No. _____

In the Supreme Court of the United States

JAMEL MOBLEY,

Petitioner,

Versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, FLORIDA ATTORNEY GENERAL,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether trial counsel can be constitutionally ineffective under Strickland v. Washington, 466 U.S. 668 (1984) for failing to preserve an issue for purposes of appeal when said issue, had it been preserved, would have granted the defendant a new trial and therefore, would have changed the outcome of the proceedings?

PARTIES TO THE PROCEEDING

All the parties to this proceeding are named in the caption.

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PETITION FOR WRIT OF CERTIORARI

Jamel Mobley respectfully petitions for a writ of certiorari to review the opinion of the United States Court of Appeals for the Eleventh Circuit entered in this matter on August 31, 2020, affirming the judgment of the United States District Court for Middle District of Florida, Jacksonville Division.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is unpublished and appears at Mobley v. Secretary, Fla. Dept. of Corr., 825 Fed. Appx. 651 (11th Cir. 2020). It is attached as **Appendix A**.

The judgment of the United States District Court for the Middle District of Florida, Jacksonville Division, is unpublished and is attached at **Appendix B**.

JURISDICTION

The court of appeals entered its order on August 31, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the Sixth Amendment, as applied to the states through the Fourteenth Amendment:

> 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.

U.S. Const. amend. VI.

STATEMENT OF THE CASE

A. Statement of jurisdiction in the lower courts, in accordance with this Court's Rule 14(1)(g)(ii), and suggestion of justification for consideration, as suggested under Rule 10.

The Petitioner, Jamel Mobley, is a Florida state prisoner serving a 35-year sentence for attempted second-degree murder, attempted armed robbery and aggravated assault. After unsuccessfully arguing that trial counsel was ineffective to the state courts, Mr. Mobley sought relief in the United States District Court for the Middle District of Florida, pursuant to Title 28, United States Code, Section 2254. The district court exercised its jurisdiction and ultimately entered an order denying Mr. Mobley relief on May 3, 2019. The Eleventh Circuit exercised jurisdiction over Mr. Mobley's appeal under 28 U.S.C. § 1291, which authorizes review of final judgments of the district courts.

This case concerns an important question about what a defendant must prove in order to establish that trial counsel was ineffective under Strickland v. Washington, 466 U.S. 668 (1984). Specifically, the issue before the Court is whether trial counsel can be deemed ineffective when a deficient act of counsel results in an unfair trial for the defendant and an unpreserved issue for appeal. The sole question is whether in certain circumstances, can trial counsel's failure to preserve an issue for appeal be deemed deficient for purposes of an ineffective counsel claim under Strickland, supra.

B. Factual Background.

On March 7, 2011, a jury trial was convened before the Honorable Judge Virginia Norton, Circuit Judge, in Duval County, State of Florida. During voir dire, a number of prospective jurors indicated that they had either been arrested or had family members or friends that had been arrested. For example, Gregory Mitchell, a 50-year resident of Jacksonville, stated that he had a family member who had been arrested. (Doc. 21-2 at 44). Mitchell also had a friend in law enforcement and a family member who had been a victim of a crime. (Id.) Mitchell confirmed that his family member's arrest would not deter him from being fair in the case. (Id. at 74). Leslie Davis, a 16-year Jacksonville resident, stated that she had been accused of a crime and had family members who had been accused and arrested. (Id. at 50). Davis added that she felt that she had been fairly treated and would be fair if chosen to sit as a juror. (Id. at 78).

Mark Griffin, a lifelong Jacksonville resident, was arrested for a criminal offense and had close friends who were arrested. (Id. at 54). In a civil suit that Griffin filed against the city, he alleged that he had been falsely arrested. Griffin claimed that he prevailed in his lawsuit. (Id. at 80). Griffin said that his experience would not prevent him from being a fair juror. (Id. at 81). Darin Hughes, a self-employed construction worker, had a close friend who had been arrested and convicted of a crime. (Id. at 49-50). Destinee Pratt also stated that she had a family member that had been accused and arrested for a crime. (Id. at 54). Pratt stated that her family member's experience would not affect her ability to be fair. (Id. at 80). Finally,

Anthony Hogg, a mortgage processor at Chase Bank, stated that he, a family member and a close friend had been arrested. (Id. at 55). Hogg said that he felt that he had been falsely arrested by the police for a misdemeanor drug charge. (Id. at 133). Hogg added that the charge was subsequently dropped. (Id. at 134). However, Hogg felt that the incident would have no impact on his ability to be fair. (Id.)

At the conclusion of the questioning, the parties began making their strikes of the prospective jurors.

> STATE: Your Honor, we would strike juror number 21, Mr. Mitchell. I believe that takes us through Mr. Griffin.
>
> TRIAL COUNSEL: We would like to get a challenge as to why the State is wanting to bump a black male.
>
> STATE: Your Honor, he, for the record, had a prior arrest for -- in 2002 for possession of marijuana and also friends and family members have been arrested as well.
>
> THE COURT: All right. Do you have any other additional responses, Mr. Gregory?
>
> TRIAL COUNSEL: Yes. There are a number of persons who've had arrests who we've acknowledged, but it's still our impression that the primary reason the State is bumping him now is because he's a black male.
>
> STATE: None of them who are on the jury. Any of the prior people who had arrests or family members, none of those right now are seated jurors.
>
> THE COURT: Well, I'm going to allow Mr. Mitchell to be stricken.
>
> TRIAL COUNSEL: Yes, Your Honor.
>
> THE COURT: And I currently have on the panel, Ms. Varn, 3, 17, 27, 28 and 29, 32 and then Mr. Griffin, he would be our alternate.

STATE: Yes, Your Honor. We would strike juror number 29 for the same reason, that she and friends or family members have been either arrested or accused of a crime. And we would accept the panel.

THE COURT: Do you have a response about Ms. Davis?

TRIAL COUNSEL: She's a black female, Your Honor. We would like to have the same inquiry. Because, again, it appears the State is bumping more of the blacks in terms of their request for cause and challenges for black females or black men.

STATE: Your Honor, I'm striking them because of their prior arrest history of them and their family.

THE COURT: Any other response, Mr. Gregory?

TRIAL COUNSEL: I understand the State just basically repeated what they said before, but the fact still remains. She was about to be accepted. She's a black female. She spoke well about being able to follow the law, follow the system, and was candid about her crimes. And as I recall, I think she's the one that said she had adjudication of guilt withheld. I think she – I don't think she's been arrested.

THE COURT: She was accused. She was not arrested.

TRIAL COUNSEL: Yeah, she was accused. So, again, the State could say they were bumping her because she had been accused. Well, a lot of folks said they've been accused but the State didn't bump them for that reason.

STATE: They're not on the jury. Just so it's clear, there's nobody who said they've been arrested or accused or had friends or a family member who have been arrested or accused who are sitting on the jury at this moment.

THE COURT: I'm going to strike Ms. Davis. All right. We now have 3, 17, 27, 28, 32, 33, and then Mr. Hogg, number 34 is the alternate.

STATE: Your Honor, we accept the panel.

THE COURT: Mr. Gregory.

TRIAL COUNSEL: If I could have just a moment, Your Honor?

THE COURT: Sure. Take your time.

TRIAL COUNSEL: How many did the State accept?

THE COURT: I'm sorry, Mr. Gregory? I was talking to Ms. Rose.

TRIAL COUNSEL: I had asked how many the State had and the State said nine.

THE COURT: I believe they had nine. Just real quickly, Ms. Woodard, who was juror number 41 has let Ms. Rose know that she has a family emergency that she needs to respond to. Is that accurate? She said she was having a problem, it seemed like she had something she needs to address.

...

TRIAL COUNSEL: If I could have just a moment, Your Honor. All right. We accept.

THE COURT: Does the State accept?

STATE: Yes, Your Honor, we would accept the panel.

THE COURT: All right. And let me just --

TRIAL COUNSEL: And I spoke to my client, Your Honor. He nodded his head affirmatively as well.

THE COURT: Okay.

TRIAL COUNSEL: I've included him in the process, Your Honor.

THE COURT: And I'm going to ask him a few questions, but thank you Mr. Gregory for helping me out.

TRIAL COUNSEL: Yes, Your Honor.

THE COURT: This is who I have as our panel, out of an abundance of caution, 3, 17, 27, 28, 32, 33, and 34. Is that what the State – is that the panel the State believes we have?

STATE: I have Mr. Hogg as our alternate.

THE COURT: Yes.

STATE: And I would use my alternate strike on him based on his – the reason he gave when we inquired of him individually about him being falsely arrested.

THE COURT: Mr. Gregory, do you have a response to that?

TRIAL COUNSEL: Your Honor, he said he would follow the law. I don't think -- well, I think the State exercised their preemptory as to the alternate. Yet, again, he's a black male and it's our impression that the State is bumping more black males,

STATE: Your Honor, the same reason that I've given for all the peremptories, that these are people with either prior arrests themselves or had mentioned something about being falsely arrested, things of that nature. And, for the record, I struck for cause many white males and females for different reasons. So this is becoming a race thing now, especially since defense counsel has used peremptories on every black male -- I'm sorry -- every white male and white female sitting in the first couple of rows.

TRIAL COUNSEL: With all respect, Your Honor, I think the State is inaccurate, perhaps -- and I'm sure it was inadvertant, but number 33 is -- as I recall, which the State has agreed to, he's already said he was arrested for a crime, sued the city and got paid. So if the State is bumping everyone who's acknowledged they've been arrested or accused before, then the State should be going against number 33. He can't have it both ways.

STATE: Your Honor, we have one strike left and I don't have to use a strike on that person if I don't want to.

TRIAL COUNSEL: My only point is the State just represented that they already exercised peremptories over every person who has had a prior arrest or been accused, and they've done so without fail. However, they bypassed number 33, Mr. Griffin, to bump number 34, Mr. Hogg. In so doing, they are, in effect, leaving on the panel at this point, number 33 who is someone who had been accused of being -- of committing a crime. So it's not accurate.

THE COURT: I'm going to let Mr. Hogg stay on the panel.

STATE: Your Honor, if I make – if I can make it clear. Mr. Griffin was the gentleman who had said that he sued the city and won and his case was dismissed. It was a disorderly intox and it was dropped. So we can differentiate on that issue.

THE COURT: But Mr. Hogg did say when he was here in private he could be fair, so I'm going to let Mr. Hogg stay.

TRIAL COUNSEL: Yes, Your Honor.

STATE: Your Honor, I'm going to object to that. It's a preemptory strike. As long as it is not race or protectoral, then it has -- then we have a right to strike him.

THE COURT: Well, explain to me – why don't you stand up, Mr. Rockwell, too. If you'll explain to me too, so why did you not strike Mr. Griffin? What's the difference between Mr. Griffin and Mr. Hogg?

STATE: For that reason. That he was the person that said he had sued the city and won his case, and that -- it was a 1982 disorderly intox case. Mr. Hogg said that he had been falsely accused. Mr. Griffin didn't say that. Mr. Hogg said that he felt that he had been falsely accused. He's a young man, the same age as the defendant. Age is an important factor. And yet, he had also mentioned during his individual questions, that he had issues and that he would be all right. And that he was -- my co-counsel wrote that he was treated unfairly by the courts.

TRIAL COUNSEL: Your Honor, to the Court, Mr. Hogg is 36, my client is 22. They're not the same age. They're not the same age. They didn't go to school together. Also, there's no difference. If you have Mr. Griffin saying, I sued the city, I got paid. I was arrested, I sued and got paid. By definition, you only sue the city and get paid for false arrest if you were saying it was a false arrest, which is the same thing Mr. Hogg said. Mr. Hogg said, I was falsely accused. Mr. Griffin said, I was falsely accused and that's why he got paid. Your general counsel office you know that -- general counsel gets involved when someone is accusing the city of false arrest. By definition, it's the same thing. Mr. Griffin is a white male and Mr. Hogg is a black male. The only difference between the two, as to going beyond the fact they had similarities to false arrests, is the fact that one is a black male and one is not. They're not the same age period. Because, again, Mr. Hogg is 36 and Mr. Mobley will be 23 on March 28th. They're not the same age period. The difference between the two is one is black and one is not.

STATE: If I could put one more thing on the record, Your Honor. Mr. Hogg pled guilty or has a criminal -- an actual criminal history to his charge from the possession of less than 20 grams. He received a withhold. Mr. Griffin has no criminal history. He was arrested but his case was dropped. So that's an additional distinction that I'm putting on the record so that this doesn't turn into some kind of a race issue. But I understand the Court's ruling.

THE COURT: No. With the distinction of the way their cases ended up being resolved, if you would read that again, Mr. Rockwell, please.

STATE: Yes, Your Honor. We researched his criminal history and it shows that he received a withhold of adjudication in 1996 for possession of less than 20 grams of marijuana.

THE COURT: That is?

STATE: Mr. Hogg, number 34.

THE COURT: Mr. Hogg. And Mr. Griffin's were dropped?

STATE: Mr. Griffin does not show any arrest history when we look him up and it's consistent with his statements saying that he fought the charges, sued the city and his charges were dropped.

THE COURT: I'm going to strike Mr. Hogg. All right. We now have Varn, May, Schultz, Hughes, Pratt, Griffin and Mr. McLeod, who is number 37.

STATE: Yes, Your Honor. We would accept the panel.

THE COURT: Mr. Gregory?

TRIAL COUNSEL: If I could have just a moment, Your Honor.

THE COURT: Take your time, sir.

TRIAL COUNSEL: I exercise the preemptory as to the alternate, -- the proposed alternate who is Mr. McLeod.

THE COURT: Mr. McLeod. Okay.

STATE: And we accept Mr. Berger.

THE COURT: All right. So I believe everyone is out of strikes at this point.

TRIAL COUNSEL: Yes, Your Honor.

(Doc. 21-2 at 159-170). Trial counsel did not make an objection to the selected panel at the time that the jury was sworn. (Doc. 21-2 at 198).

In his motion for postconviction relief filed with the state court, Mr. Mobley argued that counsel was ineffective for failing to preserve the issue for appeal. Mr. Mobley made this argument after his appellate counsel attempted to argue that he was entitled to a new trial because the State's peremptory challenges of several African-American jurors were not sufficiently supported by race-neutral reasons, and the First District Court of Appeal, State of Florida, affirmed on the issue and found that "the asserted error [was] **unpreserved** for appellate review." Mobley v. State, 97 So.3d 344 (Fla. 1st DCA 2012) (emphasis added).

C. Procedural History in the District Court.

On April 28, 2017, Mr. Mobley timely filed a Petition for Writ of Habeas Corpus pursuant to Title 28, United States Code, Section 2254, with the district court. (Doc. 1). Therein, Mr. Mobley argued seven claims for relief. On February 20, 2018, the State filed it's Response in Opposition to Mr. Mobley's petition. (Doc. 21). Mr. Mobley filed a Reply on May 21, 2018. (Doc. 22). One year later, on May 3, 2019, the district court entered an Order Denying Mr. Mobley's Petition. (Doc. 23). In Claim One, Mr. Mobley argued that his constitutional rights were violated when he received ineffective assistance of counsel when counsel failed to properly object to the State's use of peremptory challenges against two African-American jurors for pretextual

reasons. (Doc. 1, 2). In denying Claim One, the district court first went through the findings made by the state postconviction court.

> The trial court denied the claim of ineffective assistance of counsel. Id. at 102-103. The court opined that failure to renew a Neil challenge does not necessarily mean a jury panel was actually biased. Id. at 102-103. Without a showing of a biased jury, any failure on counsel's part to renew an objection would have no effect on a defendant's ability to receive a fair trial. The trial court found, in order to adequately support a claim of ineffective assistance of counsel, a petitioner must show counsel's errors actually resulted in an impartial jury. Id. at 103. The trial court concluded Petitioner failed to do so; therefore, "he cannot establish the required Strickland prejudice." Id. at 103.

(Doc. 23 at 18-19). The district court then found that

> [t]he state court's decision is not inconsistent with Supreme Court precedent. The state court's adjudication of this claim is not contrary to or an unreasonable application of Strickland, or, based on an unreasonable determination of the facts. As such, ground one is due to be denied. In the alternative, as Petitioner has failed to satisfy the prejudice prong of Strickland, he is not entitled to habeas relief.

(Doc. 23 at 19-20).

D. Eleventh Circuit's Consideration of the Matter.

Following the district court's denial and judgment, Mr. Mobley filed his Notice of Appeal with the Eleventh Circuit. After the Court granted him a certificate of appealability on the issue of whether the district court erred by denying his claim that counsel was ineffective for failing to preserve for appeal his challenge to the state's use of peremptory strikes, after concluding that the state court's rejection of it was not contrary to, or an unreasonable application of, Strickland v. Washington, 466 U.S. 668 (1984), the parties submitted briefs in support of their respective arguments. On August 31, 2020, the Court affirmed the district court's denial and found

> Here, Mobley cannot establish that the state habeas decision was contrary to clearly established federal law because the Supreme Court has not addressed a set of materially indistinguishable facts. Further, as discussed below, he cannot establish that the state unreasonably applied Strickland to the facts of this case.

Mobley, 825 Fed. Appx. at 654.

REASONS FOR GRANTING THE PETITION

I. The Sixth Amendment right to counsel exists to protect the right to a fair trial and the appellate process was created to ensure that a fair trial was satisfied.

The Sixth Amendment guarantees a panoply of constitutional rights to criminal defendants. The rights at issue in this case involve the right to a fair trial and the right to the assistance of counsel. The Sixth Amendment right to counsel exists to protect the right to a fair trial as guaranteed by the Due Process Clauses. Strickland, 466 U.S. at 684-85. Counsel's assistance is necessary to the adversarial process. Id., at 685. "[A] fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding." Ibid.

a. Strickland

In Strickland, this Court was asked for the first time to "directly and fully" address the standard for analyzing a claim of "actual ineffectiveness" of counsel's performance. 466 U.S., at 683. Because the lower federal courts and state courts were applying different standards "[w]ith respect to the prejudice that a defendant must show from deficient attorney performance," this Court granted certiorari "to consider the standards by which to judge a contention that the Constitution requires that a

criminal judgment be overturned because of the actual ineffective assistance of counsel." Id., at 684.

" '[T]he right to counsel is the right to the effective assistance of counsel.' " Id., at 686 (quoting McMann v. Richard*son*, 397 U. S. 759, 771, n. 14 (1970)). Partisan advocacy on behalf of the prosecution and defense is the most effective method of eliciting truth and to " 'promote the ultimate objective that the guilty be convicted and the innocent go free.' " United States v. Cronic, 466 U. S. 648, 655 (1984) (quoting Herring v. New York, 422 U. S. 853, 862 (1975)). Truth and fairness are the overriding reasons for demanding that an attorney's assistance be "effective." Ibid. Thus, "[t]he benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, 466 U. S., at 686; see also Nix v. Whiteside, 475 U. S. 157, 175 (1986) (refusal to cooperate in defendant's perjury is not "prejudice," even if it would have changed the outcome).

With these considerations in mind, this Court developed a two-part test for evaluating ineffective assistance claims. Strickland, 466 U. S., at 687. To prove that counsel's performance was "so defective as to require reversal of a conviction," a convicted defendant must prove that counsel's performance was deficient and that the deficient performance prejudiced the defense. Ibid.; Cronic, 466 U. S., at 658 ("the burden rests on the accused to demonstrate a constitutional violation"). The defendant, as the moving party, has the burden to show both deficient performance

and prejudice. Knowles v. Mirzayance, 556 U. S. 111, 122 (2009). No particular order of decision is required. Strickland,, supra, at 697.

Pursuant to the deficient performance element, a defendant must demonstrate that "counsel's representation fell below an objective standard of reasonable- ness" in light of all of the surrounding circumstances. Id. at 687-88. Judicial scrutiny is highly deferential and there is a "'strong presumption' that counsel's representation was within the 'wide range' of reasonable professional assistance." Harrington v. Richter, 562 U.S. 86 (2011).

With regard to the prejudice element, "any deficien- cies in counsel's performance *must* be prejudicial to the defense in order to constitute ineffective assistance under the Constitution." Strickland, 466 U. S., at 692 (emphasis added). Thus, a defendant must prove that but for counsel's unprofessional errors there is a reasonable probability that the outcome of the trial could have come to a different result. Id., at 694; Richter, 562 U. S., at 104. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, supra, at 694. The standard is high, and in those few cases in which an attorney's errors are so significant, reversal is required because the "errors so upset the adversarial balance between defense and prosecution that the trial was rendered unfair and the verdict rendered suspect." Kimmelman v. Morrison, 477 U. S. 365, 374 (1986).

"The requirement that a defendant show prejudice in effective representation cases arises from the very nature of the specific element of the right to counsel at issue there—*effective* (not mistake-free) representation. Counsel cannot be

'ineffective' unless his mistakes have harmed the defense (or, at least, unless it is reasonably likely that they have). Thus, a violation of the Sixth Amendment right to *effective* representation is not 'complete' until the defendant is prejudiced." Gonzalez-Lopez, 548 U. S., at 147.

In addressing the prejudice requirement, this Court stated that in certain Sixth Amendment contexts, prejudice is presumed and a "case by case inquiry into prejudice is not worth the cost." Strickland, 466 U. S., at 692. The actual or constructive denial of counsel is presumed to be prejudicial, as is the state's interference with counsel's assistance. Ibid.; see also Cronic, 466 U.S., at 659. In these limited circumstances, "impairments of the Sixth Amendment right ... are easy to identify and, for that reason and because the prosecution is directly responsible, easy for the government to prevent." Strickland, supra, at 692.

b. Batson

In Purkett v. Elem, 514 U.S. 765, 115 S.Ct. 1769, 131 L.Ed. 2d 834 (1995), the Court summarized its holding in Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986):

> Under our Batson jurisprudence, once the opponent of a peremptory challenge has made out a prima facie case of racial discrimination (step 1), the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step 2). If a race-neutral explanation is tendered, the trial court must then decide (step 3) whether the opponent of the strike has proved purposeful racial discrimination.

Purkett, 514 U.S. at ———— ———, 115 S.Ct. at 1770–71 (citations omitted). The Court elaborated on step 2 further:

> The second step of this process does not demand an explanation that is persuasive, or even plausible. "At this [second] step of the inquiry, the issue is the facial validity of the prosecutor's explanation. Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral."

Id. at ——, 115 S.Ct. at 1771. The Court noted that in step 3 "[the] whole focus [is not] upon the *reasonableness* of the asserted nonracial motive ... [but] rather ... the *genuineness* of the motive .... a finding which turn[s] primarily on an assessment of credibility." Id. at ——–——, 115 S.Ct. at 1771–72.

c. Strickland v. Batson

In order for a defendant to establish he is entitled to relief under Strickland, he is currently required to show that but for counsel's actions, the outcome of the proceedings **at trial** would have been different. The Court has not considered, or held, that counsel can be deficient for failing to preserve an issue, such as a Batson claim, that if preserved, would result in a different result on appeal (i.e., grant the defendant a new trial). However, the issues are one in the same and thus, why this Court should consider this question.

If a defendant is denied his right to a fair trial because of a Batson violation, the appellate court reverses and remands his case for a new trial to ensure that he receives the fair trial he is entitled to. Similarly, if a defendant is denied his right to effective counsel (and as a result, a fair trial), a defendant is similarly granted a new trial to ensure that he receives the fair trial he is entitled to. The question then becomes why isn't there an exception under Strickland that requires a defendant to show had counsel acted reasonably in preserving an appellate objection, he would

have received a new trial on appeal? By refusing to allow this alternative requirement of prejudice under Strickland, it creates an additional violation of a defendant's constitutional rights because had counsel acted reasonably, he would have already received a new trial upon his initial direct appeal.

Currently, a defendant is not entitled to relief if he cannot prove that counsel's actions substantially prejudiced him at the trial level. This Court should grant the instant petition because the right to a fair trial under Batson and the right to a fair trial under Strickland are synonymous.

d. Opportunity to remedy unequal chances for relief

This case presents an ideal opportunity to resolve this important and recurring issue. It cannot be said that Mr. Mobley is the first, or last, defendant who will suffer at the hands of his counsel because counsel failed to raise a legally sufficient objection. Other defendants, who are similarly situated but had effective counsel, were granted a new trial because their counsels acted reasonably under Strickland. The only way to ensure that all defendants are treated equally and are given their rights as ordered under the United States Constitution is to grant certiorari on this issue and consider whether counsel can be deemed ineffective for failing to preserve an issue for appeal, if that would establish the defendant would have been given a new trial.

CONCLUSION

For the reasons stated above, Jamel Mobley, respectfully submits that the petition for a writ of certiorari should be granted.

Respectfully submitted,

Jamel Mobley, Petitioner

Date: November 30, 2020

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