME COURT HAS HELD A FLAGRANT CASE OF "TRIAL BY AMBUSH," THAT IS "EXACTLY THE TYPE OF CONDUCT THE RULES OF DISCOVERY ARE DESIGNED TO PREVENT." SEIDIO, 926 So. 2d at 430. ADDITIONAL WITNESSES ARE NOT EXCEPTED FROM THE REQUIREMENTS OF ILLINOIS RULES OF CRIMINAL PROCEDURE 3.220. SEE STONE V. STATE, 547 So. 2d 657, 659 (Fla. 2d DCA 1989). ONCE THE COURT IS NOTIFIED OF A POSSIBLE DISCOVERY VIOLATION, THE COURT IS MANDATED BY LAW TO CONDUCT A RICHARDSON INQUIRY. SEE McNULTY V. STATE, 970 So. 2d 312, 321 (Fla. 2007). IN LIGHT OF THE STATE COMMITTING THE DISCOVERY VIOLATION, THE COURT KNOWINGLY FAILED TO CONDUCT A RICHARDSON INQUIRY AFTER BEING PUT ON NOTICE WHICH CLEARLY DENIED DEFENDANT OF HIS RIGHT TO THE PROCESS OF LAW AND 14TH AMENDMENT RIGHT TO A FAIR AND IMPARTIAL TRIAL.

150, 153, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972). THE PROSECUTOR STATED SEVERAL TIMES THROUGHOUT TRIAL THAT IN GOOD FAITH HE COULD NOT CALL MARTIS AS A WITNESS BECAUSE HE DENIED THAT MARTIS WOULD "LIE" AND THAT MARTIS' TESTIMONY WOULD BE "PERJURY." [T. 749, 779, 789, 997-8]. MARTIS WAS ACTUALLY BEING PROSECUTED BY THE VERY SAME STATE ATTORNEY FOR PERJURY. [T. 779; ARS# 13002745]. SEE UNITED STATES V. BARRY, 473 U.S. 667, 680, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1995). ("[T]HE KNOWING USE OF PERJURED TESTIMONY INVOLVES PROSECUTORIAL MISCONDUCT AND, MORE IMPORTANTLY, INVOLVES 'A CORRUPTION OF THE TRUTH SEEKING FUNCTION OF THE TRIAL PROCESS'"). AS LONG AGO AS MOONEY V. HOLLOMAN, 294 U.S. 103, 112, 55 S.Ct. 340, 342, 79 L.Ed. 791 (1935), THE SUPREME COURT MADE CLEAR THAT DELIBERATE PERJURY OF A COURT AND JURORS BY THE PRESENTATION OF KNOWN FALSE EVIDENCE IS INCOMPATIBLE WITH 'FUNDAMENTAL DEMANDS OF JUSTICE'. THIS WAS REAFFIRMED IN DYER V. KANSAS, 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed. 214 (1942). IN NADIE V. ILLINOIS, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959), WE SAID, 'THE SAME RESULT OBTAINS WHEN THE STATE, ALTHOUGH NOT SOLICITING FALSE EVIDENCE, ALLOWS IT TO GO UNCORRECTED WHEN IT APPEARS.' id., at 269, 79 S.Ct. at 1177. THE PROSECUTION'S USE OF KNOWN FALSE TESTIMONY AT TRIAL REQUIRED REVERSAL OF PERMONEE'S CONVICTIONS. SEE UNITED STATES V. ACHAS, 427 U.S. 97, 103, 49 L.Ed.2d 342, 96 S.Ct. 2392 (1976); THE TRIAL COURT ERRED IN DENYING THE DEFENSE MOTION FOR MISTRIAL WHEN THE PROSECUTOR IMPROPERLY COMMENTED UPON MR. CALHOUN'S CONSTITUTIONAL RIGHT TO REMAIN SILENT AT THE TIME OF HIS ARREST. IT IS WELL SETTLED THAT A DEFENDANT HAS A RIGHT TO REMAIN SILENT AND IT IS IMPROPER TO COMMENT ON HIS EXERCISE OF THAT RIGHT AT TRIAL. SEE DIAZ V. STATE, 958 So.2d 377, 385 (FLA. 3d DCA 2007) (CITING STATE V. HOPKINS, 718 So.2d 761, 770-71 (FLA. 1998)). BY THE WAY OF HIS ACTIONS, THE PROSECUTOR IN THIS CASE DID NOT LIVE UP TO HIS DUTY TO "REFRAIN FROM IMPROPER METHODS CALCULATED TO PRODUCE WRONGFUL CONVICTIONS" WHILE USING "EVERY LEGITIMATE MEANS TO BRING ABOUT A JUST ONE." CRAIG V. STATE, 685 So.2d 1224, 1224 (FLA. 1996) (QUOTING BEARER V. UNITED STATES, 295 U.S. 78, 55 S.Ct. 624, 79 L.Ed. 1314 (1935)). SEE id. (WINNING THAT THE ROLE OF PROSECUTOR IN A CRIMINAL CASE IS TO ASSURE "NOT THAT HE SHALL WIN A CASE, BUT THE JUSTICE SHALL BE DONE"). THE PROSECUTOR IN THIS UNBENEFICIAL CASE ACTS WERE SO ELEGANT AS TO DENY MR. CALHOUN'S TRIAL FUNDAMENTALLY UNFAIR. SEE DONNELLY V. UNITED STATES, 94 S.Ct. at 1871 (1974); THE TRIAL COURT ERRED IN USING THE WRONG LEGAL STANDARD TO DENY PERMONEE'S MOTION FOR JUDGMENT OF ACQUITTAL AS TO ALL COUNTS PERTAINING TO THE ALLEGED VICTIM, EITHER LEW, WHERE EITHER LEW FAILED TO IDENTIFY MR. CALHOUN AS TO HER ASSAILANT, AND THE EVIDENCE PRESENTED TO IMPLICATE HIM AS SUCH WAS ENTIRELY CIRCUMSTANTIAL. THUS, THE TRIAL COURT SHOULD HAVE APPLIED THE SPECIAL LEGAL STANDARD THAT APPLIES TO WHOLLY CIRCUMSTANTIAL CASES, WHEN RULING ON THE JOA AS TO VICTIM EITHER LEW. PRIOR TO AND DURING TRIAL PERMONEE MOVED TO SUPPRESS EVIDENCE SEIZED FROM THE SEARCH OF HIS RESIDENCE, ARGUING THAT LAW ENFORCEMENT UNLAWFULLY SEARCHED THE BEDROOM IN WHICH THE TRIAL COURT DENIED.

ALONG WITH FEELERS OF COUNSEL IN VIOLATION OF STEIGERMAN V. WASHINGTON, SUPRA, IN ITS CUMULATIVE EFFECT

denial, petitioner of his right to a fair and impartial trial resulting in his unlawful convictions. MR. CALHOUN APPEARED TO THE THEN DISTRICT COURT OF APPEALS AND WAS PER CUIAM AFFIRMED WITHOUT AN OPINION [CASE # 3713-1995]. ALTHOUGH TRIAL COUNSEL PROPERLY PRESERVED THE TRIAL COURT'S DENIAL OF MR. CALHOUN'S MOTION TO SUPPRESS EVIDENCE AND FOR FOR A FRANKS⁴ HEARING FOR DISTRICT APPEAL AND WAS ONE OF THE STRONGEST POINTS FOR APPELLATE COUNSEL'S FAILURE TO BRING THIS ISSUE FOR DISTRICT REVIEW COMPROMISED THE APPELLATE PROCESS TO SUCH A DEGREE TO UNDERMINE CONFIDENCE IN THE CORRECTNESS OF THE RESULT DEPRIVING MR. CALHOUN OF HIS 4TH, 6TH AND 14TH AMENDMENT RIGHTS OF THE U.S. CONSTITUTION. IN CONSIDERING REASONABLENESS OF AN APPELLATE'S DECISION NOT TO RAISE A PARTICULAR CLAIM, THE COURT MUST CONSIDER "ALL THE CIRCUMSTANCES, APPLYING HEAVY MEASURE OF DEFERENCE TO COUNSEL'S JUDGMENTS." PERICKLAND, 466 U.S. at 691, 104 S.Ct. at 2066. WHEREAS HERE, APPELLATE COUNSEL FAILED TO RAISE A CLAIM ON APPEAL THAT IS SO OBVIOUSLY VAID, THAT ANY COMPETENT LAWYER WOULD HAVE RAISED IT, NO FURTHER EVIDENCE IS NEEDED TO DETERMINE WHETHER COUNSEL WAS INEFFECTIVE FOR NOT DOING SO. COUNSEL'S FAILURE TO RAISE IT STANDING ALONE, ESTABLISHES COUNSEL'S INEFFECTIVENESS. SEE EGGLE V. LINAHAN, 279 F.3d 926 (11TH CIR. 2001). THEREAFTER, PETITIONER FILED SEVERAL POST CONVICTION PLEADINGS THAT WERE ALL SUMMARILY DENIED BY THE TRIAL COURT, AND WAS NEVER GIVEN THE OPPORTUNITY OF DUE PROCESS TO AN EVIDENTIARY HEARING IN ANY COURT NOTWITHSTANDING THE COURT FAILING TO FOLLOW THE LAW, AND REPEACH PORTIONS OF THE RECORD CONCLUSIVELY REJECTING MR. CALHOUN'S CLAIMS. THE THEN DISTRICT COURT OF APPEALS, PER CUIAM AFFIRMED ALL APPEALS IN REGARDS TO MR. CALHOUN'S POST CONVICTION PLEADINGS [CASE #S 3715-2385; 3716-0226; 3716-2082; 3717-0721 AND 3717-1076]. UPON EXHAUSTING ALL STATE COURT REMEDIES PETITIONER FILED HIS 2254 PETITION IN THE SOUTHERN DISTRICT COURT OF KENTUCKY THAT WAS RE-FILED FOUR DIFFERENT TIMES. SOUTHERN DISTRICT COURT MAGISTRATE JUDGE PATRICK A. WHITE DENIED MR. CALHOUN'S MOTION TO FILE AN ENLARGED 2254 PETITION, IN LIGHT OF SHOWING OF GOOD CAUSE TO DO SO DEPRIVING HIM OF HIS RIGHT TO BE HEARD. THE CONSTITUTIONAL GUARANTEE OF DUE PROCESS REQUIRES THAT EACH INDIVIDUAL BE GIVEN A FULL AND FAIR OPPORTUNITY TO BE HEARD, ANY DENIAL THEREOF ABSOLUTELY REQUIRES REVERSAL. ANY OF CASED V. RIEHL, 635 So.2d 17, 19-19 (MA. 1994); UNITED STATES V. WILSON, 159 F.3d 780 (7TH CIR. 1998); SEE U.S. CONSTITUTION. MAGISTRATE JUDGE PATRICK A. WHITE ENTERED AN ORDER REQUIRING PETITIONER TO FILE AN AMENDED PETITION IN ACCORDANCE WITH THE LOCAL RULES OF THE SOUTHERN DISTRICT [SEE APPENDIX B]. HOWEVER, DISTRICT COURT JUDGE CLAYTON A. MORENO AND THEN MAGISTRATE JUDGE WHITE'S REPORT AND RECOMMENDATION, AND DISMISSED MR. CALHOUN'S PETITION WITHOUT ISSUING A CERTIFICATE OF APPEALABILITY [SEE APPENDIX B]. PETITIONER MOVED FOR ISSUANCE OF A CERTIFICATE OF APPEALABILITY TO THE U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT WHICH WAS ALSO DENIED PURSUANT TO FAILING TO MEET THE SLACK TEST. THIS PETITION FOLLOWS:

⁴ FRANKS V. DELAWARE, 439 U.S. 168, 98 S.Ct. at 2082 (1978)

REASONS FOR GRANTING THE PETITION

MR. CALHOUN ARGUES THAT THE TRIAL COURT DEPRIVED HIM OF DUE PROCESS, THE RIGHT TO A FAIR AND IMPARTIAL TRIAL. PETITIONER MAINTAINS THE GROUNDS RAISED WITHIN HIS 2254 PETITION AND RELIES ON THEM TO SUPPORT HIS ARGUMENT HEREIN. UPON COLLATERAL ATTACK OF HIS CONVICTIONS PETITIONER APPEARED TO THE THIRD DISTRICT COURT OF APPEAL, WHERE HIS APPEAL WAS DECIDED CURIAM REBREM WITHOUT AN OPINION. MR. CALHOUN FILED SEVERAL POST-CONVICTION PLEADINGS IN THE STATE COURTS AND WHERE ALL SUMMARILY DENIED BY THE TRIAL COURT WITHOUT ACCORDING HIM THE RIGHT TO DUE PROCESS OF LAW, TO AT LEAST CONDUCT AN EXHAUSTIVE HEARING ON THE CLAIMS ADDRESSED THEREIN. THE STATE COURTS REFUSE TO ADEQUATELY ADDRESS THE GROUNDS RAISED ON FIRST APPEAL AND WITHIN HIS POST-CONVICTION PLEADINGS, AND APPLY LEGAL PRINCIPLES. NEITHER FLORIDA AND FEDERAL LAW REQUIRING THE COURTS TO GRANT HIM RELIEF. SEE PICARD V. CONNOR, 405 U.S. 270-275-277 (1971).

WITH THE FLORIDA COURTS DENYING HIM RELIEF, MR. CALHOUN PETITIONED TO THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT, FILING HIS 2254 PETITION AND MOTION TO FILE AN ENLARGED PETITION. AFTER COMPLYING WITH THE LOCAL RULES OF THE SOUTHERN DISTRICT BY MOVING TO FILE AN ENLARGED PETITION. MAGISTRATE JUDGE PATRICK A. WHITE DENIED PETITIONER'S MOTION TO FILE AN ENLARGED PETITION AND ENTERED AN ORDER REQUIRING AN AMENDED PETITION TO BE FILED TO COMPLY WITH THE APPLICABLE RULES OF PROCEDURE. IN THAT ORDER FOR AMENDED PETITION MAGISTRATE JUDGE WHITE STATES, "HERE, PETITIONER'S PETITION IS 49 PAGES, WHICH HAS SUBSTANTIALLY INTERFERED WITH THE COURTS ABILITY TO EFFECTIVELY AND EFFICIENTLY EVALUATE AND RESOLVE HIS PETITION. THEREFORE, PETITIONER MUST FILE AN AMENDED PETITION THAT COMPLES WITH THIS DISTRICT'S APPLICABLE PAGE LIMITS". LOCAL RULES FOR THE SOUTHERN DISTRICT OF FLORIDA, PRESCRIBE A TWENTY (20) PAGE LIMIT ON A PETITION AND ITS SUPPORTING MEMORANDUM. PETITION MAY NOT EXCEED TWENTY (20) PAGES EXCEPT LEAVE OF COURT AND UPON A SHOWING OF GOOD CAUSE. SEE S.D. LOC. R. 7.1(c)(2); S.D. LOC. R. 5.1(j)(3). IN HIS MOTION FOR LEAVE TO FILE AN ENLARGED 3 2254 PETITION MR. CALHOUN EXPLAINED TO THE COURT THAT HE COULD NOT COMPLY WITH THE TWENTY (20) PAGE LIMIT BECAUSE THE STATE COURT RECORD IS "EXTENSIVE" AND CONTAINS "MULTIPLE LEGAL ISSUES", AND ANY ABRIDGEMENT OR REDACTION TO THE CONTENTS OF THE PETITION WOULD SACRIFICE EFFECTIVE LITIGATION..., THUS, JEOPARDIZING FULL AND FAIR PRESENTATION OF THE PETITIONER'S CLAIMS." MOREOVER, MAGISTRATE JUDGE PATRICK A. WHITE EVEN AGREED HIMSELF THAT THE STATE COURT RECORD IS EXTENSIVE, THIS APPEARS TO BE A REVELATION OF PETITIONER'S AGGRESSIVE, IF NOT VEXATIOUS LITIGATION TACTICS.

THE LAW IS WELL-SERVED THAT PIECEMAIL LITIGATION IS NOT TOLERATED BY THE COURTS AND, WHERE THIS IS THE PETITIONER'S FINAL AND ONLY CHANCE TO BE HEARD AS A PRO SE LITIGANT ON THE FEDERAL LEVEL NIE TO 2244(d)(1)'S ONE YEAR STATUTE OF LIMITATIONS. MR. CALHOUN CONCLUDES THAT HE MUST INCLUDE WITHIN

HIS PETITION ALL THE GROUNDS FOR RELIEF FROM HIS CONVICTIONS. IF HE FAILS TO SET FORTH ALL THE GROUNDS IN HIS PETITION, HE MAY BE BARRED FROM PRESENTING ADDITIONAL GROUNDS AT A LATER DATE. "PARTIES MUST TAKE BEFORE THE MAGISTRATE, NOT ONLY THEIR BEST SHOT BUT ALL OF THE SHOTS." BORDEN V. SEC'y OF HEALTH & HUMAN SERV., 836 F.2d 4, 6 (1st CIR. 1987) (QUOTING SINGH V. SUPERINTENDING SCH. COMM., 593 F. SUPP. 1315, 1318 (D. Me. 1984)). MAGISTRATE JUDGE P. A. WHITE CLAIMS THAT PETITIONER'S 49 PAGE PETITION HAS SUBSTANTIALLY INTERFERED WITH THE COURT'S ABILITY TO EFFECTIVELY AND EFFICIENTLY EVALUATE AND RESOLVE HIS PETITION WITHOUT FURTHER EXPLANATION AS TO HOW.

MR. CAHOON ARGUES THAT MAGISTRATE'S ORDER IS CLEARLY ERRONEOUS AND CONTRARY TO THE LAW. HERE, PETITIONER COMPLIED WITH THE RULES OF THE SOUTHERN DISTRICT OF FLORIDA BY MOVING FOR LEAVE TO FILE AN ENLARGED PETITION AND BY A SHOWING OF GOOD CAUSE TO FILE SUCH ENLARGED PETITION IN ORDER FOR ALL OF THE CLAIMS ADDRESSED THEREIN TO BE HEARD. WHERE THE CLAIMS HAVE NOT BEEN DEEMED FRIVOLUS AND BASED ON THE FACT THAT ALL CLAIMS SET FORTH WITHIN THE FORTY-NINE (49) PAGE PETITION ARE SHORT, PRECISE AND STATES CONSTITUTIONAL VIOLATIONS, DUE PROCESS AND THE ENDS OF JUSTICE REQUIRES FOR HIM TO BE HEARD, REGARDLESS OF A PAGE LIMIT. TO THE CONTRARY, MAGISTRATE JUDGE P. A. WHITE'S ORDER REQUIRES FOR THE PETITIONER TO REJECT OR ABANDON HIS 2254 PETITION BY DOWNSIZING THE PAGES FROM 49 PAGES TO 20 PAGES, RESULTING IN THE COURT(S) BEING DEPRIVED OF REVIEWING THE STATE COURT RECORD AND EXHAUSTIVE CLAIMS ADDRESSED THEREIN AS A WHOLE. THE COURT(S) NEEDS TO BE AWARE OF THE TOTAL PICTURE AS TO THE FACTS AND CIRCUMSTANCES OF THE UNDERLYING CASE, TO MAKE THE PROPER DETERMINATION IF A MANIFEST INJUSTICE HAS OCCURRED AND/OR IF HABEAS RELIEF IS WARRANTED. THUS, GOOD APPROACH SOMETIMES REQUIRES ADDITIONAL TIME, SPACE AND PETITION WHICH CAN'T ALWAYS BE CRAMMED INTO 20 PAGES.

IN ADDITION TO THE ABOVE ARGUMENT, THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA HAS ALLOWED THE FILING OF ENLARGED PETITIONS WHICH HAVE WELL EXCEEDED THE APPLICABLE PAGE LIMIT TO ENSURE AN PETITIONER'S RIGHT TO BE HEARD IS NOT THWARTED UPON. SEE PICTAL V. DIR. DEPT. OF CORR'S, 641 F.3d 1276, 2011 U.S. APP. LEXIS (11TH CIR. MAR. 2011). IN PICTAL THE COURT (MAGISTRATE JUDGE PATRICK A. WHITE) ALLOWED THE PETITIONER TO FILE AN ENLARGED 2254 PETITION OF 113 PAGES ALONG WITH A 75 PAGE MEMORANDUM OF LAW UPON SHOWING OF GOOD CAUSE. THEREFORE, PETITIONER CONTENTS THAT HE HAS BROUGHT BEFORE THE COURT(S) THE SAME FACTS WHICH UNDER THE LAW DESERVE THE SAME TREATMENT. STARE DECISIS IS OF FUNDAMENTAL IMPORTANCE TO THE RULE OF LAW BECAUSE, AMONG OTHER THINGS, IT PROMOTES STABILITY AND PROTECT EXPECTATIONS; IT MEANS LIKE FACT WILL RECEIVE LIKE TREATMENT IN THE COURT OF LAW. IRWIN V. DEPT. OF VETERAN AFFAIRS, 498 U.S. 89, 100 n.3, 111 S.Ct. 453, 460 n.3, 112 L.Ed.2d 435 (1990); FLOWERS V. UNITED STATES, 764 F.2d 759 (11TH CIR. 1995). SEE ALSO 5TH, 14TH AMENDMENT U.S.C.

AFTER THE DISTRICT COURT JUDGE E. A. MORENO ENTERED HIS ORDER ADJOURNING MAGISTRATE JUDGE'S REPORT AND

RECOMMENDATIONS AND DISMISSED THE COMPLAINT FOR FAILURE TO COMPLY WITH COURT ORDERS. MR. CALHOUN FILED HIS MOTION FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY TO THE UNITED STATES COURT OF APPEALS WHICH WAS DENIED ON THE GROUND(S) OF FAILURE TO MEET THE SLACK TEST.⁵ PETITIONER FILED A TIMELY MOTION TO RECONSIDER, VACATE, OR MODIFY MAKING A REQUISITE SHOWING UNDER THE SLACK TEST BUT HOWEVER THE COURT STILL DENIED HIM THE RELIEF IN WHICH HE IS ENTITLED.

HERE, UNDER THESE PRESENTS FACTS AND CIRCUMSTANCES, MR. CALHOUN WAS DENIED EQUAL APPLICATION OF THE LAW, WHICH HAS BEEN DECIDED BY THE FLORIDA AND FEDERAL COURTS AND, APPLIED TO OTHER CASES WITH THE SAME FACTS. PETITIONER HAS SET FORTH A VIABLE DUE PROCESS VIOLATION WHICH NEEDS ATTENTION AND URGENT REVIEW OF THIS COURT TO ENSURE HIS RIGHTS SAFEGUARDED BY THE U.S. CONSTITUTION IS NOT CONTINUOUSLY THWARTED UPON. THE SUPREMACY CLAUSE OF OUR CONSTITUTION, ART. VI, CL. 2, U.S. CONST., PROVIDES THAT LAWS OF THE UNITED STATES SHALL BE THE SUPREME LAW OF THE LAND; ANYTHING IN THE CONSTITUTION OR LAWS OF ANY STATE TO THE CONTRARY NOTWITHSTANDING. TIME WARNER CABLE V. DOYLE, 66 F.3d 867 (7th CIR. 1995).

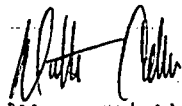
THE STATE COURT(S) SHOULD HAVE APPLIED THE LAW TO MR. CALHOUN'S CASE BUT FAILED TO DO SO. THE TRIAL COURT COULD HAVE IN ITS REVIEWABLE DISCRETION, EITHER GRANTED A NEW TRIAL OR DISMISSED THE CASE OUTRIGHT IF IT FINDS THAT THE PROSECUTORIAL MISCONDUCT WAS SO PERVASIVE THAT PETITIONER WAS DEPRIVED OF DUE PROCESS. SEE MUNDT V. STATE, 629 SO. 2d 90, 98 (FLA. 1993). RELYING ON THE DUE PROCESS GUARANTEES SET FORTH IN ARTICLE I, SECTION 9, OF THE FLORIDA CONSTITUTION, THE SUPREME COURT OF FLORIDA HAS STATED "THAT GOVERNMENTAL MISCONDUCT WHICH VIOLATES THE CONSTITUTIONAL DUE PROCESS RIGHT OF A DEFENDANT, REGARDLESS OF THAT DEFENDANT'S PREJUDICATION, REQUIRES THE DISMISSAL OF THE CHARGES." STATE V. CLOSSON, 462 SO. 2d 1082, 1085 (FLA. 1985). MR. CALHOUN MET HIS BURDEN OF DEMONSTRATING A MANIFEST INJUSTICE THROUGH CLEAR PROOF OF PREJUDICE. SEE WILLIAM V. STATE, 316 SO. 2d 267, 274 (FLA. 1975). WHERE "A MANIFEST INJUSTICE HAS OCCURRED, WITHIN A CASE SUCH AS THE PETITIONER'S, IT IS THE RESPONSIBILITY OF THE COURT TO CORRECT THAT INJUSTICE IF IT CAN." LAGO V. STATE, 975 SO. 2d 613, 614 (FLA. 3d DCA 2006) (QUOTING PEREZ V. STATE, 119 SO. 3d 249 (FLA. APP. 3 DIST. 2013)).

IN CONCLUSION, SINCE THE STATE COURT FAILED TO CORRECT THE INJUSTICE IN WHICH RELIEF IS WARRANTED, AND THE SOUTHERN DISTRICT COURT MAGISTRATE JUDGE WHO DISMISSED MR. CALHOUN'S 2854 PETITION WITHOUT RULING ON THE MERITS THEREOF. PURSUANT TO RULES OF THIS COURT, RULE 10, PETITIONER CONTENDS THAT THE COMPELLING REASONS FOR GRANTING HIS PETITION IS BECAUSE THE COURT HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER. TO CORRECT THIS INJUSTICE THAT CONSTITUTES A MISCARriage OF JUSTICE, IN VIOLATION OF UNITED STATES CONSTITUTION.

⁵ SLACK V. McDENNIS, 524 U.S. 473, 478 (2000).

CONCLUSION

THE PETITION FOR A WRIT OF HABEAS CORPUS SHOULD BE GRANTED.


RESPECTFULLY SUBMITTED,

DATE: AUGUST 17, 2020