No._____

IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM EARL SWEET,

PETITIONER

VS.

STATE OF FLORIDA,

RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTIONS PRESENTED

Mr. Sweet has attempted to obtain relief from his false conviction and death sentence based on serious constitutional violations, only to be continually denied relief based on mere technicalities. The state courts have proven inadequate to obtain relief despite his actual innocence. Accordingly, he presents the following questions to this Court to obtain the justice that has so far eluded him:

1. Whether it amounts to a suspension of the writ of habeas corpus for the state courts to fail to consider claims from an individual with compelling evidence of actual innocence to challenge a conviction and death sentence when this resulted from the ineffectiveness of state-provided trial and postconviction counsel, and full consideration of the constitutional claims is necessary to prevent the execution of an actually innocent individual?

2. Whether the Eighth Amendment and the Suspension Clause require that an individual have a fair opportunity to show actual innocence in state court and have such a claim considered?

LIST OF PARTIES

All Parties are listed in the caption.

NOTICE OF RELATED CASES

Per Supreme Court Rule 14.1(b)(iii), these are the related cases:

Underlying Trial:
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: August 30, 1991

Direct Appeal:
Florida Supreme Court
Sweet v. State, 624 So. 2d 1138 (Fla. 1993)
Judgment Entered: August 5, 1993 *(rehearing denied* October 14, 1993)

Supreme Court of the United States
Sweet v. Florida, 510 U.S. 1170 (1994)
Judgment Entered: February 28, 1994

First Postconviction Proceedings:
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: March 30, 2000

Florida Supreme Court
Sweet v. State, 810 So. 2d 854 (Fla. 2002)
Judgment Entered: January 31, 2002

Florida Supreme Court
Sweet v. Moore, 822 So. 2d 1269 (Fla. 2002)
Judgment Entered: June 13, 2002

United States District Court for the Middle District of Florida
Sweet v. Crosby, 2005 WL 1924699 (M.D. 2006)
Case No. 3:03-cv-00844-HES
Judgment Entered: August 8, 2005

United States Court of Appeals for the Eleventh Circuit
Sweet v. Secretary, Dept. of Corrections, 467 F.3d 1311 (11th DCA 2006)
Judgment Entered: October 23, 2006 (rehearing denied November 29, 2006)

Supreme Court of the United States
Sweet v. McDonough, 550 U.S. 922 (2007)
Judgment Entered: April 30, 2007

Second Postconviction Proceedings:
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: February 11, 2004

Florida Supreme Court
Sweet v. State, 900 So. 2d 555 (Fla. 2004)
Judgment Entered: December 20, 2004 (rehearing denied March 24, 2005)

Third Postconviction Proceedings:
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: July 11, 2005

Florida Supreme Court
Sweet v. State, 934 So. 2d 450 (Fla. 2006)
Judgment Entered: June 16, 2006

Fourth Postconviction Proceedings:
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: September 3, 2009

Fifth Postconviction Proceedings:
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: September 20, 2013

Sixth Postconviction Proceedings:
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: September 29, 2017

Florida Supreme Court
Sweet v. State, 248 So. 3d 1060 (Fla. 2018)
Judgment Entered: May 24, 2018 (rehearing denied July 9, 2018)

United States District Court for the Middle District of Florida
Case No. 3:18-cv-874-J-34JRK (*petition pending)*

Seventh Postconviction Proceedings:
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: March 3, 2017

Florida Supreme Court
Sweet v. State, 234 So. 3d 646 (Fla. 2018)
Judgment Entered: January 24, 2018

Eighth Postconviction Proceedings (*present petition*):
Circuit Court of Duval County, Florida
State of Florida v. William Sweet, 1991-CF-2899
Judgment Entered: January 7, 2019

Florida Supreme Court
Sweet v. State, 239 So. 3d 448 (Fla. 2020)
Judgment Entered: February 27, 2020 (rehearing denied April 21, 2020)

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Appendix A: The unreported opinion of the Circuit Court in and for Duval County denying Successive Motion for Postconviction under Florida Rule of Criminal Procedure 3.851, issued January 7, 2019.

Appendix B: The opinion of the Supreme Court of Florida affirming the denial of postconviction relief, reported at *Sweet v. State*, 293 So. 3d 448 (Fla. 2020).

Appendix C: Order denying rehearing SC19-195, 2020 WL 1921623 (Fla. 2020), issued April 21, 2020.

Appendix D: The opinion of the Supreme Court of Florida affirming the judgment and sentence, reported at *Sweet v. State*, 624 So. 2d 1138 (Fla. 1993).

Appendix E: The opinion of the Supreme Court of Florida affirming the denial of postconviction relief, reported at *Sweet v. State*, 810 So. 2d 854 (Fla. 2002).

Appendix F: The opinion of the Supreme Court of Florida affirming the denial of postconviction relief, reported at *Sweet v. State*, 248 So. 3d 1060 (Fla. 2018).

TABLE OF AUTHORITIES

CASES:

STATUTES AND RULES:

CONSTITUTIONAL PROVISIONS:

OTHER:

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

DECISIONS BELOW

The decision of the Florida Supreme Court appears at Appendix B to the petition and is reported at *Sweet v. State*, 239 So. 3d 448 (Fla. 2020). The Florida Supreme Court order denying Sweet's motion for rehearing is unpublished and attached as Appendix C to the petition. The trial court's order denying postconviction relief is also unpublished and attached as Appendix A.

JURISDICTION

The judgment of the Florida Supreme Court was entered on February 27, 2020. A timely petition for rehearing was denied by the Florida Supreme Court on April 21, 2020.

An extension of time to file the petition for a writ of certiorari was granted by order of this Court dated March 19, 2020 extending the time for seeking certiorari to 150 days.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution states:

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 compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The Eighth Amendment to the United States Constitution states:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Fourteenth Amendment to the United States Constitution, Section 1 states:

> All persons 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.

Article I, Section 9, Clause 2 of the United States Constitution states:

> The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

STATEMENT OF THE CASE

Mere technicalities should not silence the pleas of the innocent. William Sweet asserts that he is innocent and that the United States Constitution should allow him to meaningfully challenge his conviction and death sentence. This Court should grant certiorari because the Florida Supreme Court's decision bypassed claims that should have been heard and decided in Mr. Sweet's favor and would have allowed him to overcome a wrongful conviction and death sentence.

1. Trial Proceedings and Evidence

On June 28, 1990, William Sweet was arrested for one count of first degree murder of Felicia Bryant in violation of Fla. Stat. 782.04(1)(a), three counts of Attempted First Degree Murder of Marcene Cofer, Mattie Bryant and Sharon Bryant, in violation of Fla. Stat. 782.04 and Fla. Stat. 777.04, and one count of armed burglary to a dwelling with an assault, in violation of Fla. Stat. 810.02. A jury trial began on May 20, 1991. There was no physical evidence tying Mr. Sweet to the crime scene. The State's case was based solely on circumstantial evidence and eyewitness testimony. There was no physical evidence to prove Mr. Sweet's involvement in the shooting. The murder weapon was neither found in a search of Sweet's apartment nor recovered elsewhere. There were no fingerprints, no hair, no blood, no DNA evidence, nor any specific ballistics evidence that tied Sweet to Cofer's apartment in the early morning hours of June 27, 1990. Although witnesses testified that the shooter wore a ski mask or that his face was obscured by dark clothing, none of these items were ever recovered.

The State's theory was that Mr. Sweet attempted to murder Cofer because she had identified him as a suspect in an earlier robbery of her apartment. Mr. Sweet was never charged with this crime. The State's case hinged on the testimony of three witnesses. Cofer was the only adult witness who identified Mr. Sweet as the shooter at trial.[1] R2/510. Sharon Bryant, twelve years old at the time of the shooting, identified Mr. Sweet in a suggestive lineup that was later suppressed. R3/653. At

1 The other adult victim, Mattie Mae Bryant, was never able to identify Sweet. R3/732.

trial, Bryant explained she identified Mr. Sweet after viewing his obscured face through a peephole for six or seven seconds. R3/622-24. Bryant did not "really" get a good look at Mr. Sweet's face when she saw him for less than a minute during the shooting. R3/629-632. Finally, Solomon Hansbury, a jailhouse snitch, testified Mr. Sweet confessed to the shooting while he was waiting for trial. R5/943. Both Cofer and Hansbury had prior criminal activity. R2/534; R5/931.

The jury found Mr. Sweet, who was represented by lawyers without any capital trial experience, guilty on all charges. R6/1170; R10/1780.[2] After a penalty phase presentation including a sole, unprepared witness, the jury recommended death by a vote of 10 to 2 on June 4, 1991. R/1278. The Court imposed Mr. Sweet's death sentence on August 30, 1991. Mr. Sweet appealed to the Florida Supreme Court. The Florida Supreme Court affirmed the conviction and death sentence. *Sweet v. State*, 624 So. 2d 1138 (Fla. 1993). This Court denied his petition for certiorari. *Sweet v. Florida*, 510 U.S. 1170 (1994).

2. Postconviction Proceedings, Evidence, and Decisions Below

a. First Postconviction Proceeding

On August 1, 1995, Mr. Sweet filed his First Postconviction Motion which was subsequently amended on June 30, 1997 (the "First Motion"). He raised twenty-eight claims for relief. The trial court granted an evidentiary hearing on four claims and this hearing was held on January 25-28, 1999. The trial court denied the motion in a

2 Page references to the record on direct appeal after trial are designated with R[volume number]/[page no]. Citations to the first postconviction record on appeal will be cited as PC[volume number]/[page number]. Citations to the sixth postconviction record on appeal will be cited T/[page number].

written order dated March 30, 2000 and it was affirmed on appeal on January 31, 2002. *Sweet v. State*, 810 So. 2d 854 (Fla. 2002).

During the evidentiary hearing on the First Motion, it came to light that Mr. Sweet's trial counsel, Charlie Adams, had never represented a client facing the death penalty. PC9/1765. Adams suffered "health problems" throughout his representation. PC10/1777. Lindsey Moore, second chair counsel who joined Mr. Sweet's case fifty days before jury selection, also had no capital experience. PC8/1454. Moore believed that Adams was "burdened by the work that he had" and asked him to cross examine two to three witnesses. PC8/1455. "Beyond cross examining the witnesses," Moore did not feel he was competent and qualified to do what Adams asked him to do. PC8/1468-69. Yet Moore was given the important responsibility of preparing the mitigation phase and questioned the only mitigation witness without even meeting her. [3]

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3 Moore testified that he did not obtain school, mental health, medical, foster care, or juvenile justice records to prepare for Mr. Sweet's mitigation phase. PC8/1462. Even more shocking, Moore testified he was completely unprepared:

> Q: All right. You did present the testimony of Deonne Sweet during the penalty phase of Mr. Sweet's trial, is that correct, his sister?
> A: I started to present it, yes.
> Q: Okay. Tell me about the circumstances of you putting on the direct examination of Deonne Sweet.
> A: Well, to the best of my recollection the Court – either it was lunch time or a recess. I am not sure which…when court resumed that day for the first time I learned that I was to examine her but I had never seen her before.
> Q: Okay. You had never talked to the lady?
> A: Never talked with her.
> Q: And you did not prepare her to testify in any way, shape or form?
> A: I had never seen her.
> Q: Did you know what questions you were going to ask her?
> A: No.
> Q: How did you determine what questions to ask her?
> A: Played it by ear.
> Q: So you shot from the hip?
> A: Right.
> Q: And Deonne Sweet was the only witness presented during the penalty phase of Mr. Sweet's trial?

R8/1463-64.

Adams' theory of defense was that "[Sweet] didn't do it," specifically noting that the case was one of misidentification. PC10/1783. He agreed that any evidence of other potential suspects would have been helpful to the defense. PC10/1785. Charles Abner, a private investigator hired by Adams for $300-$500, worked on Mr. Sweet's capital case "[p]robably off and on about a week-and-a-half" to find additional witnesses. PC8/1438-41. This was the first time Adams ever utilized an investigator in any of his cases. PC9/1768. Abner "didn't accomplish a whole lot at the time" because investigating a capital case like this one would, at a minimum, cost $5000 to $6000 in fees. PC8/1439, 1441. *See generally Hinton v. Alabama,* 571 U.S. 263, 274 (2014) (trial attorney's failure to request additional funding in order to replace an inadequate investigator constituted deficient performance under *Strickland v. Washington*, 466 U.S. 668 (1984)).

Despite a lack of investigative resources, Adams proffered one exculpatory witness, Cofer's cousin, Anthony McNish. PC10/1788. McNish was listed as a defense witness and deposed by the State but did not appear at trial. R5/997-1002. McNish's expected testimony was proffered to the trial court: he had known Sweet for five or six years; saw three people by Cofer's apartment in the early morning hours of June 27, 1990; and none of the three men were built like Sweet or walked like Sweet. R5/997-98. The court would not delay the trial to accommodate McNish's exculpatory

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A: To my knowledge, yes.

PC8/1463-64. Moore was subsequently disbarred. PC8/1469.

testimony. R5/997-1002. The defense rested without calling him as a witness. *Id*.

McNish eventually testified at the first postconviction hearing that he saw three people by Cofer's apartment in the early morning hours of June 27, 1990. None of the three men McNish observed could have been Sweet because they had a different walk, skin complexion, and weight than Sweet. PC10/1867-69. The three men were between 5'6" and 5'7" and stocky – not tall and slim like Mr. Sweet. PC10/1864. McNish believed one of the three men was wearing a mask because his face was very dark compared to the skin tone on his hands. PC10/1868. McNish recognized one of the three men and while he would not identify the person by name, he knows it was not Mr. Sweet. PC10/1902. McNish also testified that he received the subpoena for trial, but he could not attend court because of childcare and transportation issues. PC10/1872-73. He told Mr. Sweet's trial counsel that he would need transportation to court. PC10/1874. If the proper arrangements had been made, McNish would have testified at the trial as he did during this evidentiary hearing. PC10/1875.

Solomon Hansbury was a two-time felon who received a sentence of probation in exchange for his fabricated testimony against Mr. Sweet. R5/931-33. At trial, Hansbury testified about a conversation with Sweet in which Mr. Sweet purportedly confessed to the murder and explained he wished he had killed Cofer and the Bryants. R5/943. Hansbury recanted this testimony during the 1999 hearing on the First Motion. R10/1908-14. He said:

> Counsel: Can you explain what lead up to your testimony in Mr. Sweet's trial?
> A: What lead up to it?
> Q: How it was arranged that you were to testify against Mr. Sweet?

> A: I talked to the State Attorney and agreed to testify against Earl.
> Q: Okay. And you got some benefit for doing that?
> A: Yeah. You could say that . . . .
> Q: Do you recall what you said at Mr. Sweet's trial?
> A: Yeah
> Q: Was it the truth?
> A: No
> Q: You want to explain what the truth is?
> A: There is no truth, you know. What I said in the trial was something that it was like stuff that I heard. You know. Earl never told me nothing. He never told me anything, you know. When I met Earl in the holding cell it was like him talking to somebody else and he was like, yeah, man, I just can't believe they came and got me talking about a murder for something I don't know nothing about.

Id. at 1909-10.

Mr. Sweet sought federal habeas corpus relief under 28 U.S.C. § 2254 in the Middle District of Florida following the denial of his first postconviction motion and evidentiary hearing. Mr. Sweet raised the following:

> 1) The Court erred when it failed to grant Mr. Sweet's personal request to go to trial and when it failed to adequately inquire whether he wanted to represent himself
>
> 2) Mr. Sweet was denied the effective assistance of counsel at the guilt phase of the capital proceedings, in violation of the 6th, 8th, and 14th amendments to the U.S. Constitution
>
> 3) Mr. Sweet was denied the effective assistance of counsel at the penalty phase of his capital trial, in violation of his rights to due process and equal protection under the U.S. constitution, as well as his rights under the 5th, 6th, and 8th amendments
>
> 4) Mr. Sweet's jury received inadequate instructions regarding the avoid arrest aggravating factor, in violation of his 8th and 14th amendment rights. Appellate counsel was ineffective for failing to raise this claim in Mr. Sweet's direct appeal.
>
> 5) Florida's capital sentencing statute violates the 6th and 14th amendments to the U.S. Constitution.

On August 8, 2005, the District Court dismissed the petition with prejudice. *Sweet v. Crosby*, 2005 WL 1924699 (M.D. 2006). The district court found that the habeas petition was time barred because postconviction counsel improperly relied on Mr. Sweet's first successive postconviction motion to toll the time for filing a federal habeas petition under 28 U.S.C. § 2254. Mr. Sweet appealed the district court's dismissal with prejudice. The Eleventh Circuit Court of Appeals held that the dismissal was proper because, based on *Pace v. DiGuglielmo*, 544 U.S. 408 (2005), Mr. Sweet's *Ring* petition was not timely filed in state court and, therefore, under § 2244(d), it was not "properly filed" and could not toll the time for filing his federal habeas petition. *Sweet v. Sec'y, Dept. of Corr.*, 467 F.3d 1311, 1322 (11th Cir. 2006). This Court denied Mr. Sweet's petition for writ of certiorari. *Sweet v. McDonough*, 550 U.S. 922 (2007).

b. Sixth Postconviction Proceeding

Mr. Sweet filed his Sixth Successive Motion to Vacate Judgments of Conviction and Sentence (the "Sixth Motion"), based on the newly discovered exculpatory evidence by eyewitness Eric Wilridge, on October 28, 2016. The trial court explained the need to conduct a "cumulative analysis of all the evidence, including evidence that was previously excluded as procedurally barred or presented in another post-conviction proceeding." T/165. The order specifically addressed the inclusion of powerful changed testimony by the only adult eyewitness and victim, Marcene Cofer. T/166-67. The Court held that, "the fact that identity of the perpetrator was an issue at trial, Mr. Wilridge's testimony could have a material impact at retrial." T/166. The

court allowed Mr. Sweet, "to present additional evidence at the evidentiary hearing to support his claim that Ms. Cofer recanted her testimony." T/166-67. At the evidentiary hearing on the Sixth Motion, Mr. Sweet presented former postconviction counsel Frank Tassone, Marcene Cofer, and Eric Wilridge as witnesses.

Wilridge's eyewitness testimony added to the list of other exculpatory evidence and provides a further probability of acquittal in Mr. Sweet's case. Wilridge testified that during the early morning on June 27, 1990, he was speaking on a pay phone when he observed three individuals standing near Cofer's front door. T/574, 578-79. Wilridge rode his bicycle to the corner of 3rd and Market Streets. T/580. While standing there, Jessie Gaskins approached Wilridge and was acting "kind of hyper."[4] T/581. After speaking with Gaskins, Wilridge rode his bike about 25 yards from Cofer's front door. T/110-11. From this location, Wilridge observed one man he did not recognize standing outside Cofer's door. T/585. The man was wearing a short-sleeved shirt, dark jeans, and had his arm extended. T/586-87. Wilridge could not see this man's face because of the way he was positioned and because there was a dark colored item covering part of his head. T/587. The man was about 5'9", weighed about 160 pounds, and had light brown skin. T/588, 600. Wilridge stated that Mr. Sweet is taller, more slender and has darker skin than the man he saw. T/600.

Wilridge's testimony at the Sixth Motion evidentiary hearing regarding

4 Jessie Gaskins was discovered by the State, listed as a defense witness, and deposed prior to trial. PC10/1797. Gaskins gave a police statement that on the night of the shooting "somebody had pulled a gun on him and made him knock" on Cofer's door. PC10/1798. Gaskins described this person as wearing a ski mask with holes cut out and not wearing a shirt. PC10/1798. Wilridge describes speaking with Gaskins after observing him walking from the direction of Cofer's apartment and acting "hyper." T/581. It would be likely to assume that Wilridge ran into Gaskins moments after he was held at gunpoint, giving explanation to Gaskin's demeanor.

multiple persons in the alley near Cofer's front door and then later, a single man at the door, is supported throughout the trial record. T/578-79. Mattie Mae Bryant stated at trial that she "peeped out and saw two heads, two guys standing [outside Marcene's door]." R3/730. McNish testified at the first postconviction hearing that he observed three men enter the alley but later only observed one man standing at Cofer's door. PC10/1862-63.

Wilridge's description of the single man at the door is also corroborated by other witnesses. Wilridge described the man as 5'9", weighing about 160 pounds, and with light brown skin and could not have been Sweet, who was taller, slender and had darker skin. T/588, 600. McNish's similarly saw three men outside Cofer's apartment that were between 5'6" and 5'7" and stocky. PC10/1864. McNish stated that none of these men could have been Mr. Sweet because they had a different walk, skin complexion, and weight. PC10/1867-69. Wilridge could not see the man's entire face because there was a dark colored item covering part of his head. T/587. Gaskins described the person who held a gun to him as wearing a ski mask. PC10/1798. McNish believed one of the three men he observed was wearing a mask because his face was very dark compared to the skin tone on his hands. PC10/1868.

Marcene Cofer, the State's star witness, also testified at the evidentiary hearing on the Sixth Motion. Cofer recanted parts of her prior trial testimony and provided more reasonable doubt about Mr. Sweet's guilt. When Cofer was 18 years old in 1990, she lived in a rough, drug-infested, crime ridden neighborhood in Jacksonville. T/56, 59. After she was shot on June 27, Cofer was admitted to the hospital for four or five days, felt stress, and had nightmares. T/61. Cofer was the

first witness called by the State at trial and was the State's sole adult eyewitness. T/61. During the Sixth Motion evidentiary hearing, Cofer stated she does not "want Earl Sweet to die on death row and he wasn't the one that pulled that trigger." T/88. The issue of her prior testimony against Sweet has haunted her since 1991. T/68 ("every time [the conclusion that William Sweet didn't shoot] comes back up in my life . . . I kind of go back over it in my head . . . that's something that I feel that's true"). Cofer worried that the wrong man was on death row. T/68. Cofer was cogent, sensible and articulate on the witness stand. T/55-90. She has no motive to fabricate her testimony. Cofer testified for no other reason than she felt it was the right thing to do. T/89. The depth and sincerity of her feelings came through when she concluded, "I don't know him, I never met him, I never talked to him. He never wrote me a letter. It's just something that came over my heart." T/90.

c. Eighth Postconviction Proceeding

On April 24, 2018, Mr. Sweet filed his Eighth Successive Motion to Vacate Judgments of Conviction and Sentence alleging the following:

1) Mr. Sweet was a victim of ineffective assistance of trial and post-conviction counsel given that he was represented by a lawyer with a severe drinking problem and postconviction counsel never used this evidence during any postconviction proceeding in violation of Due Process and his right to counsel under the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution and corresponding provisions of the Florida Constitution.

2) Mr. Sweet's false testimony claim was never filed by ineffective post-conviction counsel in violation of his rights under the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution and corresponding provisions of the Florida Constitution.

3) The spoliation of Eric Wilridge's jail records deprived Mr. Sweet of a fair hearing on his Sixth Successive motion under Rule 3.851 in

violation of Due Process and fundamental fairness.

4) Sentencing to death and executing someone who is actually innocent violates the Fifth, Eighth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

The circuit court denied all of Mr. Sweet's claims without a hearing on January 7, 2019. *Id*. Mr. Sweet timely appealed this denial to the Florida Supreme Court. The Florida Supreme Court affirmed the denial of all claims on February 27, 2020. A timely petition for rehearing was denied on April 21, 2020.

REASONS FOR GRANTING THE PETITION

I. THE CLAIMS THAT MR. SWEET RAISED IN STATE COURT WERE MERITORIOUS AND DEMAND RELIEF

A. Ineffective Assistance of Postconviction Counsel

Mr. Sweet brought two claims of ineffective assistance of postconviction counsel. One claim involves trial counsel's severe drinking problem, which was discovered, but never disclosed, by postconviction counsel. The second is regarding postconviction counsel's failure to file a *Giglio* claim regarding the perjured testimony of State witness, Solomon Hansbury. Mr. Sweet's postconviction counsel's grave errors beyond all expectation are partly responsible for this wrongful conviction. Postconviction counsel failed to use an affidavit that proved Sweet's trial counsel was drunk, missed federal habeas deadlines, and filed more than twenty motions for fees to investigate and prepared a meritorious *Giglio* claim that was never actually filed. The facts of these claims far exceed the type of error that might exist in a standard death penalty case and show the cumulative effect of a denial of due process and

constitutional guarantees.

The Florida Supreme Court did not review the merits of either ineffective assistance of postconviction counsel claim. Rather, these claims were summarily denied. The Florida Supreme Court stated, "'we have 'repeatedly held that claims of ineffective assistance of postconviction counsel are not cognizable'" and not a viable basis for relief under Fla. R. Crim. P. 3.851. *Sweet v. State*, 293 So. 3d 448, 453 (Fla. 2020) (citing *Banks v. State*, 150 So. 3d 797, 800 (Fla. 2014)). The Florida Supreme Court further denied the underlying independent claims of ineffective assistance of trial counsel as untimely, stating that claims of ineffective assistance of counsel do not circumvent the filing deadlines for postconviction claims under Fla. R. Crim. P. 3.851(d)(2). *See Sweet v. State,* 293 So. 3d 448, 453 (Fla. 2020). Postconviction counsel's "failure to include this ineffective assistance of trial counsel claim in the original postconviction motion does not make the new claim forever timely. Because Sweet failed to allege a valid exception to the one-year deadline for his otherwise untimely claim, we hold that Sweet was not entitled to an evidentiary hearing on his claim of ineffective assistance of trial counsel (to the extent his motion includes such a claim)." *Id.*

However, several jurisdictions recognize ineffective assistance of postconviction counsel as a stand-alone claim for postconviction relief or as a basis to circumvent a procedural bar to ineffective assistance of trial counsel claims. *See* Colorado: *People v. Valdez*, 178 P. 3d 1269, 1279 (2007) (a claim of ineffective assistance of postconviction counsel can be the basis for justifiable excuse or excusable neglect in an otherwise time barred ineffective assistance of trial counsel

claim); Iowa: *Goode v. State*, 920 N.W. 2d 520, 524 (2018) (the statutory right to postconviction counsel implies a right to effective postconviction counsel); Minnesota: *Pearson v. State*, 891 N.W. 2d 590, 600 (2017) (to prevail on a claim of ineffective assistance of postconviction counsel that is based on counsel's alleged failure to raise an ineffective assistance of trial counsel claim, a defendant must establish that trial counsel was ineffective under the *Strickland* two-prong test); Nevada: *Rippo v. State*, 134 Nev. 411, 418; 423 P.3d 1084, 1094 (2018) (a petitioner has the statutory right to assistance of postconviction counsel; thus, a meritorious claim that postconviction counsel provided ineffective assistance may establish cause for the failure to present claims for relief in a prior postconviction petition); Wisconsin: *State v. Romero-Georgana*, 360 Wis. 2d 522, 542; 849 N.W. 2d 668, 678 (2014) (ineffective assistance of postconviction counsel may be a sufficient reason for failing to raise an available claim in an earlier motion or on direct appeal; if the defendant sufficiently alleges ineffective assistance of postconviction counsel as the reason for failing to raise an issue earlier, "the trial court can perform the necessary factfinding function and directly rule on the sufficiency of the reason); Federal: *Martinez v. Ryan*, 566 U.S. 1, 9 (2012) (inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a defendant's procedural default of a claim of ineffective assistance at trial).

Likewise, Florida should also recognize a claim of ineffective assistance of postconviction counsel as both a substantive claim and a way to overcome otherwise procedurally barred ineffective assistance of trial counsel claims. The right to effective postconviction counsel is rooted in both Florida law and the United States

Constitutions. Both the Sixth and Fourteenth Amendments to the United States Constitution guarantee criminal defendants the right to effective assistance of counsel. Further, the Florida Supreme Court has consistently recognized a statutory right to effective postconviction counsel. *Spaulding v. Dugger,* 526 So. 2d 71, 72 (1988) ("we recognize that under Fla Stat. 27.702, defendants under sentence of death are entitled as a statutory right, to effective legal representation . . . in all collateral relief proceedings"). Any other finding would be incongruous, given that Florida both regulates and funds the extensive machinery of postconviction death litigation to the tune of tens of millions of dollars per year. *See* Fla. R. Crim. P. 3.112(k) (Florida mandated statutory requirements in order for an attorney to be qualified as lead counsel in capital postconviction proceedings) & 3.851(b) (rules designated capital postconviction counsel after the direct appeal proceedings have been completed).

A death penalty case requires due process at every stage in proceedings. *Beck v. Alabama*, 447 U.S. 625, 637 (1980) ("death is a different kind of punishment from any other which may be imposed in this country . . . different in its severity and its finality, and the action of the sovereign in taking the life of one of its citizens also differs dramatically from any other legitimate state action"). Summary denials are disfavored in death cases. *See Maharaj v. State,* 684 So. 2d 726 (Fla. 1996); *Hoffman v. State*, 571 So. 2d 449 (Fla. 1990). It is unfair to hold Mr. Sweet, an innocent man, on death row without a proper due process hearing concerning his postconviction lawyer's unconscionable oversights, and more importantly, a full and fair hearing on the underlying substantive claims, and in violation of his statutory right to effective

trial and postconviction counsel.

1. Postconviction counsel failed to produce evidence of trial counsel's alcoholism and thus trial counsel rendered ineffective assistance of counsel under *Strickland v. Washington*.

Prior postconviction counsel discovered that Mr. Sweet's trial counsel had a disabling drinking problem, but this evidence was never introduced during his first postconviction evidentiary hearing. On July 19, 1995, Mary Mills, Sweet's appointed attorney met with Linsey Moore. Moore shared office space with Sweet's trial attorney, Charlie Adams. Adams had no prior death penalty experience and he asked Moore to help with Sweet's defense a few weeks before trial. TM8/ 563-571. Ms. Mills took extensive notes of Moore's shocking revelations about the inadequacy of Mr. Sweet's trial counsel. "Charlie Adams is a drunk. He is drunk seven days out of the week . . . he's either drinking at the office, out of a bottle of rum he keeps in his desk, or he's fishing on the St. John's River and drinking there." TM8/566-7. Mills' notes reflect that Adams was "never in the office" and "always sleeping it off somewhere." *Id*. "The unspoken word around Jacksonville is that if you want a case lost, give it to Charlie Adams . . . Adams has not won a single criminal case." *Id*. Moore also explained that Sweet called Adams a hundred times before trial, but Adams would never speak to him or visit Sweet in jail. *Id*. Ms. Mills incorporated the findings of her investigation into a notarized affidavit signed by Moore. *See* TM8/568-9. Mills resigned from her position in 1997 and she has no idea why Moore's affidavit or the subject of Adams' grave substance abuse problem was never raised during the first postconviction hearing in 1999.

Sweet's lead postconviction lawyer during the first evidentiary hearing was

Andrew Thomas. In his affidavit, Thomas explained that Sweet's hearing was his first capital evidentiary hearing. TM8/573-4. The office Thomas worked for at the time was later dismantled, causing there to be huge volume of disorganized papers and it was "nearly impossible" to be assured that any file was complete. *Id*. There were no digital files or document management system. *Id*. Thomas does not recall seeing Moore's affidavit. *Id*. "If I had seen the affidavit or the notes prior to the evidentiary hearing, I would have utilized them in asserting that Mr. Adams was legally ineffective during the trial." *Id*.

While postconviction counsel disclosed that Adams suffered "health problems" throughout his representation at the 1999 hearing, it was never disclosed that Adams was consistently drinking heavily, "sleeping it off," or absent due to his substance abuse problem. PC10/1777; TM8/ 563-571. Adams was only in his office 8-12 times in the two full months before the trial. PC10/1777. He either failed to take notes or disposed of them prior to producing his files in postconviction and billed ten hours for preparing a trial notebook that was never found in his files. PC10/1775-76; 1801-02.

When counsel's intoxication prevents effective assistance of counsel, the *Strickland* test applies. *Berry v. King*, 765 F. 2d 451, 454 (5th Cir. 1985), *cert. denied*, 476 U.S. 1164 (1986). There are two prongs to an ineffective assistance of counsel claim: 1) deficient performance of counsel; and 2) prejudice to the defense. *Strickland v. Washington*, 466 U.S. 668, 688 (1984). This requires showing that counsel's errors deprived the defendant of a fair trial and a reliable result. *Id*. at 687. To establish deficient performance, a petitioner must demonstrate that counsel's representation "fell below an objective standard of reasonableness." *Id*. at 688. In order to show

prejudice, it is not necessary to establish that counsel's deficient conduct more likely than not altered the outcome in the case. *Id.* at 693. Instead, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694. The Court evaluates the totality of the evidence "both that adduced at trial, and the evidence adduced in the habeas proceeding[s]" to make this determination. *Williams v. Taylor*, 529 U.S. 362, 397-398 (2000).

Evidence that Mr. Sweet's lead trial counsel was drunk and never returned one hundred phone calls from Sweet's holding cell is the death knell to a claim that he received constitutionally sound assistance of counsel under the totality of the circumstances of his case. During hearings on the First Motion, it came to light that Mr. Sweet's capital trial counsel, Charlie Adams, had never represented a client facing the death penalty. PC9/1765. Moore worked primarily in federal civil litigation and had no capital experience. PC8/1454. At the time Adams and Moore experimented with their capital trial skills, there were no guidelines or requirements for capital defense. The ABA didn't publish the landmark Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases until more than a decade after Mr. Sweet was convicted. 31 Hofstra L. Rev. 913, 914 (2003).

While postconviction counsel disclosed that Adams suffered "health problems" throughout his representation at the 1999 hearing, it was never disclosed that Adams was consistently drinking heavily, "sleeping it off," or absent due to his substance abuse problem. PC10/1777; TM8/ 563-571. Adams was only in his office 8-

12 times in the two full months before the trial. PC10/1777. He either failed to take notes or disposed of them prior to producing his files in postconviction and billed ten hours for preparing a trial notebook that was never found in his files. PC10/1775-76; 1801-02.

Perhaps the greatest prejudice resulting from Adams' ineffective assistance was the failure to investigate or produce mitigation evidence. Adams did not investigate, plan, and present anything substantive during the sentencing phase of trial. His billing records reflect he did nothing to investigate mitigation except interviewing Sweet's sister, Deonne. PC11/1806-07. Adams never found mental health, foster care, or school records showing Sweet survived a serious case of childhood spinal meningitis, grew up with an alcoholic mother, had attention deficit disorders, was confined at the notorious Dozier School for Boys, and suffered severe poverty, neglect, homelessness and abuse throughout his youth. PC11/1808-1824. Adams assigned Moore, a civil rights lawyer with no capital sentencing experience, the important responsibility of preparing the mitigation phase of Sweet's capital sentencing. Moore questioned the only mitigation witness without even meeting her. R8/1463-64.

An innocent man has been confined to death row for close to three decades as a result the unreasonably poor representation of inexperienced, inebriated, and unprofessional counsel. This altered the outcome of Sweet's conviction and sentence and gravely prejudiced him in the failure to present mitigation, investigate alternative suspects, and vigorously defend his constitutional rights.

2. Postconviction counsel failed to litigate a *Giglio* claim based on one

of the State's witnesses at trial. But for postconviction counsel's failure, the trial court never heard evidence of the State knowingly putting on false testimony during Sweet's trial.

On August 1, 1990, Solomon Hansbury gave a sworn statement to police. He said, "On June 28th I was in the booking cell downstairs, Duval County Jail, when Earl Sweet walked in and we started a conversation. I asked him what he was in for. He told me, three attempted murders and a murder." TM8/588. Hansbury repeated this testimony before the jury when he was the last witness at trial:

> Q: All right. Did you ask the Defendant why he was arrested?
> A: I asked him what he was in there for.
> Q: And what did he say?
> A: Three attempted – three attempts and a murder.

R5/942. The State had to know that Hansbury's testimony was false because the June 28 arrest and booking report included *only one charge of attempted murder*. Sweet's charges for three attempts and a murder were not filed until July 11, 1990, almost two weeks after Hansbury claimed Sweet confessed to them. *The charging documents in Mr. Sweet's hands on June 28*, at the time Hansbury claimed he spoke to Sweet, charged Sweet with *one attempt at murder* only. *Cf.* TM8/ 575-583.

At trial, Mr. Sweet was convicted without any physical evidence tying him to the crime scene. The case against Mr. Sweet was a weak and circumstantial one. There was no physical evidence to prove Mr. Sweet's involvement in the shooting. *See Sweet*, 624 So. 2d at 1139. The murder weapon was neither found in a search of Sweet's apartment nor recovered elsewhere. There were no fingerprints, hair, blood, DNA, or ballistics evidence that tied Mr. Sweet to Cofer's apartment on June 27, 1990.

The State had to present compelling evidence of motive to convince the jury that Mr. Sweet was guilty of murder. The State's theory was that Mr. Sweet attempted to murder Cofer because Mr. Sweet thought she identified him as a suspect in a robbery occurring on June 6, 1990. Mr. Sweet was never charged with or convicted of a robbery on June 6, 1990. The State mutated Hansbury's statement that Sweet said he "tried to rob Marcene," which would have been an admission of the indicted crime on June 27, 1990, into testimony that Sweet "robbed" Marcene on June 6, 1990. In this way, the State manipulated Hansbury's testimony to establish motive for the June 27, 1990 murder.

During Hansbury's August 1990 statement, he said:

> A: I asked him what happened. He said, did I remember Marceen that stayed out in the project, Blodgett Homes, around that area? I told him, no. He said, well they was selling dope out of the house on Third Street and <u>he had tried to rob them</u>. He said then, if I knew that –
> Q: let me stop you there. <u>He had tried to rob Marcene</u>?
> A: Marcene
> Q: Okay. Go ahead.
> A: He said, if I knew this was going to happen like this, I would have killed them all, I guess. . . meaning, you know –
> Q: Okay. Did he make any other statements?
> A: Not concerning that.

TM8/588-9 (emphasis added).

Defense counsel objected to the State's inference that Sweet had robbed Cofer on June 6 and returned on June 27 to eliminate her as a witness. At trial, the State presented similar testimony:

> Prosecutor Phillips: Well, we're talking about two things; one is the circumstances of his [Sweet's] arrest, and two would be the circumstances of the conversation relating to Marcine Cofer.
> Defense Counsel: Okay. There is nothing about an incident

> concerning June 6, 1990, when you talk about the robbery?
> Prosecutor Phillips: Well, I don't think this witness knows what he was talking about. The statement is that he had tried – he had robbed Marcine [sic]. Now, to my knowledge, there was no date given and I don't know which time he's talking about, honestly. I don't think the witness knows that. That's for the jury to determine . . . .
> Defense Counsel: We're talking about – is he talking about June 6, 1990 or is he talking about a robbery at the time of the shooting?
> Prosecutor Phillips: All I can say is it's got to be one or the other. I don't know, you know, I don't know what the – I'm not responsible for how the Defendant put it.

R5/937-38. The State hammered this fabrication in closing argument, sarcastically calling Sweet's presence on June 27 quite a "coincidence" and using it to bolster Cofer's trustworthiness. R5/1051, 1055, 1058. The State destroyed the fundamental fairness of Sweet's trial by presenting false and misleading testimony to create a motive to convict.

As stated above, Hansbury recanted this testimony during the 1999 hearing on the First Motion. PC10/1908-14. He said:

> Counsel: Can you explain what lead up to your testimony in Mr. Sweet's trial?
> A: What lead up to it?
> Q: How it was arranged that you were to testify against Mr. Sweet?
> A: I talked to the State Attorney and agreed to testify against Earl.
> Q: Okay. And you got some benefit for doing that?
> A: Yeah. You could say that . . . .
> Q: Do you recall what you said at Mr. Sweet's trial?
> A: Yeah
> Q: Was it the truth?
> A: No
> Q: You want to explain what the truth is?
> A: There is no truth, you know. What I said in the trial was something that it was like stuff that I heard. You know. Earl never told me nothing. He never told me anything, you know.

> When I met Earl in the holding cell it was like him talking to somebody else and he was like, yeah, man, I just can't believe they came and got me talking about a murder for something I don't know nothing about.

Id. at 1909-10.

Mr. Sweet began to formulate a *Giglio* claim based on Hansbury's false testimony. Mr. Sweet wrote to his counsel, Frank Tassone, who had represented him at the time. TM8/358-478. Tassone responded by telling Sweet his claim had no merit. Tassone continued, "[i]f Mr. Hansbury has recanted in the intervening years . . . you could attack the validity of this evidence." TM8/593-4. Apparently, while representing Mr. Sweet for more than five years, Tassone had never read the postconviction transcript or realized that Hansbury recanted years earlier in 1999.

Once Mr. Sweet notified Tassone of the factual and legal errors in his analysis, Tassone moved for funds to investigate and was denied. TM8/596. A second motion to obtain funds to investigate was granted. Tassone's investigator, Tom W. Wildes, met with Hansbury in March 2009, found Hansbury to be cogent and reliable, and discovered that the State gave Hansbury a newspaper article to read to prepare his statement falsely inculpating Mr. Sweet. TM8/598-9. Mr. Sweet repeatedly requested, chided, and prodded his prior postconviction lawyers to investigate and present these claims. TM8/341-480. His postconviction counsel, Tassone, filed more than twenty motions for attorney fees and investigative expenses, but never filed motions regarding Hansbury's fabrications, despite stating he intended to file a claim on Hansbury as early as 2009. TM8/479-480. The only method available to Mr. Sweet to challenge his unjust confinement and ineffective postconviction representation was

a series of letters and *pro se* motions. TM8/481-561. Ironically, Mr. Sweet's motions were routinely denied on the basis that he was provided competent counsel under Florida's scheme.[5] Tassone finally withdrew from Mr. Sweet's case in 2014. He never filed a *Giglio* claim based on the State's witness tampering, procurement of false testimony, and failure to correct Hansbury's false testimony.

The presentation of Hansbury's testimony violated standards of due process and the United States and Florida Constitutions and made Sweet's trial fundamentally unfair. *Giglio v. United States*, 405 U.S. 150 (1972). To establish a *Giglio* violation, it must be shown that: (1) the testimony given was false; (2) the prosecutor knew the testimony was false; and (3) the statement was material. *Ventura v. State,* 794 So. 2d 553, 562 (Fla. 2001); *see also Rose v. State,* 774 So. 2d 629, 635 (Fla. 2000). The same violation occurs when the State, although not soliciting false evidence, allows it to go uncorrected when it appears. *Napue v. Illinois*, 360 U.S. 264 (1959). The *Giglio* standard for materiality is "more defense friendly" than the *Brady* standard of materiality because it reflects a heightened concern and heightened judicial scrutiny where perjured testimony is used to convict a defendant. *Guzman v. State*, 868 So. 2d 498, 507 (Fla. 2003). Perjured testimony is considered material unless failure to disclose it would be harmless beyond a reasonable doubt. *United States v. Bagley*, 473 U.S. 667 (1985); *Guzman*, 868 So. 2d at 506. The State bears the burden of proving harmless error. *Id.*

In this case, Hansbury's perjured testimony meets the *Giglio* standard and

5 *See Sweet v. Secretary*, No. 3:03-cv-00844 (M.D. Fla. filed October 1. 2003); *State v. Sweet*, No. 91-2899-CF (Duval County 1990).

denied Mr. Sweet the fundamental right to a fair trial. Hansbury's testimony was undeniably false as he recanted in 1999. PC10/1908-14. The State was aware that Mr. Sweet was not charged with "three attempts and a murder" until July 11, 1990, almost *two weeks after* Hansbury claimed Mr. Sweet allegedly confessed to these crimes, but *three weeks before* Hansbury gave his statement to law enforcement. If the State enhanced Hansbury's testimony by showing him a newspaper account of the crime there can be no doubt of a knowing *Giglio* violation. Hansbury's perjured testimony provided the only evidence tying Sweet to the crime, the only motive for the crime, and a full, but completely false, confession. These false statements were material to Mr. Sweet's wrongful conviction. Mr. Sweet was denied due process, a fundamentally fair trial, and a reliable, constitutionally permissible conviction. Postconviction counsel's ineffectiveness prevented Mr. Sweet from receiving relief that would have remedied his false conviction.

B. The Arrest Records Produced by the State to Discredit the Testimony of Eric Wilridge were False and in violation of *Brady v. Maryland*. The Trial Court was Improper to Rely on Them to Determine Wilridge's Credibility.

Mr. Sweet was granted an evidentiary hearing on his Sixth Motion based partly on the newly discovered testimony of Eric Wilridge who witnessed the underlying shooting in this case and testified that Mr. Sweet was not the shooter. Minutes prior to this hearing, the State represented it had produced true copies of arrest records which purported to show that Wilridge was arrested days prior to the shooting, thus alleging he was in custody at the time of the shooting. T/343-46. Over defense objections that the document was not disclosed prior to the hearing, was not listed on the State's exhibit

list, and did not in fact prove that Wilridge was in custody on the exact day of the shooting (only prior), the trial court allowed the State to use these records to impeach Wilridge. After the hearing, on July 21, 2017, the State filed an arrest and booking report for Eric Wilridge dated June 22, 1990 with a Business Records Certification signed by Silvia Hutchinson of the Jacksonville Sherriff's Office ("JSO"). TM8/602-611. On August 2, 2017, the State filed an "Amended Certification of Business Record" stating that the same arrest and booking report submitted on July 21, 2017 was, "a true and accurate copy . . . made and maintained by the Jacksonville Sherriff's Office in the normal course of business" not properly executed by an authorized custodian of records. TM8/613-4. The State filed this amendment "to ensure the record is completely accurate and in accord with the internal policies established by the Jacksonville Sheriff's Office." *Id.*

After the evidentiary hearing, collateral counsel investigated these "arrest records." Counsel obtained copies of Wilridge's arrest and booking report from both the Duval County Public records database ("CORE") and the JSO in the fall of 2017, and it is different from the arrest and booking report produced by the State Attorney. *C.f.* TM8/621-5. The arrest and booking report obtained by postconviction counsel, which was, in turn, obtained from the Jacksonville Sheriff's office and CORE, contains an additional JSO ID number, stamps that say "original" "THIS INSTRUMENT IN COMPUTER" and "CLERK COPY." Likewise, the space under "verified by" is blank. Most importantly, there is a stamp under the disposition column that states "June 22, 1990." By contrast, the arrest and booking reports produced by the State Attorney have a signature under the "verified" space and a stamp that says "RECORD." TM8/618-9. The disposition date stamp is omitted from the copy of the arrest record provided by the

State.

The significance of Wilridge's testimony during Sweet's Sixth Motion evidentiary hearing and how it continues to weaken the State's case cannot be overstated. Wilridge's eyewitness testimony added to the list of other exculpatory evidence and provides a further probability of acquittal in Mr. Sweet's case. Wilridge testified that during the early morning on June 27, 1990, he observed three individuals standing near Cofer's front door. T/574, 578-79. Wilridge rode his bicycle to the corner of 3rd and Market Streets and was approached by Jessie Gaskins who was acting "hyper".[6] T/580-81. After speaking with Gaskins, Wilridge rode his bike to about 25 yards from Cofer's front door. T/110-11. It was 1:30 a.m. T/585. From this location, Wilridge observed one man he did not recognize standing outside Cofer's door. T/585. The man was wearing a short-sleeved shirt, dark jeans, and had his arm extended. T/586-87. Wilridge could not see this man's face because of the way he was positioned and because there was a dark colored item covering part of his head. T/587. The man was about 5'9", weighed about 160 pounds, and had light brown skin. T/588, 600. Wilridge stated that Mr. Sweet is taller, more slender and has darker skin than the man he saw that night. T/600. As he rode away, he heard a gunshot. T/590.

Wilridge's testimony regarding multiple persons in the alley near Cofer's front door and then later, a single man at the door, is supported throughout the trial record.

6 Jessie Gaskins was listed as a defense witness and deposed prior to trial. PC10/1797. Gaskins gave a police statement that on the night of the shooting "somebody had pulled a gun on him and made him knock" on Cofer's door. PC10/1798. Gaskins described this person as wearing a ski mask with holes cut out and not wearing a shirt. PC10/1798. Wilridge describes speaking with Gaskins after observing him walking from the direction of Cofer's apartment and acting "kind of hyper." T/581. It would be likely to assume that Wilridge ran into Gaskins moments after he was held at gunpoint, giving explanation to Gaskin's general demeanor.

T/578-79. Mattie Mae Bryant stated at the guilt phase trial that at one point during the evening, she "peeped out and saw two heads, two guys standing [outside Marcene's door]." R3/730. McNish testified at the first postconviction hearing that he observed three men enter the alley and later observed just one man standing at Cofer's door. PC10/1862-63.

Wilridge's description of the single man is also independently corroborated by other witnesses. Wilridge described the man as 5'9", weighing about 160 pounds, and with light brown skin and could not have been Sweet, who was taller, slender and had darker skin. T/588, 600. McNish's testimony was similar: He saw three men outside Cofer's apartment that were between 5'6" and 5'7" and stocky. PC10/1864. McNish stated that none of these men could have been Mr. Sweet because they had a different walk, skin complexion, and weight. PC10/1867-69. Wilridge could not see the man's entire face because there was a dark colored item covering part of his head. T/587. Gaskins described the person who held a gun to him as wearing a ski mask. PC10/1798. McNish believed one of the three men he observed was wearing a mask because his face was very dark compared to the skin tone on his hands. PC10/1868.

Both the trial court and the Florida Supreme Court denied this claim without permitting discovery or an evidentiary hearing. *Sweet v. State*, 293 So. 3d 448, 451-452 (Fla. 2020). Without discovery, postconviction counsel could never know the meaning of the disposition stamp or why it was excluded from the "true and correct" business records that the State produced during the hearing. The more troubling question is: if not from CORE or the JSO, where exactly did the State obtain this record that has been sworn to be a true and correct copy of a court record kept in the ordinary course of business? If the

ordinary business records produced to postconviction counsel is actually the true and correct copy, why did the State enter a different record into evidence? Since the documents produced by the State, which were admitted into evidence based on the business records exception to the hearsay rule, markedly differ from what is available in CORE and what was produced by the Jacksonville Sherriff's Office, there was a grave possibility of a *Brady* violation, spoliation of evidence, and withholding evidence favorable to Mr. Sweet. *See Brady v. Maryland,* 373 U.S. 83 (1963). After discovery, documents produced by the State may have shown that Wilridge's case was disposed on the same day he was charged, as he already testified at the hearing on the Sixth Motion. Mr. Sweet should have been entitled to discovery and a hearing on this claim.

C. Sentencing to Death and Executing Someone who is Innocent Violates the Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

Mr. Sweet argued to the Florida Supreme Court, on appeal from the denial of his Eighth Postconviction Motion, that "standards of decency are evolving and Florida should recognize a claim of actual innocence to protect the fundamental rights of prisoners condemned to death." Therein, he argued that based on "evolving standards of decency" the Eighth Amendment's ban on cruel and unusual punishment requires that Florida courts recognize actual innocence as a claim.

The Eighth Amendment prohibits cruel and unusual punishment. This Court has recognized that "in a capital case a truly persuasive demonstration of 'actual innocence' made after trial would render the execution of a defendant unconstitutional." *Herrera v. Collins*, 506 U.S. 390, 417 (1993). In a concurring opinion, Justice O'Connor agreed that "executing the innocent is inconsistent with

the Constitution," "contrary to the contemporary standards of decency," "shocking to the conscience," and "offensive to a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Id.* at 419 (O'Connor, and Kennedy, J.J., concurring) (internal quotations and citations omitted). Justice O'Connor concluded that "the execution of a legally and factually innocent person would be a constitutionally intolerable event." *Id.* In light of the compelling evidence of Mr. Sweet's innocence, allowing him to be executed violates his rights under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

Rather than consider all of the evidence that Mr. Sweet has adduced over the years to determine whether his conviction and death sentence are "constitutionally intolerable," the Florida Supreme Court simply declared that Florida does not recognize an independent claim of actual innocence in postconviction proceedings. *Sweet,* 293 So. 3d at 453; citing *Elledge v. State*, 911 So. 2d 57, 78 (Fla. 2005). The court did not engage in any analysis of Mr. Sweet's evidence of actual innocence and affirmed the lower court's summary denial "[b]ecause actual innocence is not a cognizable basis for postconviction relief." *Id.* The Florida Supreme Court never explained how Mr. Sweet is supposed to make the showing necessary under *Herrera* if the state courts refuse to hear evidence and consider his arguments on actual innocence.

II. THIS COURT SHOULD GRANT CERTIORARI BECAUSE MR. SWEET HAS PRESENTED A COMPELLING CASE OF ACTUAL INNOCENCE ALONG WITH SUBSTANTIAL VIOLATIONS OF THE UNITED STATES CONSTITUTION THAT HE HAS BEEN DENIED AN OPPORTUNITY TO HAVE CONSIDERED BY THE STATE COURTS.

A. Mr. Sweet Asserted a Freestanding Innocence Claim in his Eighth

Motion for Postconviction Relief that was Denied by the State Courts Because Those Courts Do Not Recognize Such a Claim.

This Court should grant certiorari because Mr. Sweet's case presents a compelling case of actual innocence that should be considered in light of this Court's previous statement:

> We may assume, for the sake of argument in deciding this case, that in a capital case a truly persuasive demonstration of "actual innocence" made after trial would render the execution of a defendant unconstitutional, and warrant federal habeas relief if there were no state avenue open to process such a claim. But because of the very disruptive effect that entertaining claims of actual innocence would have on the need for finality in capital cases, and the enormous burden that having to retry cases based on often stale evidence would place on the States, the threshold showing for such an assumed right would necessarily be extraordinarily high.

Herrera v. Collins, 506 U.S. 390, 417, 113 S. Ct. 853, 869, 122 L. Ed. 2d 203 (1993). Mr. Sweet should be granted relief because he has established that he is actually innocent through a number of different procedures.

Moreover, this Court has recognized that based on *In Re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970), that "as an essential of the due process guaranteed by the Fourteenth Amendment that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S. Ct. 2781, 2787, 61 L. Ed. 2d 560 (1979). Subsequent evidence has shown that there certainly a reasonable doubt that Mr. Sweet is guilty which the courts should consider.

Mr. Sweet raised the violation of his federal constitutional rights based on his actual innocence. His case presents important issues for this Court to consider based

on *Herrera* and *Jackson*. This Court should grant certiorari and require the State courts to decide his claim of actual innocence.

The Florida Supreme Court has set forth a two-prong test that a defendant must satisfy in order to obtain relief in cases involving newly discovered evidence:

> To obtain a new trial based on newly discovered evidence, a defendant must meet two requirements. First, the evidence must not have been known by the trial court, the party, or counsel at the time of trial, and it must appear that the defendant or defense counsel could not have known of it by the use of diligence. Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial. See *Jones v. State*, 709 So. 2d 512, 521 (Fla. 1998) (*Jones II*). Newly discovered evidence satisfies the second prong of the Jones II test if it "weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability." J*ones II*, 709 So. 2d at 526 (quoting *Jones v. State*, 678 So. 2d 309, 315 (Fla. 1996)). If the defendant is seeking to vacate a sentence, the second prong requires that the newly discovered evidence would probably yield a less severe sentence. See *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991) (*Jones I*). *Marek v. State*, 14 So. 3d 985, 990 (Fla. 2009).

Hildwin v. State, 141 So. 3d 1178, 1184-85 (Fla. 2014). This, however, is insufficient to remedy the false conviction of an actually innocent individual.

Mr. Sweet has been confined to death row for nearly thirty years. He is innocent of capital murder. During trial, there was no physical evidence, weapons, bullets, DNA, blood, or hair introduced at trial to tie Mr. Sweet to the crime scene. Although witnesses testified that the shooter wore a ski mask or that his face was obscured by dark clothing, none of these items were ever recovered. The murder weapon was neither found in a search of Sweet's apartment nor recovered elsewhere. Since 1991, the State's already weak case against Mr. Sweet has crumpled even further. State witness Solomon Hansbury admitted to fabricating the jailhouse confession used to convict Mr. Sweet, further explaining that prosecutors showed him articles in the Florida Times Union to create his false testimony. The

State's star witness, Marcene Cofer, testified that she does not "want Earl Sweet to die on death row and he wasn't the one that pulled that trigger." T/88. The only eye witness the State has left to barely tie Sweet to this crime is Sharon Bryant. However, Bryant was twelve years old at the time of the shooting, identified Mr. Sweet in a suggestive lineup that was later suppressed, viewed the shooter's obscured face through a peephole for mere six or seven seconds, and failed to "really" get a good look at the shooter when she saw him for less than a minute during the shooting. R3/653, 622-24, 629-632.

With the State's case weakened to a sole, witness whose identification is suspect, Mr. Sweet has developed new evidence since his trial to further prove his innocence. Anthony McNish testified at the first postconviction hearing that he saw three people by Cofer's apartment in the early morning hours of June 27, 1990. None of the three men McNish observed could have been Sweet because they had a different walk, skin complexions, and weight than Sweet. PC10/1867-69. The three men were between 5'6" and 5'7" and stocky – not tall and slim like Mr. Sweet. PC10/1864. McNish believed one of the three men was wearing a mask because his face was very dark compared to the skin tone on his hands. PC10/1868. McNish recognized one of the three men and while he would not identify the person by name, he knows it was not Mr. Sweet. PC10/1902. Further, Eric Wilridge testified at Mr. Sweet's Sixth Motion evidentiary hearing that during the early morning on June 27, 1990, moments before the shooting, he observed a man he did not recognize standing outside Cofer's door. The man was about 5'9", weighed about 160 pounds, and had light brown skin. T/588, 600. Wilridge stated that Mr. Sweet is taller, more slender and has darker skin than

the man he saw that night. T/600.

All of the evidence developed since Mr. Sweet's faulty conviction, when examined as a whole and in conjunction with the evidence from trial, "weakens the case . . . so as to give rise to a reasonable doubt as to his culpability." *Hildwin*, 141 So. 3d at 1184-85. Moreover, if Mr. Sweet were tried again today, the evidence left for the State's case-in-chief could not pass constitutional muster to withstand the required guilty beyond a reasonable doubt.

The Florida courts do not recognize "free standing claims of innocence." The Florida Supreme Court failed to grant relief to Mr. Sweet even though he showed of the course of many years of litigation that there was a reasonable doubt regarding his guilt. While Florida will consider "newly discovered evidence" of innocence, this of little use to individuals such as Mr. Sweet whom develop evidence of innocence over the course of many years while struggling to overcome unjust convictions and death sentences. There is no doubt that a retrial of Mr. Sweet today would lead to an acquittal as the State's main witnesses have recanted and Mr. Sweet's newly discovered witnesses prove his innocence. Accordingly, Florida's system for addressing evidence of innocence that calls into question the validity of a guilty verdict is inadequate to meet the demands of the United States Constitution.

B. This Court Should Grant Certiorari to Require the State Courts to hear Mr. Sweet's Otherwise Barred Claims That Were Forfeited by Prior Collateral Counsel and his Claim of Actual Innocence to Avoid What Amounts to a Suspension of the Writ of Habeas Corpus.

This Court has stated:

> If this standard is difficult to meet, that is because it was meant to be. As amended by AEDPA, § 2254(d) stops short of imposing a complete

> bar on federal-court relitigation of claims already rejected in state proceedings. Cf. *Felker v. Turpin,* 518 U.S. 651, 664, 116 S. Ct. 2333, 135 L.Ed.2d 827 (1996) (discussing AEDPA's "modified res judicata rule" under § 2244). It preserves authority to issue the writ in cases where there is no possibility fairminded jurists could disagree that the state court's decision conflicts with this Court's precedents. It goes no further. Section 2254(d) reflects the view that habeas corpus is a "guard against extreme malfunctions in the state criminal justice systems," not a substitute for ordinary error correction through appeal. *Jackson v. Virginia,* 443 U.S. 307, 332, n. 5, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979) (Stevens, J., concurring in judgment). As a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.
>
> The reasons for this approach are familiar. "Federal habeas review of state convictions frustrates both the States' sovereign power to punish offenders and their good-faith attempts to honor constitutional rights." *Calderon v. Thompson,* 523 U.S. 538, 555–556, 118 S. Ct. 1489, 140 L.Ed.2d 728 (1998) (internal quotation marks omitted). It "disturbs the State's significant interest in repose for concluded litigation, denies society the right to punish some admitted offenders, and intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority." *Reed,* 489 U.S., at 282, 109 S. Ct. 1038 (KENNEDY, J., dissenting).

Harrington v. Richter, 562 U.S. 86, 102–03 (2011). While this is certainly accurate concerning the arduous standards of federal review, it also makes clear that the primary responsibility for reviewing violations of the United States Constitution lies with the state courts. If the state courts refuse to hear claims or deny claims in violation of the Constitution, the possibility of receiving relief is severely limited in federal court. For instance, to obtain federal relief, a petitioner must file within short time periods and is only available if the claim was decided in manner contrary to, or based on an unreasonable application of, this Courts precedent, or based on an unreasonable finding of fact. See 28 U.S.C. § 2254. While Mr. Sweet has continued to

seek relief in federal court, and will continue to do so, this is no substitute for full review by the state courts in the state courts' primary role in safeguarding the rights guaranteed by the United States Constitution.[7]

When state courts abdicate this duty and when state appointed counsel fail to fully present the claims in a timely manner, relief from constitutional error is prevented. When this happens repeatedly, it amounts to a denial of due process and a suspension of the writ of habeas corpus. This was seen in the Florida Supreme Court's decisions in the appeal of Mr. Sweet's Eighth Postconviction Motion. This Court should grant certiorari to require that the Florida courts not bypass meritorious issues based on postconviction counsel's failings.

Mr. Sweet's case has been riddled with ineffective assistance of trial counsel preventing a full and fair proceeding at his trial to ensure the minimum due process standards constitutionally guaranteed to him have been met. Mr. Sweet's trial lawyers were a notorious alcoholic teamed with a civil rights lawyer who was later disbarred. Neither had any capital trial experience. In the years that followed his trial, ineffective assistance of postconviction counsel prevented Mr. Sweet the opportunity to correct the numerous mistakes plaguing his capital trial. Some postconviction lawyers were so ineffective that they failed to timely file Mr. Sweet's federal habeas claims. *See Sweet v. Crosby*, 2005 WL 1924699 (M.D. 2006) (the Florida Middle District Court determining that the habeas petition was time barred because postconviction counsel improperly

7 The Florida Constitution similarly allows for a writ of habeas corpus: "The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety." Florida Constitution, Art. I, § 13:

relied on Mr. Sweet's first successive postconviction motion to toll the time for filing a federal habeas petition under 28 U.S.C. § 2254). Other postconviction attorneys were so self-enriching that they repeatedly moved for and received fees to investigate, research, and file a *Giglio* claim based on prosecutorial misconduct that was never actually filed. Further, procedural obstacles within the court system have denied Mr. Sweet access to both the State and Federal courts to have his claims fully litigated on the merits. Mr. Sweet's time barred federal habeas petition prevented federal courts from ever fully reviewing the merits of numerous claims from trial.[8] Mr. Sweet's ineffective postconviction attorneys prevented review of otherwise meritorious claims due to their failures to plead claims timely or use all the information available to them at the time of representation. Procedural obstacles should not prevent an otherwise innocent man from having a full merits review of his claims.

This Court should also grant certiorari to require that the state courts consider actual innocence as a free-standing claim and as a polestar to guide the adjudication of other claims of constitutional violation. Mr. Sweet has a right seek habeas corpus in state and federal court. This right means nothing if he cannot be heard in the courts that are designated as the primary deciders of claims involving constitutional rights. While *Herrera* left open the possibility of a claim of actual innocence, this right means nothing if Mr. Sweet cannot produce evidence and have

8 For example, the federal court refused to review substantively Mr. Sweet's meritorious claim that the trial court inadequately inquired under *Faretta v. California,* 422 U.S. 806 (1975) whether Sweet wanted to represent himself at trial.

his arguments heard that he truly falls under the prohibition of executing the actually innocent.

Additionally, it is constitutionally unacceptable to ignore and disregard the allegations of constitutional violation of the actually innocent litigant. *See House v. Bell*, 547 U.S. 518 (2015) and *Schlup v. Delo,* 513 U.S. 298 (2007). If there can be anything worse than the execution of such a person, it would be to allow such a sentence to be carried out based on a trial that otherwise violated the Constitution, like the violations that were not considered in Mr. Sweet's case because postconviction counsel was ineffective in raising the violations that plagued Mr. Sweet's conviction. These are all important questions that this Court should decide.

CONCLUSION

This Court should grant a writ of certiorari to review the decision below.

Respectfully submitted,

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