No. 20-6287

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

In re ANTONIO U. AKEL — PETITIONER
(Your Name)

vs.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF MANDAMUS TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (#20-10574)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF MANDAMUS

ANTONIO U. AKEL (INCARCERATED PRO SE PETITIONER)
(Your Name)

U.S.P BIG SANDY P.O. BOX 2068
(Address)

INEZ, KY 41224
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

WHETHER:

(1). WRIT OF MANDAMUS IS THE ONLY APPROPRIATE REMEDY, WHERE THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT HAS ESTABLISHED A CONSISTENT PRACTICE AND PATTERN OF UTILIZING AN ERRONEOUS CERTIFICATE OF APPEALABILITY ("COA") ANALYSIS FOR WHICH EFFECTIVELY THWARTS AND TOTALLY DEPRIVES AN ENTIRE CLASS OF HABEAS PETITIONER, WHOM NEVER HAD THE BENEFIT OF A MERITS REVIEW BY ANY COURT, [DUE TO AN INCORRECT PROCEDURAL BAR], FROM REACHING THE SHOWING NECESSARY TO OBTAIN THE REGULAR APPEAL PROCESS, SIMPLY BECAUSE:

(A). Where a Habeas Petitioners predicates, merits, Evidence and Factual development of their Constitutional Claim Submitted For 28 U.S.C § 2255 Relief have never been made part of the Record and Essentially Suppressed From view, it is Impossible For him to make the Straightforward "Substantial Showing of The Denial of a Constitutional Right" Codified within 28 U.S.C § 2253(c). BUTSEE SLACK v. MCDANIEL, 529 US 473 at 484 (clarifying the "COA" Standard under § 2253(c) For habeas petitioners denied on Procedural grounds without the court reaching the underlying constitutional claim)

(B). During the last Decade (10 years) the Eleventh Circuit Court of Appeals, over three-hundred and forty-three (343) Times, to include towards the instant Mandamus Petitioner, has alleged that SLACK 529 US at 478 States:

> To merit a certificate of appealability, [petitioners] must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 478, 120 S. Ct. 1595, 1600-01, 146 L. Ed. 2d 542 (2000). See APPENDIX "E"

when clearly SLACK 529 US at 478 has no mention upon "THE MERITS OF AN UNDERLYING CLAIM":

> We are called upon to resolve a series of issues regarding the law of habeas corpus, including questions [*pg. 551] of the proper application of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). We hold as follows:
>
> [529 US 478]
>
> [1a] First, when a habeas corpus petitioner seeks to initiate an appeal of the dismissal of a habeas corpus petition after April 24, 1996 (the effective date of AEDPA), the right to appeal is governed by the certificate of appealability (COA) requirements now found at 28 USC § 2253(c) (1994 ed., Supp III) [28 USCS § 2253(c)]. This is true whether the habeas corpus petition was filed in the district court before or after AEDPA's effective date.
>
> [2a] Second, when the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue (and an appeal of the district court's order may be taken) if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.
>
> [3a][4a] Third, a habeas petition which is filed after an initial petition was dismissed without adjudication on the merits for failure to exhaust state remedies is not a "second or successive" petition as that term is understood in the habeas corpus context. Federal courts do, however, retain broad powers to prevent duplicative or unnecessary litigation.
>
> I
>
> Petitioner Antonio Slack was convicted of second-degree murder in Nevada state court in 1990. His direct appeal was unsuccessful. On November 27, 1991, Slack filed a petition for writ of habeas corpus in federal court under 28 USC § 2254 [28 USCS § 2254]. Early in the federal proceeding, Slack decided to litigate claims he had not yet presented to the Nevada courts. He could not raise the claims in federal court because, under the exhaustion of remedies rule explained in Rose v Lundy, 455 US 509, 71 L Ed 2d 379, 102 S Ct 1198 (1982), a federal court was required to dismiss a petition presenting claims not yet litigated
>
> [529 US 479]

as that would not only be a Fundamentally unfair but also wholly Erroneous ("COA") Standard and analysis. See BUCK v. DAVIS, 137 S.ct 759, 197 L.Ed 2d (2017) Stating:

> The certificate of appealability (COA) inquiry is not coextensive with a merits analysis. At the COA stage, the only question is whether the applicant has shown that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.

(2). THE RIGHT TO ISSUANCE OF MANDAMUS IS NECESSARILY CLEAR AND INDISPUTABLE HERE, WHERE THE ELEVENTH CIRCUIT IN THREE SEPERATE ("COA") PROCEEDINGS, i.e. #'S 15-15341; 17-14707 AND 20-10574, HAS NOT ONLY REFUSED TO AFFORD "EQUAL JUSTICE UNDER THE LAW" AS CLARAFIED BY SUPREME COURT PRECEDENT SLACK v. MCDANIEL, 529 U.S 473, 484 AND ITS OWN INSTRUCTION IN HITTSON v. GDCP WARDEN, 759 F.3d 1210, 1270 (11th cir 2014), BUT, THE APPELLATE COURT HAS ACTUALLY "USURPED THE REGULAR APPEAL PROCESS" TO AN ENTIRE CLASS OF HABEAS PETITIONER WHOM HAS NEVER BEEN HEARD ON HABEAS CORPUS AND THUS UNABLE TO HOLD THE GOVERNMENT ACCOUNTABLE TO THE JUDICIARY FOR HIS OR HER IMPRISONMENT BY DIRECTLY DISREGARDING THE PROPER AND LAWFUL ("COA") STANDARD TO TAKE AN APPEAL, FOUND IN SLACK 529 US at 484.

(3). THE WRIT IS APPROPRIATE UNDER THE CIRCUMSTANCES BECAUSE IT IS CLEAR IF THE ELEVENTH CIRCUIT WERE TO OBSERVE THAT "EQUAL JUSTICE UNDER THE LAW" APPLIES TO ALL PEOPLE, AND THUS, EXTEND THE RULE OF LAW FOUND WITHIN SLACK v. MCDANIEL, 529 U.S 473, 484 WITH AN EVENHAND AND UNADULTERATED, IT THEN BECOMES OBVIOUS THAT THE INSTANT PETITIONERS RIGHT TO ISSUANCE OF A "COA" (i.e. The Regular Appeal Process) IS NOT ONLY WARRANTED BUT ALSO HIS STATED CONSTITUTIONAL CLAIM FOR HABEAS RELIEF MAKES A PRIMA FACIE SHOWING OF BEING FACTUALLY INNOCENT OF THIS FEDERAL CASE #: 3:07-Cr-136-LAC-EMT (N.D.FLA),

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

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

RELATED CASES

AKEL v. US, 137 S.Ct 1432 (2017)

AKEL v. US #15-15341 (11th cir)

AKEL v. US, 2016 US. App. LEXIS 24492 (11th cir)

AKEL v. US, 2018 US. App. LEXIS 15666 (11th cir)

US v. ANTONIO U. AKEL CASE#3:07-cr-136-LAC-EMT (N.D. FLA)

US v. AKEL, 337 Fed. Appx. 843 (11th cir 2009)

US v. AKEL #17-14707 (11th cir)

US v. AKEL, 2019 US. App. LEXIS 35330 (11th cir)

US v. AKEL, 2020 US. App. LEXIS 4146 (11th cir)

AKEL v. US # 20-10574 (11th cir)

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully prays that a writ of MANDAMUS issue to Confine the lower Court to the hierarchal Structure of the federal Court System Created by the Constitution and Congress

OPINIONS BELOW

[✓] For cases from **federal courts:**

The opinions of the United States court of appeals appears at Appendix A, C, and D to the petition and is

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

The opinion of the United States district court appears at Appendix _____ to the petition and is

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

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

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

The opinion of the _____ court appears at Appendix _____ to the petition and is

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

JURISDICTION

[✓] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was MAY 19, 2020.

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: JULY 13, 2020, and a copy of the order denying rehearing appears at Appendix B.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1651(a)

[ ] For cases from **state courts:**

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 4 Unreasonable searches and seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

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 offence 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 6 Rights of the accused.

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 defence.

§ 2255. Federal custody; remedies on motion attacking sentence

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

§ 2253. Appeal

(a) In a habeas corpus proceeding or a proceeding under section 2255 [28 USCS § 2255] before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from --

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255 [28 USCS § 2255].

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

HISTORY:
Act June 25, 1948, ch 646, 62 Stat. 967; May 24, 1949, ch 139, § 113, 63 Stat. 105; Oct. 31, 1951, ch 655, § 52, 65 Stat. 727; April 24, 1996, P. L. 104-132, Title I, § 102, 110 Stat. 1217.

STATEMENT OF THE CASE

(1). It is part and parcel to our democracy and United States jurisprudence that:

WHERE SYSTEMATIC MISAPPLICATION OF THE LAW HAS RESULTED IN UNCONSTITUTIONAL INCARCERATION, THE "GREAT WRIT" OF HABEAS CORPUS PROVIDES THE HAMMER TO STRIKE THE CONSTITUTIONAL BLOW. JOHNSON v. ZERBST, 304 U.S. 452, 58 S.Ct 1019, 1023-1025, 82 L.Ed 1461 (1938)

(2). However, in this case, before this Honorable Supreme Court is the following Conundrum:

BUT FOR MANDAMUS, WHAT RECOURSE DOES A UNITED STATES CITIZEN HAVE, WHEN THE LOWER COURTS UTILIZE AN ADDITIONAL SYSTEMATIC MISAPPLICATION OF LAW, TOWARDS THE VERY GREAT WRIT OF HABEAS CORPUS CHALLENGING HIS UNCONSTITUTIONAL INCARCERATION, THAT HAS EFFECTIVELY THWARTED, SUPPRESSED AND HIDDEN THE PREDICATES, MERITS, EVIDENCE AND FACTUAL DEVELOPMENT FOR WHICH PROVES THAT THE PETITIONER IS ACTUALLY INNOCENT OF FEDERAL CASE NO. 3:07-cr-136-LAC-EMT (N.D. FLA).

(3). Attempting to hold the Government accountable to the Judiciary for his imprisonment, on 28 U.S.C § 2255, the Petitioner stated a valid claim for the denial of a Constitutional right in accord with Kimmelman v. Morrison, 477 US 365, 106 S.Ct 2574 (1986), at (ECF #156) putting Forth:

GROUND ONE:

Petitioner was denied his Sixth Amendment right to effective assistance of counsel pretrial.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner's counsel(s) was constitutuonally ineffective pretrial due to: (1) counsel's failure to properly argue for suppression, i.e., counsel's failure to argue controlling precedent; counsel's failure to argue that the trash pull was illegal, counsel's failure to demonstrate that the affidavit was false;

as Amended and Expanded by (ECF #187 pg 5-14) Stating explicitly:

AKEL WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN RANDALL ETHERIDGE FAILED TO PROPERLY LITIGATE PETITIONER'S FORTH AMENDMENT CLAIM. HIS FAILURE TO CITE CONTROLLING PRECEDENT, INCOMPETENTLY PUTTING FORTH FALSITIES FROM AN ARREST AFFIDAVIT AND NOT THE AFFIDAVIT FOR THE SEARCH WARRANT, COUPLED WITH HIS FAILURE TO RECTIFY THE MISTAKE AND PRESENT FURTHER EVIDENCE BY FILING AN AGREED UPON FRANKS HEARING WERE IN VIOLATION OF HIS SIXTH AMENDMENT RIGHTS.

(4). Among the many meritorious issues presented for Habeas review within (ECF #187 pg 5-14), the GRAVAMEN allegation is that:

i. Attorney Randall Etheridge, despite knowing that the Sole and only factual predicates for issuance of the SEARCH WARRANT were incorrect, inasmuch as the "CONTROLLED Buys" on which the warrant was based had never occured and was deliberately false, he failed to raise an objection under FRANKS v. DELAWARE, 438 U.S. 154, 98 S.Ct 2674, 57 L.Ed.2d 667 (1978), and,

ii. Counsels inactions preiudiced the defendant Severely because the Search warrant is dispositive to the indictment for which the petitioner is incarcerated. That is: BUT FOR COUNSELS INCOMPETENCE IN THE HANDLING OF THE FOURTH AMENDMENT ISSUE THERE WOULD HAVE BEEN NO FURTHER PROCEEDINGS, and,

iii. Additionally the UNITED STATES charged the petitioner with both of the "CONTROLLED BUY" factual predicates for issuance of not only the SEARCH WARRANT but also the ARREST WARRANT For which are DISPOSITIVE to the Indictment in this federal case, and the Jury returned

"NOT GUILTY" verdicts upon them both, i.e. COUNTS (IV) and (V), and,

iv. Counsels Gross incompetence is further demonstrated where he presented the wrong argument for which did not even exist, pertaining to false vehicle descriptions located in the arrest warrant affidavit, in Lieu of the proper and meritorious argument that the entire affidavit for the Search warrant was false and a reckless disregard for the truth.

(5). In Support of his habeas claim within (ECF#187pg5-14) the petitioner presented the federal Judiciary with overwhelming evidence to include but no limited to:

i. THE SWORN TESTIMONY FROM THE TRIAL ATTORNEY HIMSELF, OBTAINED FROM AN EVIDENTIARY HEARING TAKING PLACE ON JANUARY 28, 2014 WITHIN THE U.S. DIST. COURT FOR THE NORTHERN DISTRICT OF FLORIDA, CLEARLY SUBSTANTIATING THE PETITIONERS HABEAS CLAIM FOR RELIEF AS FOLLOWS:

Another question for you: Do you agree that the case in question, two controlled buys in this incident is dispositive to the whole case, correct?

A. As I recall, yes.

Q. And I don't know if you can recall, but if you can recall, Count IV and Count V of the Indictment were those controlled buys.

A. I don't remember.

Q. You can't recall the counts, but you can recall that --

A. Generally speaking, yes, sir.

Q. Okay. And I was acquitted of the -- I'm stating for the record I was acquitted of those two controlled buys, they were Count IV and Count V of the Indictment.

A. That's correct.

Q. Why would you not, if you were not intimidated by this judge or pressured by this judge, why would you not immediately move for dismissal of the indictment or file for a franks hearing immediately after an acquittal of those charges?

A. Didn't do it.

1. The habeas claim includes the fact that law enforcement blatantly lied in alleging that the confidential informant led them to the defendants residence, lied about finding documents linking the defendant to the house and lied about purchasing drugs from the defendant all of which were contained in the Search warrant affidavit "DISPOSITIVE TO THIS CASE". See (ECF#187pg5-14)

Q. And one more time for the record, sir, just to be sure, you said that there wasn't any particular reason that you didn't file for dismissal of the indictment or the Franks hearing once evidence was discovered that those controlled buys were false?

A. I didn't file anything.

Q. You didn't file anything?

A. No, sir.

See (ECF#220 pgs 51-52 and 55-56)

ii. THE SWORN AFFIDAVIT FROM THE TRIAL ATTORNEY HIMSELF FOR WHICH ALSO SUBSTANTIATES THE PETITIONERS HABEAS CLAIM FOR RELIEF AS FOLLOWS:

GROUND ONE

1. I argued for suppression as indicated in the record. I did not cite or argue controlling precedent because I felt the issues were so clearly self-evident from the testimony of law enforcement that the trial court would rule on the merits and facts of the motion to suppress.

See (ECF#164-1 pg 2-3)

iii. THE SWORN AFFIDAVIT FROM PRIVATE INVESTIGATOR WILLIAM ANDERSON DIXON, FOR WHICH IN OF ITSELF RAISES RED FLAGS AND WOULD WARRANT FURTHER INQUIRY BY HONORABLE COURTS SEEKING TO ENSURE JUSTICE IS DONE, STATING:

AFFIDAVIT OF WILLIAM ANDERSON DIXON

I, William Anderson Dixon, being duly sworn and deposed, hereby state under the penalty of perjury that the following statements are true and correct to the best of my ability, understanding, and belief that:

1. As part of my investigation into Antonio Akel's case, I spoke with attorney Randall Etheridge concerning the government's threats.
2. Etheridge said that it was a strange case in the way that the government would treat him when he was investigating. Etheridge said that he felt intimidated by the government. Etheridge said that "I have to practice law here. If you call me on this, depending on how I feel, I may not be forthright."
3. I asked him if he could be specific about the threats and/or intimidation. Etheridge said it was body language and innuendo that said basically if you get in our way, we will arrest you too. I recall that his investigations surrounded the jurisdiction issue.
4. He said that he felt intimidated by the judge too and that he felt the judge was against his client's case.
5. Etheridge said that he felt that his hands were tied.

FURTHER, AFFIANT SAYETH NAUGHT.

William Anderson Dixon — 6-27-2011

William Anderson Dixon Date

See (ECF#174-1 pg 38-39)

IV. CITATIONS NECESSARY TO PROVE THAT THE UNITED STATES CHARGED THE PETITIONER WITH BOTH OF THE FACTUAL PREDICATES OF "CONTROLLED BUYS" WHICH SERVED AS THE ONLY PROBABLE CAUSE FOR ISSUANCE AS TO THE SEARCH AND ARREST WARRANTS THAT ARE DISPOSITIVE TO THE INDICTMENT FOR WHICH HE IS STILL INCARCERATED, AND, AS A CONSEQUENCE, THE JURY VERDICTS OF "NOT GUILTY" UPON COUNTS (IV) and (V) WHEN COMPETENTLY LITIGATED RENDERS THE DEFENDANT "ACTUALLY INNOCENT" AS EXPRESSED THROUGH THE FOURTH AMENDMENT, i.e. "THE FRUITS OF A POISONOUS TREE":

SEE: US ATTORNEY'S CLOSING ARGUMENT TO THE JURY:

Count 5, that charges -- this is Count 5. This is the second controlled buy where he sold these MDMA pills and this gram of cocaine to Aaron Gatchell.

Count 4, this is Count 4, these were the pills that were delivered in the first drug controlled buy to Aaron Gatchell, the blue pills that were introduced. This is Count 4.

COMPARE: THE JURY INSTRUCTIONS AS TO COUNTS 4 AND 5:

You will note as to Counts 4 and 5 that the defendant is charged not with possession with intent to distribute but actual distribution of a controlled substance. Title 21, United States Code Section 841(a)(1) also makes it a federal crime or offense for anyone to distribute a controlled substance.

Now, the defendant can be found guilty on each of these counts only if it is proven beyond a reasonable doubt that the defendant knowingly and intentionally distributed the controlled substance as charged.

NOW SEE: THE JURY VERDICT OF NOT GUILTY AS TO COUNTS 4, 5 AND 6:

03/24/2008		96	(Court only) ***Staff Notes as to ANTONIO U AKEL Re 93 Jury Verdict : Proposed JOA for Not Guilty Counts 4,5 & 6 referred (mjm) (Entered: 03/24/2008)
03/25/2008		97	JUDGMENT OF ACQUITTAL as to ANTONIO U AKEL (1), Counts 4s-5s, 6s, Judgment of Acquittal by Jury Verdict. Signed by SENIOR JUDGE LACEY A COLLIER on 3/25/2008. (mjm) (Entered: 03/25/2008)

(6). In Short the petitioners habeas claim of (ECF#156 GROUND ONE) as Amended by (ECF#187 pg5-14) has been acknowledged as a "valid claim for the denial of a constitutional right" by the SUPREME COURT OF THE UNITED STATES for thirty-four (34) years now, See:

> A petitioner cannot use habeas corpus as an avenue for relitigating Fourth Amendment claims, provided that the petitioner had a "full and fair" opportunity to raise the claim in the trial court and on appeal. Stone v. Powell, 428 U.S. 465, 494, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976). However, a habeas petitioner can argue that the ineffective assistance of counsel deprived him of a full and fair opportunity to litigate Fourth Amendment claims in the trial court. Kimmelman v. Morrison, 477 U.S. 365, 373-83, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986).

, and, albeit suppressed and hidden from the light by the lower courts use of misdirection and a systematic misapplication of law, the facts and evidence submitted for habeas relief makes a PRIMA FACIE showing that the petitioner is ACTUALLY INNOCENT OF THIS CASE.

(7). Despite the fact that the petitioners habeas claim of (ECF#187 pg5-14) presents the court with the distinct actions or inactions of his trial counsel for which were not before the Court on direct appeal and has absolutely nothing to do with the FOURTH AMENDMENT argument as raised in the trial court, i.e.

I. Background

A. Motion to Suppress

Akel filed a motion to suppress evidence obtained as a result of a search and seizure conducted at his residence on November 3, 2007. He asserted that the search warrant affidavit incorrectly described the vehicle used during a controlled buy on May 31, 2007 and contained stale evidence obtained during two controlled buys that occurred well over 30 days prior to the execution of the search warrant. In a memorandum in support of his motion, Akel argued that the two controlled buys could not support the search of his residence, because the buys were not conducted at his residence. He asserted that the search warrant was obtained by false pretenses, because the officer in charge swore that Akel drove a maroon Dodge Charger to the first controlled buy, even though video of the transaction showed a different type of vehicle. . . .

The court found that there was "no manipulation or falsity . . . on behalf of law enforcement" and noted that the mistaken vehicle description was found in the arrest warrant affidavit, not the search warrant affidavit. See United States v. AKEL, 337 Fed Appx 843 (11th cir 2009),

The MAGISTRATE Judge issued the following REPORT and RECOMMENDATION AT (ECF#196 pg10-12):

Ground One:

(1) Counsel's Failure to Properly Argue for Suppression

Defendant argues that trial counsel was constitutionally ineffective because he did not "properly" argue for suppression. He offers three arguments in support of this assertion: (1) counsel failed to argue controlling precedent; (2) counsel failed to argue that the trash pull was illegal; and (3) counsel failed to demonstrate that the affidavit in support of the search warrant was false. **The Government argues that this issue is procedurally barred because the motion to suppress and the suppression hearing were fully litigated on appeal.**

In the motion to suppress, counsel argued that (1) the affidavit for the search warrant failed to establish probable cause to search 9518 Pouder Lane; (2) the two alleged controlled buys on May 31, 2007 and July 18, 2007, did not form a nexus or basis to believe that proceeds of illegal drug activity or controlled substances would be found at Defendant's residence at the time of the execution of the search warrant; (3) even if that information from the controlled buys was valid, it was well over thirty days old at the time of the execution of the warrant; and (4) probable cause to search did not exist based on the trash pull which revealed no evidence of MDMA, as the mere presence of marijuana residue did not suffice to establish probable cause for a search (doc. 52 at 4-6).

The hearing on the motion to suppress took place in two parts due to scheduling conflicts (doc. 76, 77). At the commencement of the hearing, counsel identified several issues that were problematic concerning "the freshness of the warrant, whether it's stale, whether the good faith exception to the exclusionary rule applied and whether [the state and federal officers involved proceeded] with reckless disregard for actual truth of some of the matters asserted" (doc. 76 at 3). **Counsel also noted the error in the description of Defendant's vehicle in the search warrant affidavit** (*id.* at 4), and the lack of mention of marijuana in the affidavit (*id.* at 5). After the presentation of evidence and testimony counsel argued that law enforcement failed to show that any illegal activity was linked to the inside of the house, citing United States v. Marion, 238 F.3d 965, 969 (8th Cir. 2001) and United States v. Bervaldi, 226 F.3d 1256, 1264 (11th Cir. 2000)9 (doc. 77 at 77-78). Counsel argued the staleness of the information from the controlled buy and the fact that the evidence seized from the trash pull did not relate to the sale of MDMA or cocaine (*id.* at 79). **He again reiterated the error in the identification of the vehicle involved in the controlled buy**, and argued that the CI was an unverified informant, whose reliability had not been substantiated (*id.* at 81).

The Government argued in response that the contents of the search warrant affidavit were supported by evidence, including the items in the trash pull; that the mistake about the vehicle was insignificant; and that the affidavit was supported by probable cause but, if probable cause was lacking, the good faith exception would apply (doc. 77 at 82-83).

The district court specifically found there was "no manipulation or falsity or anything on behalf of law enforcement in this case at all" (doc. 77 at 83). **It agreed with the Government that the mistake about the kind of car was insignificant** (*id.* at 83-84). It noted that because the transaction in question was a controlled buy, it did not depend on the history or background of the CI (*id.* at 84). It also found that information related to or derived from trash pull was not stale, and that "the trash pull [brought] everything up to date" (*id.*). Finally, the court determined that the good faith exception would apply in this case (*id.*).

On appeal, Defendant challenged the allegedly false statements in the search warrant affidavit, the staleness of the warrant, and the district court's finding of probable cause. 337 F. App'x at 857-58.

The Eleventh Circuit found that Defendant failed to show that any statement contained in the search warrant affidavit was false, or even if he had, that any false statement was made intentionally or recklessly; that even if the evidence obtained from the controlled buys was somewhat stale, it was refreshed by the trash pull; and that the search warrant was valid. *Id.*

Because the motion to suppress was thoroughly argued before the trial court and on appeal, the Government argues that Defendant's challenge to counsel's performance in this respect is procedurally barred. Rozier, *supra;* Nyhuis, *supra.* **The court agrees that two of the three arguments Defendant makes in this motion are procedurally barred.** Defendant's first argument, that counsel should have argued "controlling precedent," is an attempt to re-argue the issue of the staleness of the information concerning the controlled buys that supported the warrant, and as such it is procedurally barred. Similarly, his argument that counsel failed to demonstrate that the affidavit was false is an attempt to re-litigate the district and appellate courts' prior determination about this issue, couched as an ineffective assistance of counsel claim.

(8). Not only is the Report and Recommendations legal premise "SQUARELY FORECLOSED" by the Supreme Courts decision in Kimmelman v. Morrison, 477 U.S 365, 106 S.Ct 2574, 91 L.Ed 2d 305 (1986) explicitly

holding:

1. The restriction on federal habeas review of Fourth Amendment claims announced in *Stone v. Powell, supra*, does not extend to Sixth Amendment ineffective-assistance-of-counsel claims which are founded primarily on incompetent representation with respect to a Fourth Amendment issue. Federal courts may grant habeas relief in appropriate cases, regardless of the nature of the underlying attorney error. Pp. 373-383.

(a) Respondent's Sixth Amendment claim is not in fact a Fourth Amendment claim directly controlled by *Stone*, as petitioners assert. The two claims are distinct, both in nature and in the requisite elements of proof. Pp. 374-375.

(b) Nor are the rationale and purposes of *Stone* fully applicable to a Sixth Amendment claim that is based [****4] principally on defense counsel's failure to litigate a Fourth Amendment claim competently. *Stone* held that the remedy for Fourth Amendment violations provided by the exclusionary rule is not a personal constitutional right, but instead is predominately a judicially created structural remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect; the rule has minimal utility in the context of federal collateral proceedings. Here, respondent sought direct federal habeas protection of his fundamental personal right to effective assistance of counsel, and collateral review is frequently the only means through which an accused can effectuate that right. Moreover, there is no merit to the contention that a defendant should not be allowed to vindicate through federal habeas review his right to effective assistance of counsel where counsel's primary error is failure to make a timely request for the exclusion of illegally seized evidence that is often the most probative information bearing on the defendant's guilt or innocence. The right to counsel is not conditioned upon actual innocence. Pp. 375-380.

(c) Petitioners' prediction that every Fourth Amendment [****5] claim that fails in state court will be fully litigated in federal habeas proceedings in Sixth Amendment guise, and that, as a result, many state-court judgments will be disturbed, is incorrect because it ignores the rigorous standard which *Strickland v. Washington, supra*, erects for ineffective-assistance claims. Although a meritorious Fourth Amendment issue is necessary to the success of a Sixth Amendment claim like respondent's, a good Fourth Amendment claim alone will not earn a prisoner federal habeas relief. Only those habeas petitioners who can prove under *Strickland* that they have been denied a fair trial by the gross incompetence of their attorneys are entitled to the writ and to retrial without the challenged evidence. Pp. 380-382.

but it is also WHOLLY DISHONEST in Contrast to the specific and detailed facts submitted for habeas relief at (Ecf#187pg5-14) and the Attorneys very own testimony on the Subject, providing:

Q. And one more time for the record, sir, just to be sure, you said that there wasn't any particular reason that you didn't file for dismissal of the indictment or the Franks hearing once evidence was discovered that those controlled buys were false?

A. I didn't file anything.

Q. You didn't file anything?

A. No, sir.

See (ECF# 220 pg55 line 20-pg 56 line 2). That is: The Report and Recommendations characterizatior that the petitioners habeas claim "IS AN ATTEMPT TO RE-LITIGATE THE DISTRICT AND APPELLATE COURTS' PRIOR DETERMINATION ABOUT THIS ISSUE, COUCHED AS AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM", is a legal fiction, a fiction of which has served only to hide the truth, obstruct rule of law and thus impede access to habeas relief.

(9). For years upon years, the petitioner has pointed out that the R&R's legal premise is not only erroneous but also born from dishonesty, see (ECF#'s 201, 219, 256, 262, 267, 279, 311, 315, 318 and 367) and See also (Judicial Complaint No. 11-16-90045).

(10). Despite this, the DISTRICT COURT has stood firm in its adoption of the R&R, twice, the first time at (ECF#215) but after being vacated in AKEL v. US, 2017 U.S. App. Lexis 27868 (11th Cir 2017)

did so for the second time at (ECF #321):

08/09/2017	321	ORDER AMENDING SENTENCE as to ANTONIO U AKEL. The Magistrate judge's Report and Recommendation is adopted and incorporated by reference in this order and the motion to vacate 156, supplemented 187 is DENIED, except as to the following corrections to Deft's sentence on Counts Two and Seven. Deft's sentence on Count Two is reduced to a term of 60 months imprisonment followed by Three Years of Supervised Release. Deft's sentence on Count Seven is reduced to a term of 120 months imprisonment followed by Three Years of Supervised Release. A certificate of appealability is DENIED. All other provisions of 122 Judgment and Sentence shall remain in full force and effect. Deft's 317 MOTION for Disclosure, etc. is DENIED. Deft's 318 MOTION TO CURE THE "MANIFEST INJUSTICE", etc. is DENIED. Signed by SENIOR JUDGE LACEY A COLLIER on 8/9/17. (mjm) Certified copies also to USM and USPO. Modified on 8/28/2017 to correct reference number for "Supplemented" from #318 to #187 (mjm). Modified on 8/28/2017 (mjm). (Entered: 08/09/2017)

(11). Because the petitioner's habeas claim was "PROCEDURALLY BARRED" from obtaining a merits determination, he can obtain the "Regular Appeal process" by satisfying the two-part "COA" standard articulated by the U.S. SUPREME COURT in SLACK v. MCDANIEL, 529 U.S. 473, 484 providing:

> Where a district court has rejected the constitutional claims on <*pg. 555> the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. **The issue becomes somewhat more complicated where, as here, the district court dismisses the petition based on procedural grounds. We hold as follows**: When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

and as clarified in the appellate Courts own precedent in HITTSON v. GDCP WARDEN, 759 F.3d 1210, 1270 (11th Cir 2014) holding:

> Where a petitioner must make a "substantial showing" without the benefit of a merits determination by an earlier court, he must demonstrate that [759 F.3d 1270] "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right." Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604, 146 L. Ed. 2d 542 (2000). That does not mean that a petitioner must show "that some jurists would grant the petition." Miller-El, 537 U.S. at 338, 123 S. Ct. at 1040. "[A] claim can be debatable [2003 U.S. App. LEXIS 165] even though every jurist of reason might agree, after the . . . case has received full consideration, that petitioner will not prevail." Id.

(12). However, at issue in this petition for WRIT OF MANDAMUS, the petitioner in three (3) seperate ("COA") proceedings before the ELEVENTH CIRCUIT [i.e. #'s 15-15341, 17-14707, 20-10574] has yet to be afforded the EQUAL PROTECTION of the law within SLACK v. MCDANIEL, 529 U.S. 473, 484, and, as a consequence thwarted and impeded from the "Regular appeal process" as proven hereafter.

(13). In the first "COA" proceeding before the ELEVENTH CIRCUIT, i.e. #15-15341, the Court Stated:

> Akel also moves for a certificate of appealability ("COA") in order to appeal the denial of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. To merit a COA, he must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478, 120 S. Ct. 1595, 1600-01, 146 L. Ed. 2d 542 (2000). Because he has failed to make the requisite showing, the motion for a COA is DENIED. SEE APPENDIX "C"

however, Contrary to that Courts Contention, SLACK 529 U.S. at 478 DOES NOT require a petitioner to "Show that reasonable Jurists would find debatable THE MERITS OF AN UNDERLYING CLAIM", See:

We are called upon to resolve a series of issues regarding the law of habeas corpus, including questions <*pg. 551> of the proper application of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). We hold as follows:

[529 US 478]

[1a] First, when a habeas corpus petitioner seeks to initiate an appeal of the dismissal of a habeas corpus petition after April 24, 1996 (the effective date of AEDPA), the right to appeal is governed by the certificate of appealability (COA) requirements now found at 28 USC § 2253(c) (1994 ed., Supp III) [28 USCS § 2253(c)]. This is true whether the habeas corpus petition was filed in the district court before or after AEDPA's effective date.

[2a] Second, when the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue (and an appeal of the district court's order may be taken) if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

[3a][4a] Third, a habeas petition which is filed after an initial petition was dismissed without adjudication on the merits for failure to exhaust state remedies is not a "second or successive" petition as that term is understood in the habeas corpus context. Federal courts do, however, retain broad powers to prevent duplicative or unnecessary litigation.

I

Petitioner Antonio Slack was convicted of second-degree murder in Nevada state court in 1990. His direct appeal was unsuccessful. On November 27, 1991, Slack filed a petition for writ of habeas corpus in federal court under 28 USC § 2254 [28 USCS § 2254]. Early in the federal proceeding, Slack decided to litigate claims he had not yet presented to the Nevada courts. He could not raise the claims in federal court because, under the exhaustion of remedies rule explained in Rose v Lundy, 455 US 509, 71 L Ed 2d 379, 102 S Ct 1198 (1982), a federal court was required to dismiss a petition presenting claims not yet litigated

[529 US 479]

Not only does the court in #15-15341 misrepresent the Rule of law found within SLACK v. McDANIEL, supra, for which the ELEVENTH CIRCUIT has utilized for over Ten years in over three-hundred and forty-three (343) habeas cases, see APPENDIX "E", but requiring habeas petitioners to make a demonstration upon the merits of which are not even part of the record as a direct result of the procedural ruling they seek to appeal, strains credulity, is not within the bounds of logic, and, effectively becomes a standard that thwarts an entire class of habeas petitioner from being able to satisfy the showing for the "Regular Appeal process"

Notwithstanding the fact that this court, the SUPREME COURT, has vacated the ELEVENTH CIRCUITS #15-15341 order in AKEL v. US, 137 S.Ct 1432 (2017) CERT #16-6032 (April 3, 2017) that didn't stop the appellate Courts reliance upon the erroneous ("COA") standard of review in the petitioners second of three proceedings as proven hereafter.

(14). In the petitioners second "COA" proceeding before the ELEVENTH CIRCUIT, i.e #17-14707,[a] the Court stated:

> ORDER:
>
> Appellant moves for a certificate of appealability ("COA") on his claim for ineffective assistance of trial counsel in presenting Appellant's Fourth Amendment claims. This Court has already denied a COA on this claim. Appellant's motion for a COA is thus DENIED as barred under the law-of-the-doctrine case. For background, see United States v. Andersbn, 772 F.3d 662, 668 (11th Cir. 2014); United States v. Escobar-Urrego, 110 F.3d 1556, 1560 (11th Cir. 1997). SEE APPENDIX "D"

however, this ruling is also erroneous and outside the bounds of logic because:

i. Where the Supreme Court vacated the courts denial of "COA" in cert #16-6032 on April 3, 2017, the courts reliance upon Appeal #15-15341 to enact the law-of-the-case doctrine is a legal nullity, and,

ii. Despite the #17-14707 court realizing itself on JAN 12, 2018:

> 01/12/2018 USDC order denying COA as to Appellant Antonio U. Akel was filed on 08/09/2017. Docket Entry 321.

, it has failed to realize that its reliance upon the MARCH 2, 2016 denial of ("COA") in the #15-15341 proceeding, for which PRE-DATES the district Courts denial of ("COA") by

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[a] As this appeal surrounds (ECF #321) for which is a "HYBRID ORDER" pursuant to US v. FUTCH, 518 F.3d 887, 890-895 (11th cir 2008) it is pending a Rehearing En banc determination due to the SEPT. 11, 2019 panels conflict with binding precedents US v. BROWN 879 F.3d 1231 (11th cir 2018); NORRIS v. US, 820 F.3d 1261 (11th cir 2016); MOLINA-MARTINEZ v. US, 136 S.Ct 1338 (2016); ROSALES-MIRELES v. US, 138 S.Ct 1897 (2018) and CAPERTON v. A.T. MASSEY COAL CO. 129 S.Ct 2252 (2009) - denied before this filing on Aug. 12, 2020

over Seventeen (17) months, not only undermines its own precedent in

HUNTER v. US, 101 F.3d 1565, 1575 (11th Cir 1996) Stating:

As far as Rule 22(b) is concerned, there is only one plausible interpretation of its language relating to the present issue. Not only does the rule make it clear that a district judge is authorized to issue a certificate of appealability, the plain language of the rule requires the judge whose denial of relief is subject to the attempted appeal either to issue a certificate, or to state why one should be denied. Only if the district judge who rendered the judgment has declined to issue the{1996 U.S. App. LEXIS 31} certificate does a circuit judge come into the picture. Under the plain language of the rule, an applicant for the writ gets two bites at the appeal certificate apple: one before the district judge, and if that one is unsuccessful, he gets a second one before a circuit judge. 8

but is also contrary to the plain text of the AEDPA, and, the Fed. R. App. P 22(b)(2) thus inverting erroneously the procedures for the "Regular appeal process." See

The same subject is also addressed in § 103 of the AEDPA, which amended Rule 22(b). As amended by § 103, Rule 22(b) now provides:

(b) Certificate of appealability. In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, an appeal by the applicant for the{1996 U.S. App. LEXIS 28} writ may not proceed unless a district or a circuit judge issues a certificate of appealability pursuant to section 2253(c) of title 28, United States Code. If an appeal is taken by the applicant, the district judge who rendered the judgment shall either issue a certificate of appealability or state the reasons why such a certificate should not issue. The certificate or the statement shall be forwarded to the court of appeals with the notice of appeal and the file of the proceedings in the district court. If the district judge has denied the certificate, the applicant for the writ may then request issuance of the certificate by a circuit judge. If such a request is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a State or its representative, a certificate of appealability is not required.Fed. R. Civ. P. 22(b). Plainly, the language of that provision authorizes district{1996 U.S. App. LEXIS 29} judges to issue certificates of appealability in § 2254 cases.

(15). As for the petitioners third "COA" proceeding before the ELEVENTH CIRCUIT, i.e. #20-10574, Stating:

ORDER:

Appellant's motion for remand to the district court is DENIED. His motion for a certificate of appealability is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). His motions for leave to proceed *in forma pauperis*, appointment of counsel, leave to file a supplemental reply, and judicial notice are DENIED AS MOOT. SEE: APPENDIX "A"

a little background is in order to understand why this "STRAIGHTFOWARD" requirement

under 28 U.S.C § 2253(c)(2), as opposed to the standard articulated by the Court in SLACK v. MCDANIEL, 529 US 473, 484, 120 S.Ct 1595 (2000), was not only clearly erroneous on the facts of the case but also ARBITRARILY IMPOSED in effort to thwart the petitioner from the "Regular Appeal process".

i. The ("COA") proceeding of #20-10574 is the petitioners effort to appeal the district courts denial of a FED.R.CIV.P 60(b)(6) motion challenging the Courts procedural ruling for which precluded a merits determination upon his habeas § 2255 claim for relief, See (ECF #367).

ii. The petitioner filed his 60(b) motion during the pendency of the appeal of the judgment of his underlying habeas 2255 petition in #17-14707 [3] where the Court therein has already acknowledged on JUNE 8, 2018 that the petitioners pro se petition facially alleges the denial of a constitutional right, when Circuit Judges TJOFLAT, MARCUS and JORDAN provided:

BY THE COURT:

Antonio Akel is a federal prisoner serving a total 480-month, Armed Career Criminal Act ("ACCA") enhanced sentence, after a jury convicted him of conspiracy to possess various drugs with intent to distribute (Count 1); possession of marijuana with intent to distribute, (Count 2); and possession of a firearm by a convicted felon (Count 7). After this Court affirmed his convictions and sentence, Akel filed a *pro* se 28 U.S.C. § 2255 motion to vacate sentence, arguing that: (1) he no longer qualified as an armed career criminal; and (2) his counsel was ineffective.

The district court denied Akel's motion, concluding that he had three prior convictions for burglary of a dwelling, an enumerated offense under the ACCA, and therefore, the ACCA enhancement was proper. Additionally, as to Akel's claim that his counsel was ineffective{2018 U.S. App. LEXIS 2} in failing to raise a Fourth Amendment issue, the court concluded that the majority of Akel's arguments were procedurally barred because they sought to relitigate issues decided on direct appeal, couched in terms of ineffective assistance. The district court denied a certificate of appealability ("COA"). Akel then moved to alter or amend the judgment, under Fed. R. Civ. P. 59(e), arguing in part that the district court's decision was contrary to *Kimmelman v. Morrison*, 477 U.S. 365, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986). The district court denied the Rule 59(e) motion, and Akel appealed.

iii. Having the benefit of three Jurist of Reason confirming the fact that the underlying 2255 petition states a valid claim for the denial of a constitutional right, 17 months and 11 days after the district courts denial of his 2255 at (ECF #321),

3. The petitioners Fed.R.civ.p 60(b) motion was filed during the appeal proceeding of the underlying 2255 pursuant to Fed.R.civ.p 62.1

While still on appeal of that very judgment in #17-14707, the petitioner presented the district court with a Fed. R. Civ. P 60(b)(6) motion at (ECF #367) stating explicitly:

"IN ACCORD WITH GONZALEZ v. CROSBY, 125 S. Ct 2641 (2005) THE MOVANT SEEKS TO LIFT THE PROCEDURAL BAR THAT PRECLUDED A MERITS DETERMINATION OF THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM AT (DOCKET #156) SUPPLEMENTED (DOCKET #187 pg 5-17) IN LIGHT OF THE INSTRUCTIVE CLARAFICATION OF BROWN V. UNITED STATES, 688 Fed. Appx. 644, 651-652 (11th Cir 2017) DEMONSTRATING THAT THE DISTRICT COURTS' LEGAL PREMISE FOR DOING SO, FOUND IN THE REPORT AND RECOMMENDATION AT (DOCKET #196 pg 12) IS CLEAR ERROR".

IV. The petitioners 60(b) motion, among other things, simply just contrasts the R&R at (ECF #196 pg 12) with the Court in BROWN v. US, 688 Fed. Appx. 644, 651-652 (11th Cir 2017) to prove that the district Courts procedural ruling was in error like so:

Because the motion to suppress was thoroughly argued before the trial court and on appeal, the Government argues that Defendant's challenge to counsel's performance in this respect is procedurally barred. Rozier, *supra*; Nyhuis, *supra*. The court agrees that two of the three arguments Defendant makes in this motion are procedurally barred. Defendant's first argument, that counsel should have argued "controlling precedent," is an attempt to re-argue the issue of the staleness of the information concerning the controlled buys that supported the warrant, and as such it is procedurally barred. Similarly, his argument that counsel failed to demonstrate that the affidavit was false is an attempt to re-litigate the district and appellate courts' prior determination about this issue, couched as an ineffective assistance of counsel claim. SEE (ECF #196 pg 12) compared to BROWN, 688 Fed. Appx at 651-652:

As an initial matter, **we find it instructive to discuss** the district court's conclusion that Brown **is procedurally barred** from raising this claim because he presented the claim on direct appeal. Typically, a prisoner **is procedurally barred** from relitigating an issue on collateral review that he already raised in his direct appeal. *Stoufflet v. United States*, 757 F.3d 1236, 1242 (11th Cir. 2014). **Where, however, facts essential to a claim are not in the appellate record, the general rule in favor** {688 Fed. Appx. 652} **of a procedural bar does not apply and the issue may be raised on collateral review to permit further factual development**. *See Bousley v. United States*, 523 U.S. 614, 621-22, 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998) (citing *Waley v. Johnston*, 316 U.S. 101, 62 S. Ct. 964, 86 L. Ed. 1302 (1942) (per curiam)). **One example of a claim typically requiring further factual development through a § 2255 proceeding is a claim based on ineffective assistance of counsel**. *Massaro v. United States*, 538 U.S. 500, 504, 123 S. Ct. 1690, 155 L. Ed. 2d 714 (2003).

V. However, despite the clear and concise contentions of the petitioners 60(b) claim within (ECF #367), the district court on OCTOBER 22, 2019 deliberately

misdirected the claim to give a false appearance to have been for FRAUD UPON THE COURT and denied the motion as untimely. See (ECF#383):

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

UNITED STATES OF AMERICA,

v. Case No. 3:07cr136/LAC

ANTONIO U. AKEL,

/

ORDER

Movant Antonio U. Akel's Motions Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure (ECF Nos. 367, 368) are DENIED as untimely. While certain motions may toll the time within which a notice of appeal must be filed, contrary to Movant's assertion, a notice of appeal does not serve to toll the time within which a Rule 60(b) motion must be filed. *See* Fed. R. App. P. 4(a)(4); *Sec. & Exch. Comm'n v. N. Am. Clearing, Inc.*, 656 F. App'x 947, 949 (11th Cir. 2016) (citing *Gulf Coast Bldg. & Supply Co. v. Int'l Bhd. of Elec. Workers, Local No. 480, AFL-CIO*, 460 F.2d 105, 108 (5th Cir. 1972)); *see also United States v. One Million Four Hundred Forty-Nine Thousand Four Hundred Seventy-Three Dollars & Thirty-Two Cents ($1,449,473.32) in U.S. Currency*, 152 F. App'x 911, 912 (11th Cir. 2005) ("The one-year limitation is not tolled by an appeal and cannot be circumvented by the use of Rule 60(b)(6)"). "This is because such motion can be made even though an appeal has been taken and is pending." *Transit Cas. Co. v. Sec. Trust Co.*, 441 F.2d 788, 791 (5th Cir. 1971). Additionally, in accordance with the Government's reasoning, the Court finds Movant's arguments of fraud to be far short of the standard necessary to establish fraud on the court for purposes of Rule 60(b).

ORDERED on this 22nd day of October, 2019.

s/ L. A. Collier
Lacey A. Collier
Senior United States District Judge

Vi. The petitioner filed a Fed. R. Civ. P 59(e) at (ECF#389) pointing out that the district court "OVERLOOKED" the real claim submitted for 60(b) relief within (ECF#367), and that: Contrary to its opinion, the challenge to its procedural ruling that precluded a merits determination of the 2255 claim for relief is properly raised under clause [6] of 60(b) and thus in his case timely raised where the ELEVENTH CIRCUIT in the Similarly situated case of BUCKLON v. SEC'Y FLA. DEPT. OF CORR, 606 Fed Appx 490, 494-495 (11th Cir. 2015) has held:

> Bucklon waited eighteen months after Cunningham was issued to file this Rule 60(b)(6) motion. This amount of time is reasonable here. Courts {606 Fed. Appx. 495} in other jurisdictions have approved of longer amounts of time in allowing Rule 60(b)(6) relief in habeas cases. See, e.g., Thompson, 580 F.3d at 443 (allowing Rule 60(b)(6) relief even though Thompson did not file suit until four years after the "extraordinary circumstance" at issue).

vii. However in a pure display of intransigence, in the face of its clear and indisputable error, where the district courts opinion in (ECF #383) has been "SQUARELY FORECLOSED" for over Seventy (70) years by the SUPREME COURT in KLAPPROTT v. UNITED STATES, 335 U.S. 601, 614-615, 69 S.Ct 384 (1949), it refused to correct itself and issued the following order at (ECF #391):

Upon consideration of the foregoing, it is ORDERED this 18th day of December, 2019, that:

(a) The relief requested is DENIED. None of the arguments made by Movant with regard to his earlier motions (Docs. 367, 368) were excluded from, or overlooked in, the Court's order of denial. Those motions were denied in their entirety.

viii. After being denied a ("COA") by the district court at (ECF #400) the petitioner filed a ("COA") to the ELEVENTH CIRCUIT ON MARCH 16, 2020 for which page #1 under the demarcated section of "OVERVIEW" alone would secure relief in every fair court of the UNITED STATES, See:

OVERVIEW: THE DISTRICT COURT ABUSED ITS DISCRETION IN DECLINING TO REOPEN THE JUDGMENT BY DENYING HABEAS PETITIONER'S FED.R.CIV.P 60(b)(6) MOTION AT (DOC #367), THE FED.R.CIV.P 59(e) AT (DOC #389) AND THE "COA" AT (DOC #395 & 396) BECAUSE: (1) CONTRARY TO DISTRICT COURT OPINIONS (DOC #'S 383, 391 & 400), A CHALLENGE TO A "FEDERAL COURT'S RULING THAT PRECLUDED A MERITS REVIEW (i.e. A PROCEDURAL BAR) AS BEING ERROR," IS PROPERLY RAISED UNDER RULE 60(b)(6), CLEARLY ESTABLISHED OVER 70 YEARS AGO IN KLAPPROTT v US, 335 US AT 614-15 (1949), GONZALEZ v. CROSBY, 545 US 524, 528-29 (2005), MEMTER v. US, 405 F.3d 1245 (5th Cir. 1968), BUCKLON v. SEC'Y 606 Fed. Appx 490 (11th Cir. 2015) [SEE MOTION FOR REMAND IN ACCORD WITH DANLEY v. ALLEN FILED HEREIN], AND, (2) A RULE 60(b)(6) MOTION FILED 18 MONTHS FROM THE ENTRY OF JUDGMENT IS TIMELY, CLEARLY ESTABLISHED IN BUCKLON, 606 Fed. Appx. 494-495, AND, (3) IN ACCORD WITH SLACK v. MCDANIEL, 529 U.S. 473, 484 (2000) AND HITTSON v. GDCP WARDEN, 759 F.3d 1210, 1270 (11th Cir. 2014), THE UNDERLYING HABEAS PETITION "STATES" A VALID CLAIM OF A DENIAL OF CONSTITUTIONAL RIGHTS FOR WHICH JURIST OF REASON CAN DEBATE, EFFECTIVELY CALLED A "KIMMELMAN v. MORRISON 477 U.S. 365 (1986) CLAIM" AND IS LOCATED AT (DOC #187 pg 5-17) PRESENTING ENTIRELY DISTINCT FACTS AND EVIDENCE FROM THE FOURTH AMENDMENT CLAIM BEFORE AND ADJUDICATED BY THE DIRECT APPEAL COURT IN U.S. AKEL, 337 Fed. Appx. 843 (11th Cir. 2009), AND, (4) AKEL HAS DISPLAYED DILIGENCE, WHERE HE ADVANCED THAT THE PROCEDURAL BAR OF (DOC #196 pg 13) WAS ERROR AT EVERY LEVEL AND OPPORTUNITY, See (DOC #'S 201, 219, 256, 262, 267, 279, 311, 315, 318) (APPEAL #'S 15-15291, 15-15341, 17-14707) (CERT #'S 16-5458, 16-6033) (JUDICIAL COMPLAINT NO. 11-16-90045), AND, (5) AKEL HAS SHOWN EXTRAORDINARY CIRCUMSTANCES JUSTIFYING RULE 60(b)(6) RELIEF: AN "INSTRUCTIVE" CLARIFICATION OF FEDERAL PROCEDURE BY A FEDERAL APPEALS COURT IN BROWN v US, 688 Fed. Appx 644, 651-653 (11th Cir. 2017) WHICH HAS PROVEN THAT THE COURTS PRIOR UNDERSTANDING OF THE PROCEDURAL BAR RULES AS SET OUT IN (DOC #196 pg 13) WAS INCORRECT AND WRONG, THUS ARBITRARILY DENYING AKEL "A FULL AND FAIR OPPORTUNITY" TO LITIGATE THE HABEAS CLAIM WITHIN (DOC #187 pg 5-17) AND PREVENTED AKEL FROM RECEIVING ADEQUATE REDRESS, AND, (6) THERE IS AN INJUSTICE TO THE MOVING PARTY AND A RISK OF LOSING THE PUBLIC'S CONFIDENCE IN THE JUDICIAL PROCESS BECAUSE THE RULING(S) HAVE EFFECTIVELY HIDDEN AND SUPPRESSED THE MERITS, EVIDENCE, AND FACTUAL DEVELOPMENT FOR WHICH PROVES AKEL'S INNOCENCE. SEE (DOC #330 pg 51 LINE 30 - pg 52 LINE 16 & pg 55 LINE 30 - pg 56 LINE 3) SEE ALSO [MOTION FOR THE APPOINTMENT OF COUNSEL FILED IN THIS APPEAL], SEE EX #3 AND pg's 33-38 HEREIN THIS "COA" SEE JUDICIAL COMPLAINT # 11-16-90045 (ACCUSING N.D. FLA OF DELIBERATELY HIDING FACTS AND EVIDENCE OF KIMMELMAN CLAIM OF DOC #187 pg 5-17) SEE ALSO (CERT # 16-6632 AT PET. pg 29-30) (SAME) AND (DOC # 311) (SAME)

ix. However, despite the indisputable merit of the petitioners ("COA"), and, having less than a 0.000336 [1 out of 3000][4] chance of being randomly assigned to this, being his Fourth time out of Six of petitioner AKELS proceedings within the ELEVENTH CIRCUIT, Judge WILLIAM H. PRYOR Jr.[5] denied relief on MAY 19, 2020 Stating:

ORDER:

Appellant's motion for remand to the district court is DENIED. His motion for a certificate of appealability is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). His motions for leave to proceed *in forma pauperis*, appointment of counsel, leave to file a supplemental reply, and judicial notice are DENIED AS MOOT.

/s/ William H. Pryor Jr.
UNITED STATES CIRCUIT JUDGE

See APPENDIX "A"

X. On June 29, 2020 the petitioner filed a motion to reconsider the Courts order denying a ("COA"), explicitly informing the court that the proper Standard of review is controlled by SLACK v. MCDANIEL, 529 U.S 473, 484 and its own precedent in HITTSON v GDCP WARDEN, 759 F.3d 1210, 1270 (11th cir 2014) and that in light of this Binding law AKEL Clearly meets and exceeds the threshold to be granted a ("COA") where he has Shown that "SIX DIFFERENT JURIST OF REASON IN THE APPEAL OF THE UNDERLYING HABEAS 2255 PETITION, i.e. #17-14707, HAVE ALREADY ACKNOWLEDGED THE PETITION STATES A VALID CLAIM OF A DENIAL OF A CONSTITUTIONAL RIGHT", WHERE ON JUNE 8, 2018 Judges TJOFLAT, MARCUS and JORDAN have framed the § 2255 petition as follows:

BY THE COURT:

Antonio Akel is a federal prisoner serving a total 480-month, Armed Career Criminal Act ("ACCA") enhanced sentence, after a jury convicted him of conspiracy to possess various drugs with intent to distribute (Count 1); possession of marijuana with intent to distribute, (Count 2); and possession of a firearm by a convicted felon (Count 7). After this Court affirmed his convictions and sentence, Akel filed a *pro se* 28 U.S.C. § 2255 motion to vacate sentence, arguing that: (1) he no longer qualified as an armed career criminal; and (2) his counsel was ineffective.

The district court denied Akel's motion, concluding that he had three prior convictions for burglary of a dwelling, an enumerated offense under the ACCA, and therefore, the ACCA enhancement was proper. Additionally, as to Akel's claim that his counsel was ineffective (2018 U.S. App. LEXIS ?) in failing to raise a Fourth Amendment issue, the court concluded that the majority of Akel's arguments were procedurally barred because they sought to relitigate issues decided on direct appeal, couched in terms of ineffective assistance. The district court denied a certificate of appealability ("COA"). Akel then moved to alter or amend the judgment, under Fed. R. Civ. P. 59(e), arguing in part that the district court's decision was contrary to *Kimmelman v. Morrison*, 477 U.S. 365, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986). The district court denied the Rule 59(e) motion, and Akel appealed.

4. The mathematical equation termed the "BERNOULLI TRIAL" proves that Judge William H. Pryor had less than a 1 in 3000 chance of being assigned randomly to this case standing alone, but when compounded to the fact that there are Six active Judges, to include the Honorable Beverly MARTIN and Jill PRYOR, for whom have never been assigned to any of the petitioners Previous Eleventh Circuit proceedings, Judge William PRYORS chances of being assigned to this case become Statistically impossible by that Same formula, Suggesting deliberate intercception of AKEL'S appeals to obstruct "Equal Justice under the law."

5. Judge William H. Pryor is a disqualified Judge and had a constitutional duty to have recused himself from this appeal

ON NOVEMBER 25,2019 Judge EDMONDSON Stated:

UNITED STATES OF AMERICA, [illegible], versus ANTONIO AKEL, Defendant-Appellant.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
[illegible] U.S. App. LEXIS 35830
[illegible] 17-14707-AA
November 25, 2019, Decided

Editorial Information: Subsequent History

Reconsideration denied by United States v. Akel, 2020 U.S. App. LEXIS 4146 (11th Cir. Fla., Feb. 10, 2020)

Editorial Information: Prior History

[illegible] Appeal from the United States District Court for the Northern District of Florida. Akel v. United States, 2017 U.S. App. LEXIS 27859 (11th Cir. Fla., July 12, 2017)

Counsel For United States of America, Plaintiff - Appellee: Robert G. Davies, Alicia Forbes, U.S. Attorney Service - Northern District of Florida, U.S. Attorney's Office, Pensacola, FL.

Antonio U. Akel, Defendant - Appellant, Pro se, Estill, SC

Judges: J.L. Edmondson, UNITED STATES CIRCUIT JUDGE.

Opinion

Opinion by: J.L. Edmondson

Opinion

ORDER:

Appellant moves for a certificate of appealability ("COA") on his claim for ineffective assistance of trial counsel in presenting Appellant's Fourth Amendment claims. This Court has already denied a COA on this claim. Appellant's motion for a COA is thus DENIED as barred under the law-of-the-doctrine case: For background, see United States v. Anderson, 772 F.3d 662, 668 (11th Cir. 2014); United States v. Escobar-Urrego, 110 F.3d 1558, 1560 (11th Cir. 1997).

Appellant's motion for a refund of the appellate filing fee is DENIED

Appellant's motions (1) for leave to file a petition for rehearing in excess of the applicable page limits and (2) for appointment of appellate counsel are HELD IN ABEYANCE pending a determination about Appellant's financial ability to obtain representation. The Clerk is directed to send to Appellant the appropriate affidavit of indigency.

/s/ J.L. Edmondson

United STATES CIRCUIT JUDGE

and ON FEBRUARY 10, 2020 Judges WILSON, EDMONDSON and HULL have further framed what the petitioner stated in his habeas petition by holding:

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus ANTONIO AKEL, Defendant-Appellant.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2020 U.S. App. LEXIS 4146
No. 17-14707-AA
February 10, 2020, Decided

Editorial Information: Prior History

{2020 U.S. App. LEXIS 1}Appeal from the United States District Court for the Northern District of Florida. United States v. Akel, 2019 U.S. App. LEXIS 35330 (11th Cir. Fla., Nov. 25, 2019)

Counsel For United States of America, Plaintiff - Appellee: Robert G. Davies, Alicia Forbes, U.S. Attorney Service - Northern District of Florida, U.S. Attorney's Office, Pensacola, FL.

Antonio U. Akel, Defendant - Appellant, a.k.a.: Tony Akel, Estill, SC.

Judges: Before: WILSON, EDMONDSON, and HULL, Circuit Judges

Opinion

BY THE COURT:

Appellant moves for reconsideration of this Court's 25 November 2019 order denying Appellant a certificate of appealability ("COA") on his claim for ineffective assistance of trial counsel in presenting Appellant's Fourth Amendment claims. Appellant's motion is DENIED.

Additionally the petitioner pointed out that Judge WILLIAM H. PRYOR knows matter of factly that both of the district courts procedural rulings in this habeas action were clearly wrong and erroneous because he himself served on the appellate panels proving such, i.e. Judge William Pryor presided in BROWN v. US, 688 Fed. Appx. 644, 651-652 for which proves the district courts procedural bar legal premise of (ECF #196 pg 12) adopted by (ECF #381) was erroneous, and, Judge William Pryor presided in BUCKLON v. SEC'Y FLA. DEPT. OF CORR., 606 Fed Fed. Appx 490 (11th cir 2015) For which proves that contrary to the district courts opinion in (ECF #383) a Rule 60(b) claim alleging the courts procedural ruling for which prevented a merits determination upon the §2255 claim for relief is properly raised under [clause 6] and therefore timely because it was filed within 18 months.

XI. However, it appears that the Court is neither bound by Rule of law nor honesty as it denied the petitioner reconsideration a mere 14 days later on July 13, 2020 Stating:

Before: WILLIAM PRYOR and ROSENBAUM, Circuit Judges.

BY THE COURT:

Antonio Akel has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-1(c) and 27-2, of this Court's May 19, 2020, order denying a certificate of appealability, leave to proceed *in forma pauperis*, appointment of counsel, remand to the district court, judicial notice, and leave to file supplemental reply in his appeal from the denial of his *pro se* Fed. R. Civ. P. 59(e) motion for reconsideration of the district court's order denying his Fed. R. Civ. P. 60(b) motion for relief from the district court's underlying judgment denying his 28 U.S.C. § 2255 motion to vacate. Upon review, Akel's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief. SEE: APPENDIX "B"

(6) When an appellate Court holds that a habeas petitioners quoting of "SIX DIFFERENT JURIST OF REASON", from the appeal of the underlying §2255 petition, highlighting that the habeas petition facially alleges: "HIS CLAIM FOR INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN PRESENTING APPELLANT'S FOURTH AMENDMENT CLAIM", is not "new evidence or argument of merit to warrant relief" as the Court in #20-10574 has done, it is clear that the "Regular Appeal process" has been thwarted and usurped, and, a UNITED STATES CITIZEN has no other recourse but to implore the SUPREME COURT OF THE UNITED STATES to ISSUE MANDAMUS to the ELEVENTH CIRCUIT to apply "EQUAL JUSTICE UNDER THE LAW" with an evenhand. CF:

In the wake of *Slack* and having found a debatable procedural bar, the Ninth and Seventh Circuits determined that the court should "simply take a 'quick look' at the face of the complaint to determine whether the petitioner has 'facially allege[d] the denial of a constitutional right.'" *Lambright v. Stewart*, 220 F.3d 1022, 1026 (9th Cir.2000) quoting *Jefferson v. Welborn*, 222 F.3d 286, 289 (7th Cir.2000). Although the Court finds no Sixth Circuit authority directly on point, this "quick look" approach appears to be the majority approach of the federal circuits. In addition, it is an approach that is well grounded{2014 U.S. Dist. LEXIS 14} in *Slack*'s literal language as the thing to be debated among reasonable jurists when a COA issues is not the merits but merely "whether the petition states a valid claim (*emphasis added*) of the denial of a constitutional right." *Slack* at 484.9

See also:

To obtain a COA when the district court denies or dismisses a § 2255 motion on procedural grounds (like untimeliness), the defendant must show that jurists{2019 U.S. App. LEXIS 5} of reason could debate both the correctness of the procedural ruling and whether the motion stated a valid claim of the denial of a constitutional right. *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000). With respect to the latter requirement, courts do not "delve into the merits of the claim" at the certification stage. *Fleming v. Evans*, 481 F.3d 1249, 1259 (10th Cir. 2007). Instead, courts "simply take a quick look at the face of the [motion]" to determine whether the movant "has facially alleged the denial of a constitutional right." *Paredes v. Atherton*, 224 F.3d 1160, 1161 (10th Cir. 2000) (per curiam) (brackets and internal quotation marks omitted).

now See HUTTO V. DAVIS, 454 US 370, 375, 102 S.Ct 703, 706, 70 L.Ed.2d 556 (1982):

But unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.

REASONS FOR GRANTING THE PETITION

I. RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY OTHER COURT BECAUSE THE CIRCUMSTANCES ARE EXCEPTIONAL WHERE:

A. THE ELEVENTH CIRCUIT HAS CONSISTENTLY MANIPULATED AND ADULTERATED THE ("COA") STANDARD OF REVIEW AS ENUNCIATED BY THE SUPREME COURT IN SLACK v. MCDANIEL 529 U.S. 473 at 484, TO ONE FOR WHICH A ("COA") CAN NEVER ISSUE, EFFECTIVELY THWARTING AND TOTALLY DEPRIVING AN ENTIRE CLASS OF HABEAS PETITIONER WHOM HAS NEVER HAD THE BENEFIT OF A MERITS REVIEW BY ANY COURT [DUE TO AN INCORRECT PROCEDURAL BAR], FROM EVER BEING ABLE TO REACH THE SHOWING NECESSARY TO OBTAIN THE REGULAR APPEAL PROCESS.

(1) The mandamus petitioner has had three (3) Seperate Certificate of appealability ("COA") proceedings within the ELEVENTH CIRCUIT, i.e. [Appeal #'s 15-15341; 17-14707; and 20-10574], and despite the Fact the Judges therein know the district court denied the petitioners habeas claim on procedural grounds without ever reaching the underlying Constitutional claim, See

ANTONIO U. AKEL, Petitioner-Appellant, versus UNITED STATES OF AMERICA, Respondent-Appellee.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2018 U.S. App. LEXIS 15666
No. 17-14707-AA
June 8, 2018, Decided

Editorial Information: Subsequent History

Reconsideration denied by, Motion denied by United States v. Akel, 2018 U.S. App. LEXIS 23037 (11th Cir. Fla., Aug. 17, 2018)

Editorial Information: Prior History

{2018 U.S. App. LEXIS 1}Appeal from the United States District Court for the Northern District of Florida.United States v. Akel, 337 Fed. Appx. 843, 2009 U.S. App. LEXIS 16952 (11th Cir. Fla., July 24, 2009)

Counsel For United States of America, Plaintiff - Appellee: Robert G. Davies, Alicia Forbes, U.S. Attorney Service - Northern District of Florida, U.S. Attorney's Office, Pensacola, FL.

Antonio U. Akel, Defendant - Appellant, Pro se, Estill, SC.

Judges: Before: TJOFLAT, MARCUS and JORDAN, Circuit Judges.

Opinion

BY THE COURT:

Antonio Akel is a federal prisoner serving a total 480-month, Armed Career Criminal Act ("ACCA") enhanced sentence, after a jury convicted him of conspiracy to possess various drugs with intent to distribute (Count 1); possession of marijuana with intent to distribute, (Count 2); and possession of a firearm by a convicted felon (Count 7). After this Court affirmed his convictions and sentence, Akel filed a *pro se* 28 U.S.C. § 2255 motion to vacate sentence, arguing that: (1) he no longer qualified as an armed career criminal; and (2) his counsel was ineffective.

The district court denied Akel's motion, concluding that he had three prior convictions for burglary of a dwelling, an enumerated offense under the ACCA, and therefore, the ACCA enhancement was proper. Additionally, as to Akel's claim that his counsel was ineffective{2018 U.S. App. LEXIS 2} in failing to raise a Fourth Amendment issue, the court concluded that the majority of Akel's arguments were procedurally barred because they sought to relitigate issues decided on direct appeal, couched in terms of ineffective assistance. The district court denied a certificate of appealability ("COA"). Akel then moved to alter or amend the judgment, under Fed. R. Civ. P. 59(e), arguing inpart that the district court's decision was contrary to *Kimmelman v. Morrison*, 477 U.S. 365, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986). The district court denied the Rule 59(e) motion, and Akel appealed.

not one time, in one proceeding, was he accorded "EQUAL JUSTICE UNDER THE LAW" to proceed with the "REGULAR APPEAL PROCESS" as already developed and clarafied by this Court twenty (20) years ago when it issued SLACK v. MCDANIEL, 529 U.S 473, 484 Stating clearly and unambiguously:

Where a district court has rejected the constitutional claims on <*pg. 555> the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. **The issue becomes somewhat more complicated where, as here, the district court dismisses the petition based on procedural grounds. We hold as follows**: When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

for which it took the ELEVENTH CIRCUIT an additional Fourteen (14) years thereafter to even properly interpret the plain language of SLACK Supra, when it held for the first time in HITTSON v. GDCP WARDEN, 759 F.3d 1210, 1270 (11th Cir 2014):

> Where a petitioner must make a substantial showing **without the benefit of a merits** determination by an earlier court, he must demonstrate that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right. That does not mean that a petitioner must show that some jurists would grant the petition. A claim can be debatable even though every jurist of reason might agree, after the case has received full consideration, that petitioner will not prevail.

(2). Despite the fact that HITTSON v. GDCP WARDEN, 759 F.3d at 1270 would seem to suggest that the ELEVENTH CIRCUIT knows how to conduct the proper and lawful ("COA") analysis as dictated by clearly established Rule of law, it has done everything but that, in all three of the instant petitioners proceedings and that of at the least an additional three-hundred-and-forty-three (343) habeas petitioners. See APPENDIX E (providing this court with at least one case from every year since 2010)

(3). In the petitioners first ("COA") proceeding, i.e. HIS ATTEMPT AT THE REGULAR APPEALS PROCESS, the ELEVENTH CIRCUIT in #15-15341, AKEL v. US, 2016 U.S. App. LEXIS 24492 (MARCH 2, 2016) Stated (WORD FOR WORD) as cut and pasted below:

> ORDER:
>
> Antonio U. Akel has filed an "Emergency *Pro Se* Declaration for Equal Protection and Due Process." The Court construes this as a motion for liberal construction of his *pro se* filings. So construed, the motion is GRANTED. *See Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).
>
> Akel also moves for a certificate of appealability ("COA") in order to appeal the denial of his 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. To merit a COA, he must show that reasonable jurists would find debatable both (1) the merits of an underlying claim, and (2) the procedural issues that he seeks to raise. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 478, 120 S. Ct. 1595, 1600-01, 146 L. Ed. 2d 542 (2000). Because he has failed to make the requisite showing, the motion for a COA is DENIED.
>
> Akel's motion for appointment of counsel is DENIED AS MOOT.
>
> /s/ William H. Pryor Jr.
>
> UNITED STATES CIRCUIT JUDGE

However, nowhere within SLACK supra does the court require a petitioner to "SHOW THAT REASONABLE JURIST WOULD FIND DEBATABLE THE MERITS OF AN UNDERLYING CLAIM", let alone at 529 U.S. 478 evinced as cut and pasted below:

We are called upon to resolve a series of issues regarding the law of habeas corpus, including questions <*pg. 551> of the proper application of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). We hold as follows:

[529 US 478]

[1a] First, when a habeas corpus petitioner seeks to initiate an appeal of the dismissal of a habeas corpus petition after April 24, 1996 (the effective date of AEDPA), the right to appeal is governed by the certificate of appealability (COA) requirements now found at 28 USC § 2253(c) (1994 ed., Supp III) [28 USCS § 2253(c)]. This is true whether the habeas corpus petition was filed in the district court before or after AEDPA's effective date.

[2a] Second, when the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue (and an appeal of the district court's order may be taken) if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

[3a][4a] Third, a habeas petition which is filed after an initial petition was dismissed without adjudication on the merits for failure to exhaust state remedies is not a "second or successive" petition as that term is understood in the habeas corpus context. Federal courts do, however, retain broad powers to prevent duplicative or unnecessary litigation.

I

Petitioner Antonio Slack was convicted of second-degree murder in Nevada state court in 1990. His direct appeal was unsuccessful. On November 27, 1991, Slack filed a petition for writ of habeas corpus in federal court under 28 USC § 2254 [28 USCS § 2254]. Early in the federal proceeding, Slack decided to litigate claims he had not yet presented to the Nevada courts. He could not raise the claims in federal court because, under the exhaustion of remedies rule explained in Rose v Lundy, 455 US 509, 71 L Ed 2d 379, 102 S Ct 1198 (1982), a federal court was required to dismiss a petition presenting claims not yet litigated

[529 US 479]

As this honorable SUPREME COURT can see, despite the fact the petitioner implored the #15-15341 Court for "EQUAL PROTECTION AND DUE PROCESS", it still refined and sharpened the ("COA") analysis to a standard for which a "COA CAN NEVER ISSUE" as to Constitutional claims that are suppressed and undeveloped resulting from the very "PROCEDURAL RULING" they are trying to appeal. CF MARSHALL v. RODGERS, 133 S.ct 1446, 1450, 185 L.Ed 2d 540 (2013) ("circuit precedent may not be" used to refine or sharpen a general principle of Supreme Court jurisprudence into a specific legal rule that the Supreme Court has not announced"). i.e. How can a petitioner make a showing upon the merits when the predicates and evidence have been hidden?

Not only is this ("COA") Standard UNATTAINABLE, it is also wholly erroneous in light of BUCK v. DAVIS, 137 S.ct 759 (2017) Stating:

The certificate of appealability (COA) inquiry is not coextensive with a merits analysis. At the COA stage, the only question is whether the applicant has shown that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. This threshold question should be decided without full consideration of the factual or legal bases adduced in support of the claims...

,and, appears to be employed part and parcel towards institutional racism within the SOUTHEASTERN FEDERAL JUDICIARY.[6]

However this #15-15341 Judgment was vacated by the SUPREME COURT in ANTONIO U. AKEL v. UNITED STATES NO.16-6032 Stating:

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the motion of petitioner for leave to proceed *in forma pauperis* and the petition for writ of certiorari are granted. The judgment of the above court is vacated, and the case is remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of *Mathis* v. *United States*, 579 U. S. ___ (2016).

(4). In the petitioners Second("COA") proceeding, i.e. HIS SECOND ATTEMPT AT THE REGULAR APPEALS PROCESS, the ELEVENTH CIRCUIT in #17-14707, US v. AKEL, 2019 U.S. App. LEXIS 35330 (Nov. 25, 2019) Stated WORD FOR WORD as cut and pasted below:

ORDER:

Appellant moves for a certificate of appealability ("COA") on his claim for ineffective assistance of trial counsel in presenting Appellant's Fourth Amendment claims. This Court has already denied a COA on this claim. Appellant's motion for a COA is thus DENIED as barred under the law-of-the-doctrine case. For background, see United States v. Anderson, 772 F.3d 662, 668 (11th Cir. 2014); United States v. Escobar-Urrego, 110 F.3d 1556, 1560 (11th Cir. 1997).

Appellant's motion for a refund of the appellate filing fee is DENIED.

Appellant's motions (1) for leave to file a petition for rehearing in excess of the applicable page limits and (2) for appointment of appellate counsel are HELD IN ABEYANCE pending a determination about Appellant's financial ability to obtain representation. The Clerk is directed to send to Appellant the appropriate affidavit of indigency.

/s/ J.L. Edmondson

United STATES CIRCUIT JUDGE

With all due respect, this ruling is one of the most arbitrary and absurd rulings ever issued by any Federal Appellate Court during the entire two-hundred-and-forty-four

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6. Using the Search terms "the merits of an underlying claim" and "529 U.S. 473,478" on the FBOP's LEXIS NEXIS System for the ELEVENTH CIR. COURT OF APPEALS will reveal ("343") habeas cases for which this erroneous ("COA") Standard was utilized to deny petitioners the regular appeal process. However slow, due to lack of resources, the petitioner managed to have outside sources (mainly petitioners mother) cross-reference the names with their respective "CORRECTIONAL LOCATION DATABASES" as well as "GOOGLE" and was able to determine that the first 50 names of the "343" were all, like the instant petitioner, of black or brown heritage. Pending the results of the other 293, it appears the erroneous ("COA") Standard is only imposed on the minority petitioners within the ELEVENTH CIRCUIT. CF APPENDIX "E"

Year history of our democracy and as such would give rise to the appearance of a deliberate obstruction of the "Regular Appeals process" in the mind of a reasonable member of the public, for these simple reasons:

(i). The previous denial of ("COA") for which the #17-14707 court relies upon to bar the petitioners instant ("COA") under the law-of-the-case-doctrine is located in the #15-15341, the very Judgment vacated by the Supreme Court in AKEL v. US, CERT #16-6032, and therefore is a legal nullity.

(ii). In turn the #15-15341 court, on July 12, 2017 VACATED the district courts denial of the petitioners 28 U.S.C § 2255 stating WORD FOR WORD as cut and pasted below:

ON REMAND FROM THE UNITED STATES SUPREME COURT

BY THE COURT:

This matter is on remand from the Supreme Court of the United States for further consideration in light of *Mathis v. United States*, 549 U.S. 964, 127 S. Ct. 410, 166 L. Ed. 2d 290 (2016).

Appellant Antonio Akel also has filed a "Motion to Recuse Judge William H. Pryor and the Jurist in Appeal #'s 08-13771, 14-11671, 15-15281 from Further Proceedings in Accordance with Due Process U.S. Const. Amend V." To the extent that Akel seeks the recusal of any of the judges on this panel, the motion is DENIED. To the extent that Akel seeks to recuse any judges of the Court not serving on this panel, the motion is DENIED AS MOOT.

We VACATE the denial of Akel's motion to vacate, set aside, or correct his sentences, 28 U.S.C. § 2255, and REMAND for the district court to reconsider the sentence on Count 7 in light of *Mathis*.

and as a consequence the DISTRICT court had to rule ANEW on the §2255 motion and ("COA") for which it did on AUGUST 9, 2017 at (ECF #321):

08/09/2017	321	ORDER AMENDING SENTENCE as to ANTONIO U AKEL. The Magistrate judge's Report and Recommendation is adopted and incorporated by reference in this order and the motion to vacate 156, supplemented 187 is DENIED, except as to the following corrections to Deft's sentence on Counts Two and Seven. Deft's sentence on Count Two is reduced to a term of 60 months imprisonment followed by Three Years of Supervised Release. Deft's sentence on Count Seven is reduced to a term of 120 months Imprisonment followed by Three Years of Supervised Release. A certificate of appealability is DENIED. All other provisions of 122 Judgment and Sentence shall remain in full force and effect. Deft's 317 MOTION for Disclosure, etc. is DENIED. Deft's 318 MOTION TO CURE THE "MANIFEST INJUSTICE", etc. is DENIED. Signed by SENIOR JUDGE LACEY A COLLIER on 8/9/17. (mjm) Certified copies also to USM and USPO. Modified on 8/28/2017 to correct reference number for "Supplemented" from #318 to #187 (mjm). Modified on 8/28/2017 (mjm). (Entered: 08/09/2017)

(iii). In the mind of the #17-14707-AA Court, petitioner AKEL cannot obtain the "Regular Appeals process" upon the AUGUST 9th, 2017 denial of ("COA") because the Court in #15-15341 denied a ("COA") on MARCH 2, 2016, and, never mind that the SUPREME COURT VACATED that Judgment or that the petitioners 28 U.S.C § 2255 was denied ANEW a full 17 months and 7 days later.

(iv). In the ELEVENTH CIRCUITS effort to outright thwart and usurp the regular appeals process to the petitioner, it has inverted the statutory operations of FED.R.APP.P 22(b) and disregarded Clearly established Federal law, See:

> The logical import of this provision seems to be that a circuit judge may not issue a COA unless and until a district judge has denied it. See United States v. Mitchell, 342 U.S. App. D.C. 283, 216 F.3d 1126, 1130 (D.C. Cir. 2000) ("Rule 22(b) requires initial application in the district court for a COA before the court of appeals acts on a COA request."). In Hunter v. United States, we unanimously interpreted this Rule as follows:
>
> **Only if the district judge who rendered the judgment has declined to issue the certificate does a circuit judge come into the picture. Under the plain language of the rule, an applicant for the writ gets two bites at the appeal certificate apple**: one{2004 U.S. App. LEXIS 37} before the district judge, and if that one is unsuccessful, **he gets a second one before a circuit judge**. 101 F.3d 1565, 1575 (11th Cir. 1996) (en banc).
>
> The same subject is also addressed in § 103 of the AEDPA, which amended Rule 22(b). As amended by § 103, Rule 22(b) now provides:
>
> > **(b) Certificate of appealability.** In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, an appeal by the applicant for the{1996 U.S. App. LEXIS 28} writ may not proceed unless a district or a circuit judge issues a certificate of appealability pursuant to section 2253(c) of title 28, United States Code. If an appeal is taken by the applicant, the district judge who rendered the judgment shall either issue a certificate of appealability or state the reasons why such a certificate should not issue. The certificate or the statement shall be forwarded to the court of appeals with the notice of appeal and the file of the proceedings in the district court. **If the district judge has denied the certificate, the applicant for the writ may then request issuance of the certificate by a circuit judge**. If such a request is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals.

Like the #15-15341 Court, the Court in #17-14707, instead of just following the clear and concise commands of SLACK v. MCDANIEL, 529 U.S. 473, 484 and provide "EQUAL JUSTICE UNDER THE LAW" with an evenhand, has utilized legal fiction and a callous disregard of Controlling law to ensure that a ("COA") CAN NEVER ISSUE!

(5). In the petitioners third ("COA") proceeding, i.e. HIS THIRD ATTEMPT AT THE REGULAR APPEALS PROCESS, the ELEVENTH CIRCUIT in #20-10574 Stated WORD FOR WORD as cut and pasted below:

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

ORDER:

Appellant's motion for remand to the district court is DENIED. His motion for a certificate of appealability is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). His motions for leave to proceed *in forma pauperis*, appointment of counsel, leave to file a supplemental reply, and judicial notice are DENIED AS MOOT.

/s/ William H. Pryor Jr.
UNITED STATES CIRCUIT JUDGE

As the Honorable Supreme Court Justices can See Judge WILLIAM PRYOR provided no phrased determination upon how he analyzed the petitioners ("COA") however logic dictates he used one of two Standards both of which ensure that a ("COA") CAN NEVER ISSUE!:

(i) Judge William Pryor, being the author of the maiority of the ("343") habeas cases for which arbitrarily allege that SLACK v. MCDANIEL, 529 U.S 473 at 478 requires petitioners to "SHOW THAT REASONABLE JURISTS WOULD FIND DEBATABLE THE MERITS OF AN UNDERLYING CLAIM", Can be Seen in APPENDIX "E" herein, to Still be utilizing this erroneous and non-existent ("COA") Standard in Year 2020 and without question at the time of the writing of this petition. Wherefore even assuming arguendo that Judge PRYOR denied the ("COA") on MAY 19, 2020 under what he purports to be the phrased determination within SLACK Supra, the petitioner can prove that Since year 2010 in STRICKLAND v. US, 2010 U.S. APP. LEXIS 37736 (march 30, 2010 11th cir) up until year 2020 in BURCKS v. US, 2020 U.S APP. LEXIS 5628 (11th cir), See: APPENDIX "E", he has, at best a clear misunderstanding of the plain language of SLACK Supra and at worst deliberately manipulated and refined SLACK Supra for which under either scenario it is a ("COA") Standard that an appeal can never proceed.

(ii). Or it could be that the MAY 19, 2020 denial of ("COA") by the Court in #20-10574 was based upon a requirement that the petitioner meet the "STRAIGHT FORWARD" "SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT", for which to a petitioner whoms predicates and evidence in Support of his habeas claim were Suppressed by the very procedural ruling he is trying to appeal, is also a ("COA") Standard for which a ("COA") CAN NEVER ISSUE on the Facts of this Case.

(6). Wherefore, whether by adulterating SLACK, 529 U.S 473, 478 as it did in Appeal #15-15311, inverting the Statutory operations of Fed. R. App. 22(b) Codified in § 103 of the AEDPA as it did in Appeal # 17-14707 or outright disregarding and refusing to follow the two-part Standard to be used when the district Court denies a habeas petition on procedural grounds without reaching the prisoner's underlying Constitutional Claim, enunciated by the SUPREME COURT in SLACK Supra, as it did in Appeal #20-10574, THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, BY JUDICIALLY USURPING THE REGULAR APPEALS PROCESS, HAS ITSELF ENSURED THAT THE PETITIONER "HAS NO OTHER ADEQUATE MEANS TO ATTAIN THE RELIEF HE DESIRES" See Ex parte Fahey, 332 U.S 258, 260, 91 L.Ed 2041, 67 S.ct 1558 (1947).

II. THE WRIT WILL BE IN AID OF THE COURT'S APPELLATE JURISDICTION WHERE:

., STABILITY AND PREDICTABILITY ARE ESSENTIAL FACTORS IN THE PROPER OPERATION OF THE RULE OF LAW AND HERE MANDAMUS IS NEEDED TO REINFORCE THE NOTION THAT THE ELEVENTH CIRCUIT IS CONFINED TO THE HIERARCHAL STRUCTURE OF THE FEDERAL COURT SYSTEM CREATED BY THE CONSTITUTION AND CONGRESS AND THUS MUST ADHERE TO CONTROLLING DECISIONS OF THE SUPREME COURT, FOR WITHOUT WHICH, ANARCHY WILL PREVAIL WITHIN THE SOUTHEASTERN FEDERAL JUDICIARY ALLOWING HABEAS COURTS, LIKE THE NORTHERN DISTRICT OF FLORIDA BELOW, TO UTILIZE FICTION AND DELIBERATE DISREGARD OF LAW TO EFFECTIVELY SILENCE HABEAS PETITIONERS AND ENSURE THAT THEY ARE UNABLE TO HOLD THE GOVERNMENT ACCOUNTABLE TO THE JUDICIARY FOR HIS OR HER IMPRISONMENT.

(1). Honorable Supreme Court Justices, with respect, do we not live under the Rule of law, which directs that decisions are to be made under objective, common and discernable legal principles and not the arbitrary decision of any individual government official and that "continuing to adhere to our Constitution and the Rule of law is one way the UNITED STATES OF AMERICA contrasts itself with those who embrace terror"? See United States v. Bell, 81 F.Supp.3d 1301, 1326 (M.D. FLA 2015).

(2). The petitioner is certain that this Court would agree that where systematic misapplication of the law has resulted in unconstitutional incarceration, the "GREAT WRIT" of habeas Corpus provides the hammer to strike the Constitutional blow, JOHNSON v. ZERBST, 304 U.S. 458, 58 S.Ct 1019, 1023-1025, 82 L.Ed 1461 (1938) and that the "GREAT WRIT" is a "BULLWARK AGAINST CONVICTIONS THAT VIOLATE FUNDAMENTAL FAIRNESS", see ENGLE v. ISAAC, 456 U.S. 107, 126, 102 S.Ct 1558, 1570, 71 L.Ed 2d 783 (1982).

(3). However, what recourse does a UNITED STATES CITIZEN have when it is clearly evident, with not an IOTA of ambiguity present, that both the DISTRICT COURT and APPELLATE Court are excercising their personal will, engaged in Something other than Constitutional law having no Judicial restraint, in effort to impede that very citizen from having access to the Courts on HABEAS REVIEW to raise a claim pursuant to KIMMELMAN v. MORRISON, 477 U.S. 365, 106 S.Ct 2574, 91 L.Ed. 2d 305 (1986) through which he can prove his Actual Innocence., i.e. Judicial Obstruction of the "GREAT WRIT"!

(4). In this case, the petitioner raised a habeas claim pursuant to KIMMELMAN Supra at (ECF#187 pg5-14) putting forth explicitly as cut and pasted below:

AKEL WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN RANDALL ETHERIDGE FAILED TO PROPERLY LITIGATE PETITIONER'S FORTH AMENDMENT CLAIM. HIS FAILURE TO CITE CONTROLLING PRECEDENT, INCOMPETENTLY PUTTING FORTH FALSITIES FROM AN ARREST AFFIDAVIT AND NOT THE AFFIDAVIT FOR THE SEARCH WARRANT, COUPLED WITH HIS FAILURE TO RECTIFY THE MISTAKE AND PRESENT FURTHER EVIDENCE BY FILING AN AGREED UPON FRANKS HEARING WERE IN VIOLATION OF HIS SIXTH AMENDMENT RIGHTS. Id at 5

for which is clearly a "Stated claim for the denial of a constitutional Right":

A petitioner cannot use habeas corpus as an avenue for relitigating Fourth Amendment claims, provided that the petitioner had a "full and fair" opportunity to raise the claim in the trial court and on appeal. Stone v. Powell, 428 U.S. 465, 494, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976). **However, a habeas petitioner can argue that the ineffective assistance of counsel deprived him of a full and fair opportunity to litigate Fourth Amendment claims in the trial court. Kimmelman v. Morrison**, 477 U.S. 365, 373-83, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986).

(5). However, the district court procedurally barred the claim from even seeing the light of day by adopting the Report and Recommendation (ECF#196 pg12)(ECF#321) Stating:

Because the motion to suppress was thoroughly argued before the trial court and **on appeal**, the Government argues that Defendant's challenge to counsel's performance in this respect is **procedurally barred**. Rozier, *supra;* Nyhuis, *supra.* The court agrees that two of the three arguments Defendant makes in this motion are **procedurally barred**. Defendant's first argument, that counsel should have argued "controlling precedent," is an attempt to re-argue the issue of the staleness of the information concerning the **controlled buys** that supported the warrant, and as such it is **procedurally barred**. Similarly, his argument that counsel failed to demonstrate that the affidavit was false is an attempt to re-litigate the district and appellate courts' prior determination about this issue, couched as an ineffective assistance of counsel claim.

(6). This Contention however is easilly proven as being born from dishonesty and mendacity by simply comparing the Demarcation of my habeas claim (ECF#187 pg5) with the appeal court Stating:

I. Background

A. Motion to Suppress.

Akel filed a motion to suppress evidence obtained as a result of a search and seizure conducted at his residence on November 3, 2007. He asserted that the search warrant affidavit incorrectly described the vehicle used during a controlled buy on May 31, 2007 and contained stale evidence obtained during two controlled buys that occurred well over 30 days prior to the execution of the search warrant. In a memorandum in support of his motion, Akel argued that the two controlled buys could not support the search of his residence, because the buys were not conducted at his residence. He asserted that the search warrant was obtained by false pretenses, because the officer in charge swore that Akel drove a maroon Dodge Charger to the first controlled buy, even though video of the transaction showed a different type of vehicle. . . .

The court found that there was "no manipulation or falsity . . . on behalf of law enforcement" and noted that the mistaken vehicle description was found in the arrest warrant affidavit, not the search warrant affidavit.

and the UNITED STATES own words from the Suppression hearing observing and pointing out:

There is no reference to a car in the affidavit in support of the search warrant. I believe defense counsel and defendant are confused. That particular argument just -- just, as a matter of fact, it doesn't exist. There is no reference to a car, much less a mistaken reference to a car.

See (ECF# 76 pg 7 Line 3-7). That is: Contrary to the FICTION utilized in the Report and Recommendation, the "Appellate Court's prior determination about this issue" really and truly Substantiates the claim that:

"COUNSEL INCOMPETENTLY PUT FORTH FALSITIES FROM AN ARREST AFFIDAVIT AND NOT THE AFFIDAVIT FOR THE SEARCH WARRANT" (ECF# 187 pg 5-14)

(7). Additionally the legal premise for procedurally barring the claim is "Squarely Foreclosed" by Kimmelman v. Morrison, 477 U.S. 365 at (E) and Massaro v. United States, 538 U.S. 500, 504, 123 S.Ct 1690 (2003) and the petitioner diligently informed the district court of this error, See (ECF #'s 201, 219, 256, 263, 267, 279, 311, 315 and 318), to no avail.

(8). When the petitioner attempted to challenge the "federal courts previous ruling that precluded a merits determination" of his habeas claim in a Fed.R.civ.p.60(b) motion at (ECF#367), the district court yet again relied upon Fiction, alleging the claim is governed by [clauses(1) thru(3)] and not [clause(6)] and therefore untimely, a proposition that has been "Squarely Foreclosed" for over 70 years by the Supreme Court in KLAPPROTT v. UNITED STATES, 335 U.S. 601, 614-615, 69 S.Ct 384, 93 L.Ed. 266 (1949).

(9). Despite the absurdity and erroneousness of the district courts legal premises of (ECF#196 pg 13) and (ECF#383) utilized solely to impede the petitioner from vindicating himself on habeas corpus, the CIRCUIT COURT has insulated these rulings from the "Regular Appeal process" three Seperate times by directly disregarding and refusing to allow the "EQUAL JUSTICE UNDER THE LAW" of SLACK v. MCDANIEL Supra.

(10). With Respect, if this Honorable Court would but command the courts to not only adhere to controlling SUPREME COURT precedent cf HUTTO v. DAVIS, 454 U.S. 370, 375; RODRIGUEZ de QUIJAS v. SHEARSON/AM. EXP. INC, 490 U.S 477, 484, but to also apply binding precedent with an evenhand and unadulterated, irrespective of a petitioners race, gender or status, then it would be "clear and indisputable" that the petitioner can easily meet the two-part ("COA") Standard articulated by SLACK Stating:

*** [2a] Second, when the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue (and an appeal of the district court's order may be taken) if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

and thus be able to obtain the "REGULAR APPEAL PROCESS" for which he has been thwarted three Seperate times by the ELEVENTH CIRCUIT, Simply because:

(1). Clearly the petitioners habeas petition of (ECF#156 ground one) Amended by (ECF#187 pg5-14) Stating respectively as cut and pasted below:

GROUND ONE:

Petitioner was denied his Sixth Amendment right to effective assistance of counsel pretrial.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner's counsel(s) was constitutuonally ineffective pretrial due to: (1) counsel's failure to properly argue for suppression, i.e., counsel's failure to argue controlling precedent, counsel's failure to argue that the trash pull was illegal, counsel's failure to demonstrate that the affidavit was false;

AKEL WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN RANDALL ETHERIDGE FAILED TO PROPERLY LITIGATE PETITIONER'S FORTH AMENDMENT CLAIM. HIS FAILURE TO CITE CONTROLLING PRECEDENT, INCOMPETENTLY PUTTING FORTH FALSITIES FROM AN ARREST AFFIDAVIT AND NOT THE AFFIDAVIT FOR THE SEARCH WARRANT, COUPLED WITH HIS FAILURE TO RECTIFY THE MISTAKE AND PRESENT FURTHER EVIDENCE BY FILING AN AGREED UPON FRANKS HEARING WERE IN VIOLATION OF HIS SIXTH AMENDMENT RIGHTS. Id at 05

is a facially alleged denial of a constitutional Right, one of which that SIX Seperate Jurists of Reason have already framed in the appeal of the underlying 28 U.S.C. § 2255 Judgment, i.e. #1744707, when Stating on JUNE 8, 2018:

BY THE COURT:

Antonio Akel is a federal prisoner serving a total 480-month, Armed Career Criminal Act ("ACCA") enhanced sentence, after a jury convicted him of conspiracy to possess various drugs with intent to distribute (Count 1); possession of marijuana with intent to distribute, (Count 2); and possession of a firearm by a convicted felon (Count 7). After this Court affirmed his convictions and sentence, Akel filed a *pro se* 28 U.S.C. § 2255 motion to vacate sentence, arguing that: (1) he no longer qualified as an armed career criminal; and (2) his counsel was ineffective.

The district court denied Akel's motion, concluding that he had three prior convictions for burglary of a dwelling, an enumerated offense under the ACCA, and therefore, the ACCA enhancement was proper. Additionally, as to Akel's claim that his counsel was ineffective (2018 U.S. App. LEXIS 2) in failing to raise a Fourth Amendment issue, the court concluded that the majority of Akel's arguments were procedurally barred because they sought to relitigate issues decided on direct appeal, couched in terms of ineffective assistance. The district court denied a certificate of appealability ("COA"). Akel then moved to alter or amend the judgment, under Fed. R. Civ. P. 59(e), arguing in part that the district court's decision was contrary to *Kimmelman v. Morrison*, 477 U.S. 365, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986). The district court denied the Rule 59(e) motion, and Akel appealed.

and in:

UNITED STATES OF AMERICA, Plaintiff-Appellee, versus ANTONIO AKEL, Defendant-Appellant.
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
2020 U.S. App. LEXIS 4146,
No. 17-14707-AA
February 10, 2020, Decided

Editorial Information: Prior History

{2020 U.S. App. LEXIS 1}Appeal from the United States District Court for the Northern District of Florida.United States v. Akel, 2019 U.S. App. LEXIS 35330 (11th Cir. Fla., Nov. 25, 2019)

Counsel For United States of America, Plaintiff - Appellee: Robert G. Davies, Alicia Forbes, U.S. Attorney Service - Northern District of Florida, U.S. Attorney's Office, Pensacola, FL.

Antonio U. Akel, Defendant - Appellant, a.k.a.: Tony Akel, Estill, SC.

Judges: Before: WILSON, EDMONDSON, and HULL, Circuit Judges.

Opinion

BY THE COURT:

Appellant moves for reconsideration of this Court's 25 November 2019 order denying Appellant a certificate of appealability ("COA") on his claim for ineffective assistance of trial counsel in presenting Appellant's Fourth Amendment claims. Appellant's motion is DENIED.

For which Satisfies the Substantive prong of SLACK supra in the Circuit Courts, CE:

The Ninth Circuit has stated that a court's task in completing this step is to "simply take a 'quick look' at the face of the complaint to determine whether the petitioner has 'facially allege[d] the denial of a constitutional right.'" *Lambright v. Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000) (quoting *Jefferson v. Welborn*, 222 F.3d 286, 289 (7th Cir. 2000)).

Neither the magistrate judge nor the district court addressed the merits of Sutton's due-process claim; therefore, "our review is limited." *Gibson v. Klinger*, 232 F.3d 799, 802-03 (10th Cir. 2000). Rather than a comprehensive review, "[w]e will only take a 'quick' look at the federal habeas petition to determine whether Mr. [Sutton] has 'facially allege[d] the denial of a constitutional right.'" *Id.* at 803 (final alteration in original) (quoting *Jefferson v. Welborn*, 222 F.3d 286, 289 (7th Cir. 2000)).

Before proceeding to the limitations issue, we must therefore review the constitutional claims. Because the district court did not address these claims and the parties {232 F.3d 803} have not briefed them on appeal, our review is limited. We will only take a "quick" look at the federal habeas petition to determine whether Mr. Gibson has "'facially alleged the denial of a constitutional right.'" Jefferson v. Welborn, 222 F.3d 286, 289 (7th Cir. 2000). After reviewing the habeas petition, we conclude that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right." Slack, 120 S. Ct. at 1604;

(ii). The District Courts previous ruling of a procedural bar that precluded a merits determination (ECF#196pg13) stating:

Because the motion to suppress was thoroughly argued before the trial court and on appeal, the Government argues that Defendant's challenge to counsel's performance in this respect is procedurally barred. Rozier, *supra*; Nyhuis, *supra*. The court agrees that two of the three arguments Defendant makes in this motion are procedurally barred. Defendant's first argument, that counsel should have argued "controlling precedent," is an attempt to re-argue the issue of the staleness of the information concerning the controlled buys that supported the warrant, and as such it is procedurally barred. Similarly, his argument that counsel failed to demonstrate that the affidavit was false is an attempt to re-litigate the district and appellate courts' prior determination about this issue, couched as an ineffective assistance of counsel claim.

has been Instructively clarified by the ELEVENTH CIRCUIT in BROWN v. US, 688 Fed Appx 649, 651-52 (11th Cir 2017) as to have been an INCORRECT PROCEDURAL RULING when it held explicitly as cut and pasted below:

As an initial matter, we find it instructive to discuss the district court's conclusion that Brown is procedurally barred from raising this claim because he presented the claim on direct appeal. Typically, a prisoner is procedurally barred from relitigating an issue on collateral review that he already raised in his direct appeal. {2017 U.S. App. LEXIS 16} *Stoufflet v. United States*, 757 F.3d 1236, 1242 (11th Cir. 2014). Where, however, facts essential to a claim are not in the appellate record, the general rule in favor {688 Fed. Appx. 652} of a procedural bar does not apply and the issue may be raised on collateral review to permit further factual development. *See Bousley v. United States*, 523 U.S. 614, 621-22, 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998) (citing *Waley v. Johnston*, 316 U.S. 101, 62 S. Ct. 964, 86 L. Ed. 1302 (1942) (per curiam)). One example of a claim typically requiring further factual development through a § 2255 proceeding is a claim based on ineffective assistance of counsel. *Massaro v. United States*, 538 U.S. 500, 504, 123 S. Ct. 1690, 155 L. Ed. 2d 714 (2003).

this Court has always, at least since year 1986, known to be an incorrect procedural ruling:

The Supreme Court in Kimmelman v. Morrison, 477 U.S. 365, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986), however, carved out an exception for Sixth Amendment claims arising from Fourth Amendment violations. As explained in Kimmelman:

> Where defense counsel's failure to adequately litigate a Fourth Amendment claim competently is the principle allegation [in a claim] of ineffectiveness [of counsel], the defendant must prove that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the outcome of the trial would have been different absent the excludable evidence. Kimmelman, 477 U.S. at 375. A defendant may therefore obtain habeas relief where trial counsel's incompetent handling of a meritorious Fourth Amendment claim deprives a defendant of a Sixth Amendment right to effective assistance of counsel and a reasonable probability exists that the trial's outcome would have been different. See id. at 380-381.

and all of the district Courts Colleagues within the region Know its procedural error

Was clearly erroneous. See WARE v. UNITED STATES, 2018 U.S. dist. lexis 12839 (S.D.GA) explaining:

> Respondent argues Petitioner's claim is procedurally barred because the Eleventh Circuit rejected Petitioner's sufficiency of the factual basis claim on direct appeal. (Id. at 24.) When a § 2255 petitioner raises a claim on direct appeal, he may not relitigate the claim in collateral proceedings under a different legal theory. United States v. Nyhuis, 211 F.3d 1340, 1343 (11th Cir. 2000) ("A rejected claim does not merit rehearing on a different, but previously available, legal theory.") However, where a petitioner collaterally attacks his conviction based on a claim of ineffective assistance of counsel where the petitioner has previously challenged the underlying deficiency, the petitioner has not merely repackaged the claim and the procedural bar does not apply. See Perry v. United States, Nos. CV 610-074, CR 606-026, 2011 U.S. Dist. LEXIS 41538, 2011 WL 1479081, at *4 (S.D. Ga. March 31, 2011) ("[T]he Court of Appeals rejected the claim on the merits, while here it is raised on ineffectiveness grounds. Ineffective assistance of counsel was not an available theory on direct review, so . . . the Court rejects the government's contention that this claim is barred."); Willis v. United States, Nos. CV 608-116, CR 606-026, 2009 U.S. Dist. LEXIS 52554, 2009 WL 1765771, at *4 (S.D. Ga. June 22, 2009) ("[T]he circuit court analyzed [petitioner's] claim for *judicial* error in the application of the sentencing guidelines. [Petitioner], in contrast, argues *attorney* error. . . . Hence, unlike the movant in Nyhuis, he is not, merely 'repackaging' his claim of judicial error as a claim of ineffective assistance of counsel.") Accordingly, Petitioner is not merely repackaging his claim here, since he challenges Mr. Hawk's performance as ineffective.

CF SLACK Supra (coa should issue where petitioner "stated valid claim"... and procedural ruling debatable)

(iii). The District Courts ruling of untimeliness, alleging that a Fed.R.civ.p 60(b) challenge to its "procedural ruling that precluded a merits determination of a habeas claim" is governed by [clauses (1) THRU (3)] and therefore beyond the one-year limitation, at (ECF #383) stating:[7]

ORDER

Movant Antonio U. Akel's Motions Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure (ECF Nos. 367, 368) are DENIED as untimely. While certain motions may toll the time within which a notice of appeal must be filed, contrary to Movant's assertion, a notice of appeal does not serve to toll the time within which a Rule 60(b) motion must be filed. *See* Fed. R. App. P. 4(a)(4); *Sec. & Exch. Comm'n v. N. Am. Clearing, Inc.*, 656 F. App'x 947, 949 (11th Cir. 2016) (citing *Gulf Coast Bldg. & Supply Co. v. Int'l Bhd. of Elec. Workers, Local No. 480, AFL-CIO*, 460 F.2d 105, 108 (5th Cir. 1972)); *see also United States v. One Million Four Hundred Forty-Nine Thousand Four Hundred Seventy-Three Dollars & Thirty-Two Cents ($1,449,473.32) in U.S. Currency*, 152 F. App'x 911, 912 (11th Cir. 2005) ("The one-year limitation is not tolled by an appeal and cannot be circumvented by the use of Rule 60(b)(6)". "This is because such motion can be made even though an appeal has been taken and is pending." *Transit Cas. Co. v. Sec. Trust Co.*, 441 F.2d 788, 791 (5th Cir. 1971). Additionally, in accordance with the Government's reasoning, the Court finds Movant's arguments of fraud to be far short of the standard necessary to establish fraud on the court for purposes of Rule 60(b).

ORDERED on this 22nd day of October, 2019.

is not only a procedural ruling that has been "SQUARELY FORECLOSED" by this Court for over 70 YEARS now:

see *Klapprott v. United States*, 335 U.S. 601, 614-15, 69 S. Ct. 384, 93 L. Ed. 266 (1949) (holding that Rule 60(b)(6) applies "for all reasons except the five particularly specified" in clauses (1) through (5)).

but both the ELEVENTH CIRCUIT and its district court colleague Knew that its procedural ruling of untimeliness is cleary erroneous because contrary to its opinion

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7. In response to the petitioners Fed.R.civ.p 59(e) motion (ECF #389) pointing out Court overlooked the real 60(b) claim raised within (ECF #367) the Court stated that its ruling at (ECF #383) still serves as its legal premise to deny the real claim. See (ECF #391)

a challenge to its procedural ruling is governed by [clause (6)] of 60(b) and is timely when raised within eighteen months. See BUCKLON v. SEC'Y. FLA DEPT. OF CORR 606 Fed. Appx. 490, 494-495 (11th Cir 2015) Stating:

> Bucklon waited eighteen months after Cunningham was issued to file this Rule 60(b)(6) motion. This amount of time is reasonable here. Courts (606 Fed. Appx. 495) in other jurisdictions have approved of longer amounts of time in allowing Rule 60(b)(6) relief in habeas cases. See, e.g., Thompson, 680 F.3d at 443 (allowing Rule 60(b)(6) relief even though Thompson did not file suit until four years after the "extraordinary circumstance" at issue).

and See:

CEDRIC MAURICE BUCKLON, Petitioner, -vs- SECRETARY, DEPARTMENT OF CORRECTIONS, Respondent.
UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION
2015 U.S. Dist. LEXIS 178204
Case No. 8:04-cv-2302-T-17TGW
October 21, 2015, Decided
October 21, 2015, Filed

Editorial Information: Prior History

Bucklon v. Sec'y, Fla. Dep't of Corr., 606 Fed. Appx. 490, 2015 U.S. App. LEXIS 4841 (11th Cir. Fla., 2015)

Counsel [2015 U.S. Dist. LEXIS 1] Cedric Maurice Bucklon, #A524804, Petitioner, Pro se, Avon Park, FL.
For Secretary, Florida Department of Corrections, Respondent: Patricia A. McCarthy, Florida Attorney General's Office, Tampa, FL.

Judges: ELIZABETH A. KOVACHEVISCH, UNITED STATES DISTRICT JUDGE.

Opinion

Opinion by: ELIZABETH A. KOVACHEVISCH

Opinion

ORDER

In 2004, Cedric Maurice Bucklon, serving life in prison, instituted this action with a pro se petition for writ of habeas corpus in which he challenged his trial-based judgment for manslaughter with a firearm. (Doc. 1) The judgment attacked arises out of the Thirteenth Judicial Circuit in case no. 98-5011. This Court denied his amended petition (Doc. 5) and in so doing, found a number of his grounds were procedurally barred. *Bucklon v. Crosby*, 2005 U.S. Dist. LEXIS 76065, 2005 WL 2990449 (M.D. Fla. 2005)(unpublished). This case is on remand pursuant to the Eleventh Circuit's decision in *Bucklon v. Sec'y, Fla. Dep't. of Corr.*, 606 Fed. Appx. 490, 2015 WL 1321470, 1 (11th Cir. 2015), reversing the denial of Bucklon's Fed.R.Civ.P. 60(b)(6) motion for relief from judgment with respect to the procedural bar ruling on four of Bucklon's grounds for relief, grounds five through eight of Bucklon's amended petition.

CF SLACK supra (coa should issue where petitioner "stated a valid claim" procedural ruling is debatable).

(II). AS the World knows and is led to believe, the UNITED STATES prides itself in a System of justice that requires "EQUAL JUSTICE UNDER THE LAW", a concept basic to any definition of Due Process or fairplay. Wherefore, Habeas petitioners Should not be treated different upon the Same or Similar facts based Solely on the whims and personal preference of a government official or group of officials. When the Facts are the Same, the law Should be the Same. In addition, in the UNITED STATES, HABEAS CORPUS is indispensable to the Citizenry in challenging an unconstitutional incarceration and the animating principle behind this "GREAT WRIT" is "Fundamental Fairness", See ENGLE v. ISAAC, 456 U.S. at 126. The instant petitioner has established a PRIMA FACIE Showing that the Courts below are engaged in Something other than Constitutional law, Proving clearly and concisely that if the Rule of law in SLACK, 529 US at 484 is applied with an evenhand and unadulterated he could obtain a "REGULAR APPEAL PROCESS", but without which, he has been denied his FIFTH Amendment right to Due Process, and, as the facts of this case Suggest the obstruction to SLACK Supra is deliberate and arbitrarily done, a form of Judicial usurpation which establishes the petitioners right to issuance of the Writ as "CLEAR AND INDISPUTABLE." See, KERR v. UNITED STATES DIST. COURT FOR NORTHERN DIST. OF CAL., 426 U.S. 394, 403, 48 L.Ed.2d 725, 96 S.Ct 2119 (1976) CF HUTTO v. DAVIS, 454 U.S. 370, 375 (1982); RODRIGUEZ de QUIJAS v. SHEARSON/AM. EXP INC, 490 U.S 477, 484 (1989).

III. THE EXCEPTIONAL CIRCUMSTANCES WARRANTING EXERCISE OF DISCRETION ARE CLEAR AND COMPEL THIS LAST RESORT WHERE THIS COURT SHOULD FIND THE WRIT APPROPRIATE TO RESTRAIN THE LOWER COURT WHERE ITS ACTIONS THREATEN TO ERODE PUBLIC FAITH THAT JUSTICE IS EVEN ACHIEVABLE WITHIN THE SOUTHEAST REGION OF THE UNITED STATES AND EMBARRASES THE FEDERAL JUDICIARY AS A WHOLE IN SUGGESTING THERE ARE TWO JUSTICE SYSTEMS WITHIN THIS NATION: ONE WHERE EQUAL JUSTICE UNDER THE LAW IS RENDERED AND THE OTHER RESERVED FOR ITS BLACK AND BROWN CITIZENS [See note 6] WHERE SYSTEMIC INJUSTICE IS UTILIZED, AS IS THE CASE HEREIN, TO KEEP THESE CITIZENS FROM BEING HEARD ON HABEAS CORPUS SIMPLY BY DISREGARDING AND SUBVERTING SUPREME COURT PRECEDENT SLACK v. MCDANIEL supra IN EFFORT TO SUPPRESS THEIR PREDICATES, MERITS AND EVIDENCE FOR WHICH PROVES THEY ARE FACTUALLY INNOCENT OF AN INDICTMENT.

(1). In the mind of a reasonable member of the federal Judicial System, the court(s) below appear to be engaged in the strategic denial of Equal Protection of the law, deliberately thwarting an entire class of habeas petitioner from a constitutionally adequate process to contest their loss of liberty. Specifically towards the instant petitioner, the courts are purposely obstructing him from Kimmelman v. Morrison, 477 U.S. 365 and Slack v. McDaniel, 529 U.S. 473, 484 with the sole objective to keep him wrongfully incarcerated in light of the fact they have no rational basis for keeping Kimmelman and Slack from him.

(2). Honorable Justices, the petitioners federal case #3:07-cr-136-LAC-EMT below, derives from the execution of a State of FLORIDA SEARCH and ARREST WARRANTS and the FRUITS OF EVIDENCE thereof, NOTHING MORE! See APPENDIX "F" (COPY OF GRAND JURY TRANSCRIPTS)

(3). The Sole and Only factual predicates for Probable cause for issuance of both the SEARCH and ARREST warrants, that are DISPOSITIVE and CONTROLLING here, is the allegation that the petitioner conducted two "CONTROLLED BUYS" [i.e. DRUG TRANSACTIONS] with a Confidential Informant. See APPENDIX "F" (COPY OF GRAND JURY TRANSCRIPTS)

(4). The United States charged both of these "Controlled Buys" [i.e The only factual predicates for issuance of the Search and arrest warrants Controlling of this case] at Counts (4) and (5) of the indictment and the Jury returned "NOT GUILTY" verdicts upon them both, for which as a direct Consequence to the United States this Fact alone when competently litigated under FRANKS v. DELAWARE, 438 US 154, 98 S.ct 2674 (1978) and its "preponderance of the evidence" Standard renders the petitioner ACTUALLY INNOCENT of this case as expressed through the "FRUITS-OF-THE-POISONOUS-TREE-DOCTRINE". WONG SUN v. UNITED STATES, 371 U.S. 471, 485-88 (1963).

(5). The petitioner timely raised this and other meritorious issues pursuant to Kimmelman v. Morrison on his 28 U.S.C § 2255 at (ECF #156) as Amended by (ECF #187 pg 5-14) and presented overwhelming evidence in Support, however the DISTRICT COURT has silenced him with a FICTIONAL PROCEDURAL BAR and the Appellate

Court is Insulating the oppression and Tyrrany by refusing to apply SLACK v. MCDANIEL with an evenhand and unadulterated, thus thwarting "The Regular Appeal process".

(6) With upmost respect to the Justices of this FAIR COURT, the Conduct of the Courts below would place in the mind of any reasonable person, laymen or otherwise, that they are deliberately Suppressing and Covering up the petitioners predicates and evidence of (ECF#187pg5-14) evidence which proves his (IV) & (VI) Amendment rights have been violated, see:

(i). Trial Attorney's testimony from a JAN. 28, 2014 evidentiary hearing revealing:

Another question for you: Do you agree that the case in question, two controlled buys in this incident is dispositive to the whole case, correct?

A. As I recall, yes.

Q. And I don't know if you can recall, but if you can recall, Count IV and Count V of the Indictment were those controlled buys..

A. I don't remember.

Q. You can't recall the counts, but you can recall that --

A. Generally speaking, yes, sir.

Q. Okay. And I was acquitted of the -- I'm stating for the record I was acquitted of those two controlled buys, they were Count IV and Count V of the Indictment.

A. That's correct.

Q. Why would you not, if you were not intimidated by this judge or pressured by this judge, why would you not immediately move for dismissal of the indictment or file for a Franks hearing immediately after an acquittal of those charges?

A. Didn't do it.

See (ECF#220pg51-52)

Q. And one more time for the record, sir, just to be sure, you said that there wasn't any particular reason that you didn't file for dismissal of the indictment or the Franks hearing once evidence was discovered that those controlled buys were false?

A. I didn't file anything.

Q. You didn't file anything?

A. No, sir.

See (ECF#220pg55-56)

(ii). Trial Attorney's Affidavit:

GROUND ONE

1. I argued for suppression as indicated in the record. I did not cite or argue controlling precedent because I felt the issues were so clearly self-evident from the testimony of law enforcement that the trial court would rule on the merits and facts of the motion to suppress.

See (ECF#164-1pg2-3)

(iii). The excerpts proving the United States charged the petitioner with both of the "CONTROLLED BUYS" dispositive and Controlling of this case at Counts (4) and (5) and proof Jury found "NOT GUILTY" upon them both:

See: US Attorney's Closing Argument To The Jury:

Count 5, that charges -- this is Count 5. This is the -- second controlled buy where he sold these HDMA pills and this gram of cocaine to Aaron Gatchell.

Count-4, this is Count 4, these were the pills that were delivered in the first drug controlled buy to Aaron Gatchell, the blue pills that were introduced. This is Count

COMPARE: THE JURY INSTRUCTIONS AS TO COUNTS 4 AND 5:

You will note as to Counts 4 and 5 that the defendant is charged not with possession with intent to distribute but actual distribution of a controlled substance. Title 21, United States Code Section 841(a)(1) also makes it a federal crime or offense for anyone to distribute a controlled substance.

Now, the defendant can be found guilty on each of these counts only if it is proven beyond a reasonable doubt that the defendant knowingly and intentionally distributed the controlled substance as charged.

NOW SEE: THE JURY VERDICT OF NOT GUILTY AS TO COUNTS 4, 5 AND 6:

03/24/2008		96	(Court only) ***Staff Notes as to ANTONIO U AKEL Re 93 Jury Verdict : Proposed JOA for Not Guilty Counts 4,5 & 6 referred (mjm) (Entered: 03/24/2008)
03/25/2008		97	JUDGMENT OF ACQUITTAL as to ANTONIO U AKEL (1). Counts 4s 5s, 6s. Judgment of Acquittal by Jury Verdict. Signed by SENIOR JUDGE LACEY A COLLIER on 3/25/2008. (mjm) (Entered: 03/25/2008)

(IV). The Sworn Affidavit from Private Investigator Dixon revealing:

AFFIDAVIT OF WILLIAM ANDERSON DIXON

I, William Anderson Dixon, being duly sworn and deposed, hereby state under the penalty of perjury that the following statements are true and correct to the best of my ability, understanding, and belief that:

1. As part of my investigation into Antonio Akel's case, I spoke with attorney Rendall Etheridge concerning the government's threats.
2. Etheridge said that it was a strange case in the way that the government would treat him when he was investigating. Etheridge said that he felt intimidated by the government. Etheridge said that "I have to practice law here. If you call me on this, depending on how I feel, I may not be forthright."
3. I asked him if he could be specific about the threats and/or intimidation. Etheridge said it was body language and innuendo that said basically if you get in our way, we will arrest you too. I recall that his investigations surrounded the jurisdiction issue.
4. He said that he felt intimidated by the judge too and that he felt the judge was against his client's case.
5. Etheridge said that he felt that his hands were tied.

FURTHER AFFIANT SAYETH NAUGHT.

6-27-2011

William Anderson Dixon — Date

See: (ECF#174 pg 28-29)

(V). The testimony from Law Enforcement proving there were no "controlled buys" in this case see (ECF#77 pg 31-32):

11:10:57	20	Q. At the time of the affidavit for the search warrant, you
11:11:03	21	personally couldn't prove that Mr. Akel had participated in any
11:11:05	22	drug transaction? Everything you talked about was based on
11:11:07	23	what the CI supposedly told you, right?
11:11:10	24	A. Are you talking about on -- both the controlled buys?
11:11:14	25	Q. Yeah. That's all you had, right?
11:11:15	1	A. Yes, sir.

CF The Honorable Judge Moody in United States v. ACUNA, 2006 U.S. DIST. LEXIS 21856 (M.D.FLA) Stating:

A. Controlled Buy.

A controlled buy occurs when a confidential informant conducts a transaction supervised and monitored by law enforcement. *Martin v. State*, 906 So. 2d 358, 360 (Fla. 5th DCA2005), citing *McCall v. State*, 684 So. 2d 260, 262 (Fla.4th DCA1996). The advantage of a controlled buy is that law enforcement does not need to independently establish the informant's reliability in the search warrant affidavit, because law enforcement is present, and can corroborate the truthfulness of the informant's actions and words. *See Martin* at 360, citing *Malorie v. State*, 651 So.2d 733, 734 (Fla. 5th DCA1995).

From the face of the affidavit it is apparent that Detective Bermingham approached the confidential informant on the basis of a controlled buy. Further, it is apparent that Detective Bermingham presented the affidavit to the state court judge as a "controlled buy."

The affidavit states,in pertinent part, that "the CI was acting under the direction of the Hardee County Drug Task Force." Additionally, it is apparent to the Court that the language of the affidavit implies that the actions of the CI were being monitored and supervised by the Hardee County Drug Force, when in fact they were not, at least not at all times. From a review of the record, the Court concludes that the transaction at issue was not a "controlled buy," because the sale was not supervised or monitored by law enforcement officers.

(Vi). The Testimony from the Confidential Informant proving law enforcement lied in the affidavit in alleging the (C.I.) knew the location, or led law enforcement to the defendants home, and, substantiating the unlawful roaming of the Community etc, CF WONG SUN, 371 US 471, 480. See (ECF #133 pg 7-8 and pg 43) revealing:

Q. Okay. Let's talk about that. You've never stepped foot in that house in your life, have you?
A. No, I haven't.
Q. You've never been over there to buy drugs, have you?
A. No, I have not.
Q. You've never been over there and made any dope deals over there, did you?
A. Not at that house. ...
Q. You don't even know what that house looks like, do you, not at the time that you supposedly did these dope deals, right, because you've never been there, yes or no?
A. No.

Q. You were asked whether or not you ever went into XXXX XXXXXX Lane or had drugs at XXXX XXXXXX Lane. Do you recall that?
A. Yes.
Q. But have you been to at least a driveway of XXXX XXXXXX Lane and met with the defendant?
A. No.
Q. Okay. Have you ever been -- how do you know XXXX XXXXXX Lane or that XXXXXX Lane is the residence where the defendant and Danielle Rudinsky resided?
A. Because Danielle told me that that's where she resided, the street.
Q. Do you also have contact with any individuals on that street, friends that live on that street as well?
A. No.

(Vii). The Testimony from Law enforcement proving they lied in the affidavit, alleging they found documents containg the address to be Searched and the defendants name in the trash, See (ECF #133 pg 108 & pg 128) revealing:

A. There was documents with his name on it in the garbage.
Q. Yeah. It has his name on it and his daddy and mama's address, didn't it?
A. Correct.
Q. It sure didn't have XXXX XXXXXX Lane on it, did it?
A. Not in the trash pull, no. ! ....
Q. All right. Now, I believe we talked about, earlier talked about nothing addressed to my client at XXXX. And the stuff that you found in this trash pull, there wasn't one piece of mail addressed to my client on there, was there?
A. Not addressed to him, no, sir. !

(Viii). The Testimony of law enforcement proving they lied in the affidavit because they never purchased drugs from the defendant and really just wanted to "Jumpstart" a case against him. See (ECF# pg119-120) revealing:

Q. Okay. So you had May 31st, and then you go a whole month of June and then the 18th of July, a little over a month-and-a-half before you do the second alleged controlled buy, correct?
A. We attempted to do another one.
Q. Okay. But he never would cooperate, right, or it didn't go down?
A. We were never able to actually purchase drugs from him, correct.
Q. After July 18th, you directed your boys several times to make phone calls and try to get ahold of him, and for whatever reason Mr. Akel wouldn't return the phone calls or anything else, right?
A. That's correct.
Q. And then I believe, and I'm using your words, you said we didn't know exactly what was going on. We weren't really sure, right?
A. Correct.
Q. And you said we had to, quote, jump start the case, right?
A. Correct.

(7). PLEASE, the petitioner prays for this court to excercise its discretion and find the WRIT is appropriate under the Circumstances, where the ELEVENTH CIRCUITS actions threaten to embarrass the Judicial arm of the Government and destroy Public Faith in the Integrity of the Federal courts because the UNITED STATES does not deliberately thwart nor impede its Citizens From proving their Wrongfull Incarceration on HABEAS CORPUS. CF Ex Parte Peru, 318 U.S. 578, 588 (1943), See KERR, Supra, at 403.[8]

CONCLUSION

The petition for a writ of MANDAMUS should be granted.

Respectfully submitted,

Date: OCTOBER 8, 2020

[8] "Everyone Should have his own day in court and that happens only when certain minimum requirements, consistent with due process have been met". St. HUBERT v. US, 140 S.ct 1787 (2020) (SOTOMAYOR, J, concurring in denial of Certiorari)