No. 20-7269

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ANTONIO U. AKEL — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI 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 CERTIORARI

ANTONIO U. AKEL Reg #06899-017 INCARCERATED PRO SE PETITIONER
(Your Name)

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

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

N/A
(Phone Number)

QUESTION(S) PRESENTED

WHETHER:

(1). IN RESOLVING THE CIRCUIT SPLIT HIGHLIGHTED BY THIS COURT IN GONZALEZ v. CROSBY, 545 U.S. 524, 535 n.7 (2005) AND BUCK v. DAVIS, 137 S.Ct. 759, 772 n.* (2017) AS WELL AS THE INTRA-CIRCUIT DEBATE AND UNCERTAINTY IN LIGHT OF HARBISON v. BELL, 556 U.S. 180, 183 (2009), THIS COURT SHOULD FIND THAT IT IS CONTRARY TO THE PLAIN TEXT AND STRAIGHTFORWARD READING OF 28 U.S.C. § 2253(c) TO REQUIRE A CERTIFICATE OF APPEALABILITY ("COA") TO APPEAL THE DENIAL OF A TRUE FED.R.CIV.P 60(b) MOTION, WHERE:

(A). The True Rule 60(b) Motion at Issue Here: Challenges only a Procedural Ruling of The Habeas Court For which Precluded a merits Determination upon The Petitioners 28 U.S.C. § 2255 CLAIM For Relief and Does Not In Substance or effect Assert or Reassert a Federal Basis For Relief From The Underlying Conviction, and,

(B). The District Courts order Denying the 60(b) Motion Cannot be Squared as a Final Order For which Disposes of a Proceeding Challenging The Lawfulness Of The Petitioners Detention It Is Merely An Order Refusing To Reopen The Judgment. See and Compare GONZALEZ v. SEC'Y DEP'T OF CORR., 366 F.3d 1253, 1299-1300 (11th Cir 2004) (TJOFLAT, Circuit Judge, dissenting):

> Courts of appeals have jurisdiction of appeals from all final decisions of the district courts . . . ." 28 U.S.C. § 1291. A litigant faced with an unfavorable district court judgment may make a timely appeal of that judgment and may also file a Rule 60(b) motion for relief with the district court either before or after filing his appeal. See Stone v. INS, 514 U.S. 386, 401, 115 S. Ct. 1537, 1547, 131 L. Ed. 2d 465 (1995). "The denial of the [Rule 60(b)] motion is appealable as a separate final order . . . ." Id. Thus, an order adjudicating a Rule 60(b) motion, in addition to a final judgment adjudicating the case as a whole, is an appealable, final decision.
>
> Although our appellate jurisdiction extends to all final decisions, § 2253's COA requirement does not. As a textual matter, § 2253 requires a COA to appeal only one final order in a habeas corpus proceeding, not all orders. See 28 U.S.C. § 2253(c)(1) (providing that the COA requirement {2004 U.S. App. LEXIS 138} applies to "the final order" in proceedings attacking state or federal convictions or sentences (emphasis added)).
>
> In habeas cases involving more than one appealable order, such as orders disposing of Rule 60(b) motions or other postjudgment motions, § 2253's requirement of a COA as to the appeal of just one final order clearly extends to the petitioner's efforts, if any, to appeal the court's final judgment denying him habeas relief. The district court's judgment on the habeas petition is seemingly the only "final decision" that could deny the petitioner's constitutional challenge to his conviction or sentence. Therefore, that judgment is the only decision that § 2253(c)(2) seems to address; it is the only final order that could serve as the basis for the petitioner's "substantial showing of the denial of a constitutional right[,]" the showing he must make to obtain the COA. In contrast to judgments denying habeas relief, final orders denying a Rule 60(b) motion do not adjudicate a constitutional challenge to the movant's conviction or sentence. They simply state that the district court will not exercise its discretion to set aside the final judgment it entered. 23
>
> 23
>
> This point is discussed at length in Part IV, infra. 108
>
> {2004 U.S. App. LEXIS 139} I agree with the majority's statement that the word "the" can sometimes be read in the plural. In certain circumstances, singular terms can be construed in the plural. See 1 U.S.C. § 1 ("Unless the context indicates otherwise[,] words importing the singular include and apply to several persons, parties, or things . . . ."). "But obviously this rule is not one to be applied except where it is necessary to carry out the evident intent of the statute." First Nat'l Bank in St. Louis v. Missouri, 263 U.S. 640, 657, 44 S. Ct. 213, 215, 68 L. Ed. 486 (1924) (interpreting the predecessor rule that "words importing the singular number may extend and be applied to several persons or things"); see also Toy Mfrs. of America, Inc. v. Consumer {366 F.3d 1300} Prods. Safety Comm'n, 630 F.2d 70, 74 (2nd Cir. 1980) (holding that 1 U.S.C. § 1 does not apply "except where it is necessary to carry out the evident intent of the statute"). AEDPA evinces no legislative intent to apply the COA requirement to more than one order. Nor does it evince legislative intent to apply the

§ 2253(c)(2) requirement of a "substantial showing" to an order{2004 U.S. App. LEXIS 140} that does not determine whether the petitioner has suffered the denial of a constitutional right. While AEDPA clearly limits appeals of the denial of habeas relief, there is nothing in the text of the Act that narrows the reach of Rule 60(b) or the independent collateral attacks the Rule authorizes. Thus, interpreting "the" in the plural would be improper in this context, and § 2253 must apply to one final order: the district court's final judgment on the habeas petition.

B.

I respectfully decline to join in the majority's reliance on the decisions of our sister circuits for the proposition that the COA requirement of § 2253 extends to appeals of the denial of Rule 60(b) relief. By and large, the courts, in reaching these decisions, simply assumed that § 2253 applies in the Rule 60(b) context. Moreover, most of these cases involve obvious misuses of the Rule and are therefore inapposite to circumstances involving true Rule 60(b) motions. See Rutledge v. United States, 230 F.3d 1041, 1052-53 (7th Cir. 2000) (considering an appeal from the denial of a Rule 60(b) motion based on an ineffective assistance of counsel claim that the petitioner "should have raised . {2004 U.S. App. LEXIS 141} . . in his § 2255 motion"); Morris v. Horn, 187 F.3d 333, 343 (3d Cir. 1999) ("What [the habeas petitioner] is attempting to raise as a Rule 60(b) motion is in fact what he should have brought as an appeal" from the district court's dismissal of his habeas petition for failure to exhaust state remedies.); Zeitvogel v. Bowersox, 103 F.3d 56, 57 (8th Cir. 1996) (refusing to grant a COA to review the denial of the petitioner's purported Rule 60(b) motion because the motion merely presented a constitutional claim, ineffective assistance of counsel, that the petitioner had previously raised in a motion for leave to file an SSHP). 24 I suggest that a fair reading of the opinions in these cases indicates that none of the motions at issue was a true Rule 60(b) motion.

See also McPHERRON v. DA OF CHESTER, 621 Fed Appx 704, 707 (3d Cir 2015) ("[A] COA is required to appeal the denial of habeas-related Rule 60(b) motions. See Morris v. Horn, 187 F.3d 333, 340-41 (3d Cir. 1999). But see Wilson v. Sec'y Pa. Dep't of Corr., 782 F.3d 110, 115 (3d Cir. 2015) (noting that "the vitality of [this holding in Morris] is undermined somewhat by . . . Harbison v. Bell," 556 U.S. 180, 183, 129 S. Ct. 1481, 173 L. Ed. 2d 347 (2009), but not deciding whether Harbison has abrogated it).

(US v. HANDY, 713 Fed Appx 169, 174 n.3 (10th Cir 2018) ("The necessity of a COA for [60(b)] has been the subject of some debate."))

see also Jones v. Ryan, 733 F.3d 825, 832 n.3 (9th Cir. 2013) (suggesting a COA may not be necessary to appeal the denial or dismissal of "a valid Rule 60(b) motion," as opposed to one seeking habeas-style relief).

(2). IF THIS COURT HAS DETERMINED EXPLICITLY, OR IMPLICITLY, THAT IN ACCORD WITH 28 U.S.C § 2253(c)(A) ("COA") IS REQUIRED TO APPEAL THE DENIAL OF A FED.R.CIV.P 60(b) MOTION, SHOULDN'T THIS COURT IN THE FIRST INSTANCE, TO ENSURE STABILITY AND PREDICTABILITY WITHIN THE FEDERAL CIRCUITS, RESOLVE THE DISAGREEMENT BETWEEN THE COURT BELOW AND THE SECOND, FOURTH AND TENTH CIRCUITS, BY HOLDING:

(A). When Considering a ("COA") Application From A Procedural Ruling Involving A Rule 60(b) Motion, The Source of The Constitutional Claim Is The Underlying Habeas/§2255 Petition, Not Within The 60(b) Motion Itself, Contrary to The Implicit Holding of The July 13, 2020 Two Judge order Below. CF. US v MARTZCALES-DELGADILLO, 913 Fed Appx 435, 441 n.3 (10th Cir 2007) Revealing:

When a district court dismisses a habeas petition or § 2255 motion on procedural grounds {2007 U.S. App. LEXIS 10}and an appeal is sought, the first part of the *Slack* test looks to the habeas petition or § 2255 motion in order to determine whether a petitioner has stated a valid claim of the denial of a constitutional right. **But in the context of a request for a COA to appeal the procedural denial of a Rule 60(b) motion, there is a question as to whether we look to the underlying habeas petition or § 2255 motion when making this inquiry, to the Rule 60(b) motion itself, or perhaps to some combination of the two**. In *Spitznas*, we appeared to look at the underlying habeas petition without firmly resolving the issue. *See Spitznas*, 464 F.3d at 1225 (quoting *Slack* test verbatim as test applicable when considering whether to issue a COA as to the denial of a true Rule 60(b) motion but not applying first part of test). **Two other circuits that have considered this question in the habeas context have looked either to the Rule 60(b) motion first and, finding no constitutional claim to support issuing a COA, to the underlying petition**, *see Reid v. Angelone*, 369 F.3d 363, 371 (4th Cir. 2004), or to the underlying petition in light of the grounds asserted in support of the Rule 60(b) motion, *see Kellogg v. Strack*, 269 F.3d 100, 104 (2d Cir. 2001) {2007 U.S. App. LEXIS 11}(per curiam).

And See DULWORTH V. JONES, 496 F.3d 1133, 1137-1138 (10th Cir. 2007).

For example, in *Reid v. Angelone*, 369 F.3d 363, 371 (4th Cir. 2004), the petitioner sought to appeal the denial of a Rule 60(b) motion that asserted the district court erred in not allowing her to withdraw her habeas application. The court held that

> [b]ecause this claim is procedural in nature, we may not grant a COA unless Reid establishes (a) "that jurists of reason would find it debatable whether the [Rule 60(b) motion] states a valid claim of the denial of a constitutional right" and (b) "that jurists of reason would find it debatable {2007 U.S. App. LEXIS 10}whether the district court was correct in its procedural ruling."*Id.* (quoting *Slack*, 529 U.S. at 484) (second alteration in original). **Because the petitioner's Rule 60(b) claim was not constitutional in nature, however, the court had to determine where to look for the source of the constitutional claim for part one of the standard. If it looked solely to her Rule 60(b) motion, a COA could never issue**. The court concluded it was appropriate to look to her underlying habeas petition, and in particular to those claims in the petition "that the district court may reexamine if we conclude that its procedural ruling [i.e., its ruling on the Rule 60(b) motion] was erroneous." *Id.* at 371. The Second Circuit followed a similar path in *Kellogg v. Strack*, 269 F.3d 100, 104 (2d Cir. 2001) (per curiam), holding that
>
> a COA should issue only if the petitioner shows that (1) jurists of reason would find it debatable whether the district court abused its discretion in denying the Rule 60(b) motion, and (2) jurists of reason would find it debatable whether the underlying habeas petition, in light of the grounds alleged to support the 60(b) motion, states a valid claim of the denial of a constitutional {2007 U.S. App. LEXIS 11}right.

(3) IF INDEED WHEN CONSIDERING A ("COA") APPLICATION FROM THE DENIAL OF A RULE 60(b) MOTION THE SOURCE OF THE CONSTITUTIONAL CLAIM IS FOUND WITHIN THE UNDERLYING HABEAS/§ 2255 PETITION AND NOT THE 60(b) MOTION ITSELF, HAS NOT THE COURT BELOW COMMITTED CLEAR ERROR WHEN CONTRARY TO ITS OPINION SIX DIFFERENT JURIST OF REASON IN THE SIMULTANEOUSLY PENDING #11-14707 APPEAL OF THE UNDERLYING 28 U.S.C § 2255 JUDGMENT HAVE ALREADY FRAMED THE PRO SE PETITION AS HAVING "STATED A VALID CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHT". 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)

(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 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.

A CLAIM FOR WHICH THIS COURT HAS RECOGNIZED FOR OVER 34 YEARS:

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 IN OF ITSELF SATISFIES THE SUBSTANTIVE PRONG OF SLACK v. MCDANIEL, 529 U.S 473, 484 (2000) CF:

Regarding the other prong of the *Slack* test, "[w]e will only take a 'quick' look at the federal habeas petition to determine whether [the petitioner] has facially alleged {755 Fed. Appx. 778} the denial of a constitutional right." *Gibson v. Klinger*, 232 F.3d 799, 803 (10th Cir. 2000) (brackets and internal quotation marks).

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 484-91

(4). THE PETITIONERS RIGHT TO ISSUANCE OF CERTIORARI IS NECESSARILY CLEAR AND INDISPUTABLE BECAUSE THE COURT BELOW PROVIDED A ("COA") ANALYSIS FOR WHICH NOT ONLY DISREGARDED 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 ACTUALLY THWARTS 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 UTILIZING ARBITRARY PROCEDURES FOR WHICH A ("COA") CAN NEVER ISSUE, AND FOR WHICH, AN ERRONEOUS "PROCEDURAL RULING THAT PRECLUDED A MERITS REVIEW" OF A CONSTITUTIONAL CLAIM PROVING THE PETITIONERS ACTUAL INNOCENCE CAN NEVER BE CORRECTED IN A FED.R.CIV.P 60(b) PROCEEDING.

(5). 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 EVEN HAND IN CONJUNCTION WITH LOOKING TO THE UNDERLYING HABEAS/§2255 PETITION FOR THE SOURCE OF THE CONSTITUTIONAL CLAIM AS OPPOSED TO THE 60(b) MOTION, IT THEN BECOMES OBVIOUS THAT THE INSTANT PETITIONERS RIGHT TO ISSUANCE OF A "COA" 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-CV-136-LAC-EMT (N.D. FLA). See (ECF #156) as Amended By (ECF #187 pg 5-14) CF. (ECF #220 pgs 51-52 & 55-56)

(6). THE ELEVENTH CIRCUIT HAS COMMITTED ERROR IN REFUSING TO PROVIDE THE INCARCERATED HABEAS PETITIONER LIBERAL REVIEW WITHIN HIS ("COA") PROCEEDING, AND IN REFUSING TO TAKE JUDICIAL NOTICE OF APPEAL # 17-14707, i.e. THE PENDING APPEAL OF THE UNDERLYING 28 U.S.C § 2255, WHEREIN SIX DIFFERENT JURIST OF REASON HAVE ALREADY FRAMED THE PRO SE PETITION AS HAVING "STATED A VALID CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHT", CONTRARY TO THE HOLDING OF THE COURT BELOW AND FOR WHICH UNDERMINES PUBLIC CONFIDENCE THAT JUSTICE IS EVEN ACHIEVABLE WITHIN THE SOUTHEAST REGION OF THE UNITED STATES. CF. The Pro Se March 16, 2020 ("COA") at page #1 under the demarcated Section of "OVERVIEW"

(7). THE COURT BELOW HAS ABUSED ITS DISCRETION AS WELL AS UNDERMINED THE PUBLICS CONFIDENCE IN THE UNITED STATES JUDICIARY AS A REFUGE FOR "EQUAL JUSTICE UNDER THE LAW" AND AS A SOURCE OF IMPERSONAL AND REASONED JUDGMENTS, WHEN IN REFUSING TO RECONSIDER ITS MAY 19, 2020 DENIAL OF A ("COA") IT HELD THAT: THE DISREGARD OF SLACK v. MCDANIEL, 529 U.S. 473, 478 AND ITS OWN INSTRUCTION IN HITTSON v. GDCP WARDEN, 759 F.3d 1210, 1270 (11th cir 2014) AS WELL AS THE FACT THAT SIX SEPERATE JURIST OF REASON ALREADY FRAMING THE PRO SE HABEAS PETITION AS STATING A VALID CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHT IN THE PENDING APPEAL OF THE UNDERLYING 28 U.S.C § 2255 JUDGMENT, FOR WHICH DIRECTLY CONTRADICTS AND BELIES THE LEGAL PREMISE FOR ITS MAY 19, 2020 DENIAL, IS NOT "NEW EVIDENCE OR ARGUMENTS OF MERIT TO WARRANT RELIEF"

(8). THE LITERAL LANGUAGE OF SLACK v. MCDANIEL, 529 U.S. 473, 484 REQUIRES NOTHING MORE THAN THE APPELLATE COURT TO TAKE A "QUICK LOOK" AT THE UNDERLYING HABEAS PETITION TO DETERMINE IF THE PETITION HAS FACIALLY ALLEGED A VALID CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHT, AN APPROACH ENDORSED BY THE FIRST, FOURTH, SEVENTH, NINTH AND TENTH CIRCUITS, AND IF SO, DID THE COURT BELOW COMMIT ERROR IN REQUIRING THE PETITIONER TO MAKE THE STRAIGHTFORWARD SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT UPON A HABEAS CLAIM FOR WHICH NEVER RECEIVED THE BENEFIT OF A MERITS REVIEW BY ANY COURT DUE TO AN ERRONEOUS PROCEDURAL BAR RULING. See ROUSE v. LEE, 314 F.3d 698, 701-703 (4th Cir. 2003); GIBSON v. KLINGER, 232 F.3d 799, 803 (10th Cir. 2000)

(9). THE PARTICIPATION OF A DISQUALIFIED APPELLATE COURT JUDGE CONSTITUTES A STRUCTURAL ERROR FOR WHICH CAN BE RAISED AT ANY STAGE OF THE PROCEEDING, AND IF SO, DID THE COURT BELOW COMMIT SIGNIFICANT PROCEDURAL ERROR IN FINDING THE STRUCTURAL ERROR TO HAVE BEEN MOOT SIMPLY BECAUSE IT CHOSE TO RESOLVE THE SIMULTANEOUSLY FILED MOTION TO RECONSIDER THE DENIAL OF A ("COA") FIRST, WHERE IF IT TURNS OUT THAT RECUSAL IS WARRANTED, THE JUDGE GENERALLY IS NOT ALLOWED TO TAKE ANY FURTHER ACTION CONCERNING THE MERITS. See generally EL FENIX de PUERTO RICO v. M/Y JOHANNY, 36 F.3d 136, 141 (1st Cir 1996) (citing cases and authorities)

(10). DOES THE INSTANT PETITION MEET THE CRITERIA AND THUS SATISFY SUPREME COURT RULE 10(a) AND (c) WHERE:

(A). There is not only a circuit split but also an acknowledgment by the lower courts that the necessity of a ("COA") in the Context of a Rule 60(b) proceeding has been the subject of DEBATE. See UNITED STATES v. HANDY, 743 Fed. Appx. 169, 174 n.3 (10th Cir 2018) Stating:

> **The necessity of a COA in this context has been the subject of some debate**. *See Williams v. Warrior*, 631 F. App'x 587, 589 & n.1 (10th Cir. 2015) (noting a tension between our COA requirement and the Supreme Court's "strict reading of the language in 28 U.S.C. § 2253(c)(1)(A) that limits the COA requirement to 'final orders that dispose of the merits of a habeas corpus proceeding'" (citing *Harbison v. Bell*, 556 U.S. 180, 183, 129 S. Ct. 1481, 173 L. Ed. 2d 347 (2009)); *see also Buck v. Davis*, 137 S. Ct. 759, 772, 197 L. Ed. 2d 1 n.* (2017) (noting an apparent circuit split over whether a COA is needed to appeal the denial of a Rule 60(b) motion and assuming without deciding that a COA is needed).

See also DELLABUONO v. WARDEN SOUTHWOODS STATE PRISON, 2016 U.S. dist lexis 70538 n.1 (D.NJ) Stating:

> It is unclear whether a certificate of appealability is required to appeal the denial of a motion to reopen. See, e.g., McPherron v. Dist. Attorney of Cty. of Chester, 621 F. App'x 704, 707 (3d Cir. 2015) (citing Morris v. Horn, 187 F.3d 333, 340-41 (3d Cir. 1999) and Wilson v. Sec'y Pa. Dep't of Corr., 782 F.3d 110, 115 (3d Cir. 2015)) (discussing whether a certificate of appealability is required to appeal the denial of habeas-related Rule 60(b) motions).

(B). There is a Question in need of a first instance determination by the SUPREME COURT as to where, in the Context of a request for a ("COA") to appeal the procedural denial of a Rule 60(b) motion, do the Courts look for the Source of the Constitutional Claim

For Part one of the SLACK v. MCDANIEL, 529 U.S. 473, 484 Standard, i.e. IN THE RULE 60(b) MOTION ITSELF OR THE UNDERLYING HABEAS/§2255 PETITION. See, UNITED STATES v. MARIZCALES-DELGADILLO, 243 Fed. Appx. 435, 441 n.3 (10th Cir. 2007) Stating:

> When a district court dismisses a habeas petition or § 2255 motion on procedural grounds {2007 U.S. App. LEXIS 10}and an appeal is sought, the first part of the *Slack* test looks to the habeas petition or § 2255 motion in order to determine whether a petitioner has stated a valid claim of the denial of a constitutional right. But in the context of a request for a COA to appeal the procedural denial of a Rule 60(b) motion, there is a question as to whether we look to the underlying habeas petition or § 2255 motion when making this inquiry, to the Rule 60(b) motion itself, or perhaps to some combination of the two. In *Spitznas*, we appeared to look at the underlying habeas petition without firmly resolving the issue. *See Spitznas*, 464 F.3d at 1225 (quoting *Slack* test verbatim as test applicable when considering whether to issue a COA as to the denial of a true Rule 60(b) motion but not applying first part of test). Two other circuits that have considered this question in the habeas context have looked either to the Rule 60(b) motion first and, finding no constitutional claim to support issuing a COA, to the underlying petition, *see Reid v. Angelone*, 369 F.3d 363, 371 (4th Cir. 2004), or to the underlying petition in light of the grounds asserted in support of the Rule 60(b) motion, *see Kellogg v. Strack*, 269 F.3d 100, 104 (2d Cir. 2001) {2007 U.S. App. LEXIS 11}(per curiam).

CF:

> The Second Circuit has provided a noteworthy articulation of the substance of *Slack*'s two-part test, as applied in the specific context of Rule 60(b) motions:
>
> [A] COA should issue only if the petitioner shows that (1) jurists {2010 U.S. App. LEXIS 10}of reason would find it debatable whether the district court abused its discretion in denying the Rule 60(b) motion, and (2) jurists of reason would find it debatable whether the underlying habeas petition, in light of the grounds alleged to support the 60(b) motion, states a valid claim of the denial of a constitutional right. *Kellogg v. Strack*, 269 F.3d 100, 104 (2d Cir. 2001) (per curiam). Speaking arguably in dictum, we noted favorably the Second Circuit's test, indicating that it dealt with the question of where in the context of procedural Rule 60(b) claims "to look for the source of the constitutional claim for part one of the [*Slack*] standard." *Dulworth*, 496 F.3d at 1137. The conclusion the Second Circuit reached was that "it was appropriate to look to [petitioner's] underlying habeas petition." *Id.*

(C). The petitioner herein has been denied the EQUAL PROTECTION OF THE RULES OF LAW found in Kimmelman v. Morrison, 477 U.S. 365, 106 S.Ct 2574 (1986), Massaro v. United States, 538 U.S. 500, 504, 123 S.Ct 1690 (2003), Klapprott v. United States, 335 U.S. 601, 614-615, 69 S.Ct 384 (1949) and Slack v. McDaniel, 529 U.S 473, 484, 120 S.Ct 1595 (2000) as well as denied the EQUAL PROTECTION OF STATUTE AND PROCEDURE 28 U.S.C § 2255 and Fed. R. Civ. P. 60(b) all for which has thwarted the U.S. CITIZEN from a constitutionally adequate process to contest his loss of liberty because the Courts below have Suppressed the claim and hidden the evidence thereof that easily and unequivocally proves his Actual Innocence. See HABEAS CLAIM at (ECF #156) as Amended by (ECF #187 pg's 5-14) CF The Evidence at (ECF #220 pg's 51-52 & 55-56); (ECF #164-1 pg 2-3); (ECF #174-1 pg 28-29); (ECF # 93 pg 3)

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)

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES

STATUTES AND RULES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

The opinion of the United States court of appeals appears at Appendix A to the petition and is

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

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

[ ] reported at _____; 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. § 1254(1).

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

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

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, 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). While the Denial of the petitioners 28 u.s.c § 2255 was on Appeal within the ELEVENTH CIRCUIT at #17-14707 he Submitted a FEDERAL RULE OF CIVIL PROCEDURE 60(b)(6) MOTION at (ECF #367) to the NORTHERN DISTRICT OF FLORIDA.

(2). The Fed.R.Civ.P 60(b) motion at (ECF #367) is clearly demarcated to State explicitly WORD FOR WORD as follows:

"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) AS SUPPLEMENTED (DOCKET #187 pg5-17) IN LIGHT OF THE 'INSTRUCTIVE' CLARAFICATION OF BROWN v. UNITED STATES, 688 Fed. Appx. 644, 651-653 (11th Cir 2017) DEMONSTRATING THAT THE DISTRICT COURTS LEGAL PREMISE FOR DOING SO, FOUND IN THE REPORT AND RECOMMENDATION AT (DOCKET #196 pg12) IS CLEAR ERROR"

(3). The Motion, among other things, brings to the DISTRICT COURTS attention that its PROCEDURAL BAR RULING Found in (ECF #196 pg12) adopted by (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.

WAS "INSTRUCTIVELY CLARAFIED" by the UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AS to have been INCORRECT and ERROR, when on MAY 5th, 2017 it issued BROWN v. US, 688 Fed. Appx. 644, 651-653 Stating:

> 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).

(4). Additionally the 60(b) motion points out that the Courts procedural ruling for which precluded a merits review upon the petitioners HABEAS CLAIM FOR INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN REPRESENTATION OF HIS FOURTH AMENDMENT RIGHTS has been "SQUARELY FORECLOSED" for over thirty (30) years where:

> 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.

(5). Furthermore, to ensure that the District Court apprehended the fact that JURIST OF REASON would determine that its PROCEDURAL RULING OF (ECF#196 pg12) was INCORRECT, the 60(b) motion also points out that the Courts colleague in WARE v. UNITED STATES, 2018 U.S. dist. lexis 12839 (S.D. GA) has already found as much when it held:

> 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.

(6). On the 22nd of OCTOBER, 2019 the United States District Court for the NORTHERN DISTRICT OF FLORIDA denied the petitioners 60(b) motion by holding at (ECF#383):

> ORDER
>
> Movant Anthony 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.

(7). Because it appears that the courts opinion of (ECF#383) failed to apprehend the actual claim submitted for 60(b) relief within (ECF#367), the petitioner filed a Federal Rule of Civil Procedure 59(e) motion at (ECF#389).

(8). The 59(e) motion informs the Court that it must have overlooked the TRUE and GRAVAMEN issue raised within (ECF#367) because contrary to its opinion (ECF#383) the petitioners 60(b)(6) motion is For relief from Judgment with respect to the procedural Bar Ruling, NOT FOR FRAUD UPON THE COURT AS MISDIRECTED.

(9). Additionally, the 59(e) motion directs the Courts attention to BUCKLON v. SEC'Y FLA. DEPT. OF CORR, 606 Fed. Appx 490, 494-495 (11th Cir 2015) and BUCKLON v. SEC'Y DEPT. OF CORR, 2015 U.S dist. lexis 178204 (M.D. FLA) for which States and reveals respectively:

> Finally, Rule 60(c)(1) requires that Bucklon file his motion within a "reasonable time." 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).
>
> 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*, 2006 U.S. Dist. LEXIS 76085, 2006 WL 2990449 (M.D. Fla. 2006)(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.

And that a Review of BUCKLON Supra proves that the District court committed clear and obvious error because contrary to its opinion, a 60(b) motion for relief from Judgment with respect to a "procedural Ruling that precluded a merits review" is governed under [clause (6)] not [clauses (1) Thru (3)] and therefore the petitioners claim within (ECF#367) is timely because it was raised Seventeen (17) months and eleven (11) days from the Judgment of (ECF#321).

(10). However in a pure display of ARBITRARINESS and INTRANSIGENCE the court held 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.*

(11). The petitioner filed for a Certificate of Appealability ("COA") at (ECF#395 &396) informing the DISTRICT COURT explicitly that the underlying HABEAS PETITION at (ECF#156) as Amended by (ECF#187 pg5-14) Stating respectively:

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.

IS a "STATED" claim for the denial of a Constitutional right that is effectively called a "KIMMELMAN v MORRISON, 477 U.S 365 (1986) CLAIM" and for which clearly Satisfies the Substantive Prong of SLACK v. MCDANIEL, 529 U.S 473, 484 (2000) because it is valid. CF:

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).

(12). Additionally the petitioners ("COA") at (ECF#395 &396) reminds the Court that its PROCEDURAL BAR RULING at (ECF#196 pg12) adopted by (ECF#321) putting forth:

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.

IS an Unequivocally "INCORRECT PROCEDURAL RULING" evinced by the MAY 5th, 2017

"INSTRUCTIVE" Clarification from its own appeal Court, i.e. THE ELEVENTH CIRCUIT, in BROWN v. UNITED STATES, 688 Fed. Appx 649, 651-652 (11th Cir) HOLDING:

> 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).

, for which clearly Satisfies the Second Prong of SLACK v. MCDANIEL, 529 U.S 473, 484 (2000).

(13). Furthermore the petitioners ("COA") at (ECF #395 & 396) informs the District Court that it ABUSED ITS DISCRETION IN DENYING THE RULE 60(b) MOTION because Contrary to its opinion within (ECF #s 383 & 391), a 60(b) motion challenging a "PREVIOUS RULING THAT PRECLUDED A MERITS DETERMINATION" is Governed by [clause (6)] not [clauses (1) THRU (3)] and that this can be Substantiated if the court would only review the procedural history and appellate determination of the "SIMILARLY SITUATED" in BUCKLON v. SEC'Y FLA. DEPT. OF CORR., 606 Fed. Appx. 490, 494-495 (11th Cir. 2015) and BUCKLON v SEC'Y, DEPT. OF CORR, 2015 U.S. dist. lexis 178204 (M.D. FLA) revealing and Stating respectively:

> Finally, Rule 60(c)(1) requires that Bucklon file his motion within a "reasonable time." 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). ...

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*, 2006 U.S. Dist. LEXIS 76085, 2006 WL 2990449 (M.D. Fla. 2006)(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 Buckion's amended petition.

assuming that the Court does not realize that this was resolved by the SUPREME COURT over 70 YEARS AGO and over 30 YEARS AGO by the ELEVENTH CIRCUIT. See:

Application of Rule 60(b)(6) is appropriate where no other subsection of Rule 60(b) governs and the absence of reconsideration would work an extreme and unexpected hardship. *Griffin v. Swim-Tech Corp.*, 722 F.2d 677, 680 (11th Cir.1984); *Hall v. Alabama*, 700 F.2d 1333, 1338 (11th Cir. 1983) (citing *Klapprott v. United States*, 335 U.S. 601, 614-15, 69 S. Ct. 384, 93 L. Ed. 266 (1949)).

For which also Satisfies the "TWO PART" ("COA") Standard of SLACK v. MCDANIEL, 529 U.S. 473, 484 CF:

Kellogg v. Strack, 269 F.3d 100, 104 (2d Cir. 2001) (concluding that a court will issue a COA on the denial of a Rule 60(b) motion if the petitioner establishes both that "jurists of reason would find it debatable whether the underlying habeas 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 abused its discretion in denying the Rule 60(b) motion").

(14). Despite the obvious merit of the petitioners ("COA"), for which would be granted in every fair HABEAS COURT within the UNITED STATES, the District Court denied "EQUAL JUSTICE UNDER THE LAW" by ARBITRARILY HOLDING at (ECF #400):

ORDER

1. Defendant's Motion for Leave to Appeal In Forma Pauperis (Doc. 399) is **DENIED.**

2. Defendant's Motion for Certificate of Appealability (Docs. 395, 396) is **DENIED.** To the extent such a certificate would be required, Defendant may not take an appeal from the Court's Order unless he has made a substantial showing of a denial of a constitutional right. Defendant has failed to make this showing.

3. To proceed with this appeal, Defendant must pay the $505.00 appellate filing fee within **THIRTY (30) DAYS** from the date of the docketing of this order.

ORDERED on this 13th day of February, 2020.

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

(15). The petitioner ever diligent, timely appealed and was assigned Appeal #20-10574-J.

(16). On MARCH 16, 2020, among other motions, the petitioner filed his "RENEWED MOTION FOR A CERTIFICATE OF APPEALABILITY" for which page #1 under the Demarcated Section of "OVERVIEW" alone would obtain relief in every fair and honest UNITED STATES ARTICLE III APPELLATE Court that adheres to Constitutional law and the HIERARCHAL STRUCTURE OF THE FEDERAL COURT SYSTEM CREATED BY CONGRESS, as evinced as Cut and Pasted Below:

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#388) 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), MENDER v. US, 405 F.3d 215 (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, 249, 256, 262, 267, 279, 314, 315, 318) (APPEAL #'S 15-15391, 15-15341, 17-14707) (CERT #'S 16-5453, 16-6032) (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 12) 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" OF 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 #16-6032 AT PET. pg 29-30) (SAME) AND (DOC #311) (SAME)

(17). However, Consistent with the inference of the petitioners other pleadings, the Court agreed that "A (COA) IS NOT NECESSARY WHEN APPEALING THE DENIAL OF A TRUE FED.R.CIV.P.60(b) MOTION". See APPEAL #20-10574 DOCKET AS CUT AND PASTED BELOW:

03/16/2020 Open Document NO ACTION WILL BE TAKEN A cetificate of appealability is not necessary when filing a criminal post conviction appeal Notice of receipt: Renewed Motion for a Certificate of Appealability as to Appellant Antonio U. Akel. [Entered: 03/19/2020 01:28 PM]

(18). After a series of motions and Responses between the parties and post the filing of the Appellants APPENDIX, the COURT on MAY 19, 2020 at 10:14 PM at night, well after its hours of operation and UNBEKNOWINST to the appellant, reinstated the ("COA") to reflect its original filing date. See APPEAL # 20-10574 DOCKET AS CUT AND PASTED BELOW:

03/16/2020 Open Document MOTION for certificate of appealability filed by Appellant Antonio U. Akel. Opposition to Motion is Unknown [9091470-1] [Entered: 05/19/2020 10:14 PM]

(19). Then, after a mere 32 MINUTES from being entered into the docket on MAY 19, 2020, at 10:46 PM at night, Judge William H. Pryor DENIED all of the appellants filings. See APPEAL # 20-10574 DOCKET AS CUT AND PASTED BELOW:

05/19/2020 Open Document ORDER: Motion for remand to the district court filed by Appellant Antonio U. Akel is DENIED. [9038910-2]; Motion for certificate of appealability filed by Appellant Antonio U. Akel is DENIED. [9091470-2]; Motion to proceed in forma pauperis filed by Appellant Antonio U. Akel is DENIED as MOOT. [9038855-2]; Motion for appointment of counsel filed by Appellant Antonio U. Akel is DENIED as MOOT. [9038885-2]; Motion for leave to file a supplemental reply filed by Appellant Antonio U. Akel is DENIED as MOOT. [9070425-2]; Motion to take judicial notice filed by Appellant Antonio U. Akel is DENIED as MOOT. (see attached order for complete text)[9065826-2] WHP [Entered: 05/19/2020 10:46 PM]

And See:

CORRECTED
IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No 20-10574-J

ANTONIO U. AKEL,
a.k.a. Tony Akel,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

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

(20). On JUNE 29, 2020 the appellant Filed the following motions:

06/29/2020 Open Document MOTION for reconsideration of single judge's order entered on 05/19/2020 filed by Appellant Antonio U. Akel. Opposition to Motion is Unknown [9128144-1] [Entered: 07/02/2020 03:22 PM]
06/29/2020 Open Document MOTION Motion to Illuminate filed by Appellant Antonio U. Akel. Opposition to Motion is Unknown [9128288-1] [Entered: 07/02/2020 04:06 PM]
06/29/2020 Open Document MOTION Motion Raising Structural Error filed by Appellant Antonio U. Akel. Opposition to Motion is Unknown [9128305-1] [Entered: 07/02/2020 04:10 PM]
06/29/2020 Open Document MOTION Motion for Liberal Construction filed by Appellant Antonio U. Akel. Opposition to Motion is Unknown [9128314-1] [Entered: 07/02/2020 04:14 PM]

(21) In particular the petitioners "MOTION FOR RECONSIDERATION" explicitly informed Judge William H. Pryor of SIX specific points of fact and evidence for which unequivocally establish that his MAY 19th, 2020 denial of ("COA") was Arbitrary and capricious, where:

(A). The Courts ("COA") analysis not only completely disregards the TWO-PART standard articulated by the SUPREME COURT in SLACK v. MCDANIEL, 529 U.S 473, 484 enunciating:

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.

but also disregards its own INSTRUCTIVE PRECEDENT in HITTSON v. GDCP WARDEN, 759 F.3d 1210, 1270 (11th Cir 2014) Stating:

> Where a petitioner must make a "substantial showing" without the benefit of a merits determination by an earlier court, 65 he must demonstrate that [59 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 [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.

(B). The Court failed to apprehend that the petitioners TRUE RULE 60(b) motion is not Constitutional in nature and that by looking solely to the 60(b) motion itself A COA COULD NEVER ISSUE, Wherefore the Court should look to the petitioners underlying HABEAS/2255 petition for the Source of the Constitutional claim For part one of the Standard articulated by SLACK supra, and, in doing so, it becomes obvious that (ECF #156 ground one) as Amended by (ECF #187 pg 5-14) Stating respectively:

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.

Is a facially valid claim for the denial of a Constitutional Right for which has been recognized by the Supreme Court of the UNITED STATES for thirty-four (34) YEARS. 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 as Such Clearly Satisfies the Substantive PRONG of SLACK supra for issuance of "COA". See:

Regarding the other prong of the *Slack* test, "[w]e will only take a 'quick' look at the federal habeas petition to determine whether [the petitioner] has facially alleged {755 Fed. Appx. 778} the denial of a constitutional right." *Gibson v. Klinger*, 232 F.3d 799, 803 (10th Cir. 2000) (brackets and internal quotation marks)

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

CF. U.S. v. MARIZCALES-DELGADILLO, 243 Fed. Appx. 435, 441 n.3 (10th Cir 2007):

When a district court dismisses a habeas petition or § 2255 motion on procedural grounds {2007 U.S. App. LEXIS 16} and an appeal is sought, the first part of the *Slack* test looks to the habeas petition or § 2255 motion in order to determine whether a petitioner has stated a valid claim of the denial of a constitutional right. But in the context of a request for a COA to appeal the procedural denial of a Rule 60(b) motion, there is a question as to whether we look to the underlying habeas petition or § 2255 motion when making this inquiry, to the Rule 60(b) motion itself, or perhaps to some combination of the two. In *Spitznas*, we appeared to look at the underlying habeas petition without firmly resolving the issue. *See Spitznas*, 464 F.3d at 1225 (quoting *Slack* test verbatim as test applicable when considering whether to issue a COA as to the denial of a true Rule 60(b) motion but not applying first part of test). Two other circuits that have considered this question in the habeas context have looked either to the Rule 60(b) motion first and, finding no constitutional claim to support issuing a COA, to the underlying petition *see Reid v. Angelone*, 369 F.3d 363, 371 (4th Cir. 2004), or to the underlying petition in light of the grounds asserted in support of the Rule 60(b) motion, *see Kellogg v. Strack*, 269 F.3d 100, 104 (2d Cir. 2001) {2007 U.S. App. LEXIS 1}(per curiam).

(C). Appellate Court Judge William H. Pryor Knows matter of factly that the District Courts PROCEDURAL RULING within the 28 U.S.C § 2255 proceeding at (ECF #196 pg 12) Adopted by (ECF #321) was INCORRECT because he himself Served on the panel in BROWN v. US, 688 Fed. Appx. 644, 651-652 (11th cir 2017) for which "INSTRUCTIVELY" clarafied it as being "ERROR".

(D). Appellate Court Judge William H. Pryor Knows matter of factly that the District Court ABUSED ITS DISCRETION IN DENYING THE PETITIONERS RULE 60(b) MOTION because he himself Served on the panel in BUCKLON v. SEC'Y FLA. DEPT. OF CORR., 606 Fed. Appx. 490 (11th cir 2015) For which proves that Contrary to the courts opinions in (ECF #'s 383 & 391) a RULE 60(b) MOTION FOR RELIEF FROM JUDGMENT WITH RESPECT TO A PROCEDURAL BAR RULING IS GOVERNED BY [CLAUSE (6)] NOT [CLAUSES (1) THRU (3)] AND IS TIMELY WHEN FILED WITHIN EIGHTEEN (18) MONTHS. See APPENDIX "D" (Copy of BUCKLON Supra)

(E). The Court was made aware that "SIX DIFFERENT JURIST OF REASON" in the pending Appeal of the underlying 28 U.S.C § 2255, Framing the petition as having Stated a Valid claim of the denial of Constitutional Right, 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 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.

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's 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.

not only BELIES Judge William H.Pryors MAY 19th, 2020 opinion but also clearly Satisfies Circuit Precedent:

Relying on the Supreme Court's decision in Miller-El, the Eleventh Circuit determined that "[a] petitioner satisfies this standard by demonstrating ... that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Hittson v. GDCP Warden, supra (quoting Miller-El v. Cockrell, 537 U.S. at 327, 123 S. Ct. at 1034). Where the petitioner has to make a "substantial showing," without the benefit of a merits determination by an earlier court, he must demonstrate that "jurists of reason{2017 U.S. Dist. LEXIS 40} would find it debatable whether the petition states a valid claim of the denial of a constitutional right." Hittson v. GDCP Warden, supra at 1270 (quoting Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604, 146 L. Ed. 2d 542 (2000)). "[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." Id.

AS well as the First part of SLACK Supra CF:

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).

(F). It was brought to the Courts attention that Judge William H.PRYOR is a disqualified Judge, as he had a Constitutional duty to Recuse himself from this proceeding in light of pending and unresolved recusal issues from Appeal #s 17-14707 & 15-15341, and that, additionally because it is a statistical impossibility for Judge PRYOR to be randomly assigned yet again, to this, being his Fourth out of Six of the petitioners Eleventh Circuit proceedings evinced by the mathematical equation termed the "BERNOULLI TRIAL", his involvement suggests impropriety.

(22). However unpersuaded by TRUTH and UNBOUND BY RULE OF LAW, within a mere 14-days of filing, the court on JULY 13, 2020, denied the motion for Reconsideration and held all other motions to have been MOOT. See APPEAL #20-10574 DOCKET AS CUT AND PASTED BELOW:

07/13/2020 Open Document ORDER: Motion for reconsideration of single judge's order filed by Appellant Antonio U. Akel is DENIED. [9128144-2] (see attached order for complete text) WHP and RSR [Entered: 07/13/2020 08:17 AM]
07/13/2020 Open Document MOTION MOOT: Motion to Illuminate is MOOT [9128288-2], Motion Raising Structural Error is MOOT [9128305-2], Motion for Liberal Construction is MOOT [9128314-2] due to this Court's order filed 07/13/2020. Motion filed by Appellant Antonio U. Akel. [Entered: 07/13/2020 08:21 AM]

and See:

Case: 20-10574 Date Filed: 07/13/2020 Page: 1 of 1

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No 20-10574-J

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTONIO U. AKEL,
a.k.a. Tony Akel,

Defendant-Appellant.

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

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(e) 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.

(23). As a collateral matter, the petitioner filed a "MOTION FOR THE APPOINTMENT OF COUNSEL" on MARCH 16, 2020, See:

03/16/2020 Open Document MOTION for appointment of counsel filed by Appellant Antonio U. Akel.. Opposition to Motion is Unknown [9038885-1] [Entered: 03/19/2020 01:22 PM]

highlighting and providing all of the facts and evidence necessary to demonstrate that the petitioner is a FACTUALLY INNOCENT AMERICAN CITIZEN whom has been silenced on HABEAS REVIEW, never having his day in court and thus unable to hold the Government accountable to the Judiciary for his imprisonment, based upon erroneous, ridiculous and absurd rulings for which in the mind of any Reasonable Jurist or member of the public can only be seen as a deliberate denial of "EQUAL JUSTICE UNDER THE LAW" IF the courts are apprehending

the prose pleadings.

(24). At page#12 of the motion, the petitioner has Demarcated the following:

"THE FACTUAL DEVELOPMENT FOR WHICH I HAVE BEEN UNFAIRLY PREVENTED FROM BRINGING INTO THE LIGHT IN SUPPORT OF MY KIMMELMAN v. MORRISON 477 U.S 365 CLAIM AT (DOC#187 pg 5-14) PROVING BOTH, FOURTH AND SIXTH AMENDMENT VIOLATIONS", and,

Underneath this demarcation the petitioner presented FIVE points of emphasis, [A] thru [E] reproduced below:

A. EVEN WITHOUT THE JURY VERDICT SUPPORT, THE EVIDENCE IS CLEAR, THERE WERE NO "CONTROLLED BUYS" IN THIS CASE. BUT SEE: ASHE v. SWENSON, 397 U.S. 436 at 443 "COLLATERAL ESTOPPEL" CF NOT GUILTY OF COUNTS 4 & 5

(i) The Record is replete with law enforcement testimony that demonstrates for Certain that there were no "CONTROLLED BUYS" IN this case and that the Contention otherwise is a reckless disregard for the TRUTH. See (ECF # 77 pg 31-33) LEAD DETECTIVE AL MCDONOUGH TESTIFYING AS CUT AND PASTED BELOW:

Q. At the time of the affidavit for the search warrant, you personally couldn't prove that Mr. Akel had participated in any drug transaction? Everything you talked about was based on what the CI supposedly told you, right?
A. Are you talking about on -- both the controlled buys?
Q. Yeah. That's all you had, right?
A. Yes, sir.

See also (ECF # 77 pg 25) AL MCDONOUGH TESTIFYING:

Q. There is nothing in that video showing any transaction being made there? You can't tell from the video you have supplied to the court, can you?
A. No, sir. It occurred in the car. We cannot see inside the vehicle.

See also (ECF # 77 pg 27) AL MCDONOUGH TESTIFYING:

Q. You have no -- you personally don't have any personal knowledge as to whether a deal was made that day, that was basically up to your CI, is that correct?

A. I was not sitting inside the car, no, sir.

See also (ECF #71 pg 75) SECOND LEAD DETECTIVE MATTHEW SPRATT TESTIFYING AS CUT AND PASTED BELOW:

Q. You didn't see any hand-to-hand buys, you didn't see any drugs exchanged, did you, from those video tapes, did you?

A. I didn't see any, no, sir.

Q. No one else did besides --

A. I can't --

Q. -- supposedly the CI, correct?

A. The CI, yes, sir.

(ii). All Jurist of Reason and Competent defense attorneys, on this evidence, like that of the HONORABLE District Court Judge JAMES MOODY in U.S. v. ACUNA, 2006 U.S. dist. lexis 28156 (M.D. FLA) are to know that the alleged Transactions at issue in my Case "were not Controlled Buys". See ACUNA as cut and pasted:

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 *Malone 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.

B. THE ONLY LINK LAW ENFORCEMENT HAD BETWEEN THE HOME AND THE DEFENDANT WAS BASED UPON A RECKLESS DISREGARD FOR THE TRUTH.

(i). In order to link the defendant ANTONIO AKEL to the home in accord with probable cause, law enforcement explicitly stated in the affidavit for the search warrant, as cut and

Pasted below:

and miscellaneous documents containing the address of 9518 Pouder Lane, Akel's name and Akel's live in girlfriend Danielle Rudinsky's name.

(ii). However law enforcements testimony is proof that this was a LIE and outright FALSE, as cut and pasted below:

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.

See (ECF #133 pg 8)

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.

See (ECF #133 pg 122)

C. THE TESTIMONY OF THE INFORMANT IN THIS CASE PROVES THAT THE INFERENCE GIVEN THAT HE KNEW THE LOCATION AND WAS ABLE TO LEAD LAW ENFORCEMENT TO THE LOCATION OF THE DEFENDANTS HOME WAS FALSE AND A RECKLESS DISREGARD FOR THE TRUTH.

(i). The following testimony from the Confidential Informant proves that it would have been impossible for him to have led law enforcement to my home or speak upon my home in relation to illegal activity, as cut and pasted below:

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.

See (ECF #133 pg 7-8)

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.

See (ECF #133 pg 42) CF LAW ENFORCEMENT TESTIMONY REVEALING:

Q. But had the investigation indicated that MDMA had come out of that house in the past?

A. Yes.

Q. Explain that to the jury.

A. On the two controlled buys involving Mr. Gatchell, there was a surveillance officer actually videotaping the residence before the phone call was actually placed on both occasions.

That was to determine if the drugs came out of the house

(ii). The Facts of this case will prove to any Competent person of Reason that LAW ENFORCEMENT had to have Canvassed the community to first locate my home, then created the false appearance that the informant led them there to set up Surveillance to gain entry based upon false "CONTROLLED BUYS", AND, A THEORY THAT THE DRUGS HAD TO HAVE COME OUT OF THE HOME ON A "DIRECTLY THERE AND DIRECTLY BACK TO THE HOME PREMISE". Although crafty, this is corrupt and violates the FOURTH AMENDMENT. CF WONG SUN v. U.S., 371 U.S. 471, 480 ("FOR AUGHT THAT THE RECORD DISCLOSES, HOM WAY'S ACCUSATION MERELY INVITED THE OFFICERS TO ROAM THE LENGTH OF LEAVENWORTH STREET IN SEARCH OF ONE BLACKIE TOY'S LAUNDRY")

D. THE TESTIMONY OF LAW ENFORCEMENT PROVES THAT THEY OMITTED INFORMATION FROM THE AFFIDAVIT FOR THE SEARCH WARRANT, WHICH IF IT HAD BEEN INCLUDED WOULD HAVE DEFEATED PROBABLE CAUSE.

(i). The following testimony from law enforcement, pertaining to their investigation of me would have defeated probable cause if it were included in the affidavit, as cut and pasted below:

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.

See (ECF #133 pg 119-120)

(ii). In this case law enforcement admitted that they "WERE NEVER ABLE TO PURCHASE DRUGS FROM HIM" and that they "JUMP STARTED" this case against me and yet almost 13 YEARS later I still languish in prison.

E. MY FOURTH AMENDMENT ATTORNEY'S TESTIMONY OBTAINED FROM AN EVIDENTIARY HEARING ON JAN. 28th, 2014 IS THE "SMOKING GUN" EVIDENCE FOR WHICH PROVES THE TRUTH AND MERIT OF MY KIMMELMAN v. MORRISON, 477 U.S. 365 (1986) CLAIM AT (ECF #187 pg 5-14), BUT, THE N.D. OF FLA WITH ITS STRATEGIC AND ERRONEOUS PROCEDURAL RULINGS HAS GIVEN THE APPEARANCE TO BE ATTEMPTING TO HIDE, COVER UP AND SUPPRESS THE TRUTH, WHICH IN TURN CAN CAUSE THE PUBLIC TO LOSE ITS CONFIDENCE AND FAITH IN THE SOUTHEASTERN FEDERAL JUDICIARIES ABILITY TO PROVIDE HONEST AND HONORABLE ADMINISTRATION OF LAW.

(i). Honorable people, just look at this following testimony from my attorney whom represented me in the trial court on a FOURTH AMENDMENT CLAIM FOR SUPPRESSION OF EVIDENCE, as cut and pasted below:

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 pg 55-56)

(ii). Honorable people, Counsels admissions here proves two things:

(1). He was aware that the "CONTROLLED BUY ALLEGATIONS", The only allegations within the PROBABLE CAUSE AFFIDAVIT FOR THE ISSUANCE OF THE SEARCH WARRANT, WERE FALSE!, AND,

(2). Despite knowing that the Predicates for Issuance of the SEARCH WARRANT were False he did not file for the hearing pursuant to FRANKS v. DELAWARE, 438 U.S. 154 (1978).

(iii). Now with that evidence in mind allow me to once again Bring into the light my HABEAS CLAIM FOR RELIEF AT (ECF#187) By SIMPLY CUTTING AND PASTING IT AS FOLLOWS:

> 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 pg5

(iv). Look at this additional testimony from my Attorney as cut and pasted below:

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#220 pg51-52)

(25) In sum, ANTONIO U. AKEL, a United States Citizen of BLACK and BROWN lineage appears to be deliberately denied "EQUAL JUSTICE UNDER THE LAW". The Southeastern Federal Judiciary has utilized arbitrary procedures and a systematic disregard of law in effort to Silence him on his HABEAS CLAIMS at (ECF#187 pg5-14), Silence him on his Rule 60(b)(6) claim at (ECF#367) and

Silence him on his ("COA") predicates at (ECF#s 395 & 396), all for which effectively Suppresses the Fact he is FACTUALLY INNOCENT OF THIS CASE by precluding the facts and evidence from coming out into the open and into the light. See INTER ALIA:

1. 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.

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

I. 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 pg2-3)

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 for tonight."
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 — 5-27-2011

William Anderson Dixon Date

See (ECF#174-1 pg28-29)

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)

and See also page #1 of the MARCH 16, 2020 Filed ("CCA") in Appeal #20-10574 to the COURT BELOW:

OVERVIEW: THE DISTRICT COURT ABUSED ITS DISCRETION IN DECLINING TO REOPEN THE JUDGMENT BY DENYING HABEAS PETITIONER'S FED.R.CIV.P60(b)(6) MOTION AT (DOC#367), THE FED.R.CIV.P59(e) AT (DOC#388) 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, 528-31 (2005), MENDER v. US, 405 F.3d 215 (5th Cir. 1968), BUCKLON v. SEC'Y 606 Fed. Appx. 490 (11th Cir. 2015) [SEE MOTION FOR REMAND IN ACCORD WITH DANLEY v. ALIEN 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 12) WAS ERROR AT EVERY LEVEL AND OPPORTUNITY, SEE (DOC#'S 201, 249, 256, 262, 267, 279, 311, 315, 318) (APPEAL #'S 15-15291, 15-15341, 17-14707) (CERT #'S 16-5453, 16-6032) (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 12) 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 20 - pg 52 LINE 16 & pg 55 LINE 20 - pg 56 LINE 2] SEE ALSO [MOTION FOR THE APPOINTMENT OF COUNSEL FILED IN THIS APPEAL], SEE EX#3 AND pg's 23-28 HEREIN THIS "COA" CF 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 #16-6032 AT PET. pg 29-30) (SAME) AND (DOC #311) (SAME)

(26). Wherefore, because the conduct of the Courts below displays the lack of stability and predicatability as well as suggests an appearance that there are "Two Justice Systems" for which govern the Southeast Region of the United States, the petitioner Humbly and Respectfully is before this Honorable Court imploring it to essentially pick up where it left off previously in CERT# 16-6032, granted April 3rd, 2017, at "PETITION FOR REHEARING".

REASONS FOR GRANTING THE PETITION

I. IN ACCORD WITH SUPREME COURT RULE 10(a)&(c), THIS COURT IS RESPECTFULLY REQUESTED TO RESOLVE THE CIRCUIT SPLIT IT NOTED IN GONZALEZ v. CROSBY, 545 U.S. 524, 535 n.7 (2005) AND BUCK v. DAVIS, 137 S.Ct. 759, 773 n.* (2017) AS WELL AS THE INTRA-CIRCUIT UNCERTAINTY CREATED BY THIS COURTS DECISION WITHIN HARBISON v. BELL, 556 U.S. 180, 183 (2009)

(1) Although the circuits are split on whether a COA is required to appeal a district court's denial of a Rule 60(b) motion, *Gonzalez v. Crosby*, 545 U.S. 524, 535 n.7, 125 S. Ct. 2641, 162 L. Ed. 2d 480 (2005), and see:

Buck v. Davis, 137 S. Ct. 759, 772, 197 L. Ed. 2d 1 n.* (2017) (noting an apparent circuit split over whether a COA is needed to appeal the denial of a Rule 60(b) motion and assuming without deciding that a COA is needed)

this honorable Supreme Court has allowed this instability to linger for over fifteen (15) years.

(a). This Courts holding in HARBISON v. BELL, 556 U.S. 180, 183 (2009) has caused many federal courts to question whether a ("COA") is even necessary to appeal the denial of TRUE FED.R.CIV.P 60(b) motions, see UNITED STATES v. HANDY, 743 Fed.Appx. 169, 174 n.3 (10th cir 2018) Stating:

The necessity of a COA in this context has been the subject of some debate. *See Williams v. Warrior*, 631 F. App'x 587, 589 & n.1 (10th Cir. 2015) (noting a tension between our COA requirement and the Supreme Court's "strict reading of the language in 28 U.S.C. § 2253(c)(1)(A) that limits the COA requirement to 'final orders that dispose of the merits of a habeas corpus proceeding'" (citing *Harbison v. Bell*, 556 U.S. 180, 183, 129 S. Ct. 1481, 173 L. Ed. 2d 347 (2009)); *see also Buck v. Davis*, 137 S. Ct. 759, 772, 197 L. Ed. 2d 1 n.* (2017) (noting an apparent circuit split over whether a COA is needed to appeal the denial of a Rule 60(b) motion and assuming without deciding that a COA is needed).

See also DELLOBUONO v. WARDEN SOUTHWOODS STATE PRISON, 2016 U.S. dist lexis 70538 n.1 (D.NJ) Stating:

It is unclear whether a certificate of appealability is required to appeal the denial of a motion to reopen. See, e.g., McPherron v. Dist. Attorney of Cty. of Chester, 621 F. App'x 704, 707 (3d Cir. 2015) (citing Morris v. Horn, 187 F.3d 333, 340-41 (3d Cir. 1999) and Wilson v. Sec'y Pa. Dep't of Corr., 782 F.3d 110, 115 (3d Cir. 2015)) (discussing whether a certificate of appealability is required to appeal the denial of habeas-related Rule 60(b) motions).

See also MCPHERRON v. DA OF CHESTER, 621 Fed.Appx 704, 707 (3rd cir 2015) Stating:

A COA is required to appeal the denial of habeas-related Rule 60(b) motions. See Morris v. Horn, 187 F.3d 333, 340-41 (3d Cir. 1999). But see Wilson v. Sec'y Pa. Dep't of Corr., 782 F.3d 110, 115 (3d Cir. 2015) (noting that "the vitality of [this holding in Morris] is undermined somewhat by . . . Harbison v. Bell," 556 U.S. 180, 183, 129 S. Ct. 1481, 173 L. Ed. 2d 347 (2009), but not deciding whether Harbison has abrogated it).

and see JONES v. RYAN, 733 F.3d 825, 833 n.3 (9th cir 2013) Stating:

Were Jones appealing the denial or dismissal of a valid Rule 60(b) motion, he may have had no need for a COA. *See Harbison v. Bell*, 556 U.S. 180, 183, 129 S. Ct. 1481, 173 L. Ed. 2d 347 (2009) ("[28 U.S.C. §] 2253(c)(1)(A) . . . governs final orders that dispose of the merits of a habeas corpus proceeding-a proceeding challenging the lawfulness of the petitioner's detention.")

A. THE STRAIGHT FORWARD AND STRICT READING OF 28 U.S.C §2253 REVEALS THAT THE DENIAL OF A TRUE RULE 60(b) MOTION IS NOT SUBJECT TO THE COA REQUIREMENT AND U.S. FEDERAL COURTS SHOULD NOT DISREGARD WHAT IS TRUE IN FAVOR OF WHAT IS CONVENIENT

(1). The vast majority of the lower courts in finding that a ("COA") is required to appeal the denial of a Rule 60(b) motion have approached the statutory construction of 28 U.S.C.S. 2253 solely influenced by the supposition that "it is highly unlikely that congress intended a given result". CF. U.S. v. WINKLES, 795 F.3d 1134, 1140 (9th Cir 2015) ("Congress elected not to change the language... we may presume that it accepted the existing judicial interpretation of the CPC, which held that a CPC was needed to appeal more than one order per habeas corpus proceeding, including the denial of a Rule 60(b) motion for relief from Judgment").

(2). However the intent of Congress is found in the words it has chosen to use. See (West Virginia Univ. Hospitals, Inc. v. Casey, 499 U.S. 83, 98, 111 S.Ct 1138, 113 L.Ed.2d 68 (1991)("The best evidence of [Congress'] purpose is the statutory text adopted by both houses of Congress and submitted to the president")

(3). 28 U.S.C.S. 2253(c)(1)(B) provides that unless a circuit Justice or Judge issues a certificate of appealability ("COA") an appeal may not be taken from the final order in a proceeding under Section 28 U.S.C.S. §2255. This provision governs final orders that dispose of the merits of a habeas/2255 proceeding- a proceeding challenging the lawfulness of the petitioners detention. In contrast to Judgments denying habeas/2255 relief, final orders denying a Rule 60(b) motion do not adjudicate a constitutional challenge to the movants conviction or sentence. They merely state that the district court will not exercise its discretion to set aside the final Judgment entered and therefore cannot be classified as an order subject to the COA requirement.

(4). AS the HONORABLE JUSTICE THOMAS stated in HARBISON supra.

> "Even if the proper interpretation of a statute upholds a very bad policy, it is not within our province to second guess the wisdom of Congress' action by picking and choosing our preferred interpretation from among a range of potentially plausible, but likely inaccurate, interpretations of a statute. Our task is to apply the text, not to improve upon it." (Citations omitted)... Rather, the Court must adopt the interpretation of the statute that is most faithful to its text... IF congress enacted into law something different from

What it intended, then it should amend the statute to conform it to its intent. It is beyond our province to rescue Congress from its drafting errors, and to provide for what we might think is the preferred result".

(5). In essence, the petitioner relies upon the words of the Honorable SUPREME COURT JUSTICE THOMAS as aforementioned and the Honorable Circuit Judge TJOFLAT's dissenting opinion within GONZALEZ v. SEC'Y DEPT OF CORR, 366 F.3d 1253, 1299-1300 (11th Cir 2004) for his party presentation as to why 28 U.S.C. §2253's COA requirement does not extend to the denial of Rule 60(b) motions. See!

the majority holds that § 2253 requires habeas petitioners to obtain a COA before appealing the denial of Rule 60(b)(3) relief. I cannot ascribe to this holding because § 2253's plain language discloses no such requirement. Neither can{2004 U.S. App. LEXIS 137} I ascribe to the majority's reliance on the decisions in other circuits that might appear to, but do not, support its position. A.

Courts of appeals have jurisdiction "of appeals from all final decisions of the district courts . . . ." 28 U.S.C. § 1291. A litigant faced with an unfavorable district court judgment may make a timely appeal of that judgment and may also file a Rule 60(b) motion for relief with the district court either before or after filing his appeal. See Stone v. INS, 514 U.S. 386, 401, 115 S. Ct. 1537, 1547, 131 L. Ed. 2d 465 (1995). "The denial of the [Rule 60(b)] motion is appealable as a separate final order . . . ." Id. Thus, an order adjudicating a Rule 60(b) motion, in addition to a final judgment adjudicating the case as a whole, is an appealable, final decision.

Although our appellate jurisdiction extends to all final decisions, § 2253's COA requirement does not. As a textual matter, § 2253 requires a COA to appeal only one final order in a habeas corpus proceeding, not all orders. See 28 U.S.C. § 2253(c)(1) (providing that the COA requirement{2004 U.S. App. LEXIS 138} applies to "the final order" in proceedings attacking state or federal convictions or sentences (emphasis added)).

In habeas cases involving more than one appealable order, such as orders disposing of Rule 60(b) motions or other postjudgment motions, § 2253's requirement of a COA as to the appeal of just one final order clearly extends to the petitioner's efforts, if any, to appeal the court's final judgment denying him habeas relief. The district court's judgment on the habeas petition is seemingly the only "final decision" that could deny the petitioner's constitutional challenge to his conviction or sentence. Therefore, that judgment is the only decision that § 2253(c)(2) seems to address; it is the only final order that could serve as the basis for the petitioner's "substantial showing of the denial of a constitutional right[,]" the showing he must make to obtain the COA. In contrast to judgments denying habeas relief, final orders denying a Rule 60(b) motion do not adjudicate a constitutional challenge to the movant's conviction or sentence. They simply state that the district court will not exercise its discretion to set aside the final judgment it entered.

23 This point is discussed at length in Part IV, infra. 108 {2004 U.S. App. LEXIS 139} I agree with the majority's statement that the word "the" can sometimes be read in the plural. In certain circumstances, singular terms can be construed in the plural. See 1 U.S.C. § 1 ("Unless the context indicates otherwise[,] words importing the singular include and apply to several persons, parties, or things . . . ."). "But obviously this rule is not one to be applied except where it is necessary to carry out the evident intent of the statute." First Nat'l Bank in St. Louis v. Missouri, 263 U.S. 640, 657, 44 S. Ct. 213, 215, 68 L. Ed. 486 (1924) (interpreting the predecessor rule that "words importing the singular number may extend and be applied to several persons or things"); see also Toy Mfrs. of America, Inc. v. Consumer {366 F.3d 1300} Prods. Safety Comm'n, 630 F.2d 70, 74 (2nd Cir. 1980) (holding that 1 U.S.C. § 1 does not apply "except where it is necessary to carry out the evident intent of the statute"). AEDPA evinces no legislative intent to apply the COA requirement to more than one order. Nor does it evince legislative intent to apply the

§ 2253(c)(2) requirement of a "substantial showing" to an order{2004 U.S. App. LEXIS 140} that does not determine whether the petitioner has suffered the denial of a constitutional right. While AEDPA clearly limits appeals of the denial of habeas relief, there is nothing in the text of the Act that narrows the reach of Rule 60(b) or the independent collateral attacks the Rule authorizes. Thus, interpreting "the" in the plural would be improper in this context, and § 2253 must apply to one final order: the district court's final judgment on the habeas petition.

B.

I respectfully decline to join in the majority's reliance on the decisions of our sister circuits for the proposition that the COA requirement of § 2253 extends to appeals of the denial of Rule 60(b) relief. By and large, the courts, in reaching these decisions, simply assumed that § 2253 applies in the Rule 60(b) context. Moreover, most of these cases involve obvious misuses of the Rule and are therefore inapposite to circumstances involving true Rule 60(b) motions. See Rutledge v. United States, 230 F.3d 1041, 1052-53 (7th Cir. 2000) (considering an appeal from the denial of a Rule 60(b) motion based on an ineffective assistance of counsel claim that the petitioner "should have raised . {2004 U.S. App. LEXIS 141} . . in his § 2255 motion"); Morris v. Horn, 187 F.3d 333, 343 (3d Cir. 1999) ("What [the habeas petitioner] is attempting to raise as a Rule 60(b) motion is in fact what he should have brought as an appeal" from the district court's dismissal of his habeas petition for failure to exhaust state remedies.); Zeitvogel v. Bowersox, 103 F.3d 56, 57 (8th Cir. 1996) (refusing to grant a COA to review the denial of the petitioner's purported Rule 60(b) motion because the motion merely presented a constitutional claim, ineffective assistance of counsel, that the petitioner had previously raised in a motion for leave to file an SSHP). 24 I suggest that a fair reading of the opinions in these cases indicates that none of the motions at issue was a true Rule 60(b) motion.

II. In Accord With Supreme Court Rule 10(a)&(c), This Court is Respectfully Requested To Resolve The Disagreement Between The Court Below And The Second, Fourth And Tenth Circuits And Determine In The First Instance That In The Context Of A "COA" To Appeal The Procedural Denial Of A Rule 60(b) Motion The Source Of The Constitutional Claim For Part One Of The Standard Enunciated In Slack v. McDaniel, 529 U.S. 473, 484 (2000) Is Within The Underlying Habeas/2255 Petition Not Within The Rule 60(b) Motion Itself.

(1). In this case the petitioners Rule 60(b) motion at (ECF #367) is not Constitutional in nature, therefore the appellate court looking solely to the 60(b) motion for part one of the ("COA") Standard was an ARBITRARY PROCEDURE FOR WHICH A "COA" CAN NEVER ISSUE.

(2). With Respect, to ensure stability and predictability within the Federal Circuits this Honorable Court is implored to hold that the path enunciated by the Second, Fourth and Tenth Circuits is now "CLEARLY ESTABLISHED FEDERAL LAW." See KELLOGG v. STRACK, 269 F.3d 100, 104 (2d cir 2001); REID v. ANGELONE, 369 F.3d 363, 371 (4th cir 2004); DULWORTH v. JONES, 496 F.3d 1133, 1137-1138 (10th cir 2007). See also: UNITED STATES v. MARTZCALES-DELGADILLO, 243 Fed Appx 435 n.3

(10th Cir 2007):

When a district court dismisses a habeas petition or § 2255 motion on procedural grounds {2007 U.S. App. LEXIS 10}and an appeal is sought, the first part of the *Slack* test looks to the habeas petition or § 2255 motion in order to determine whether a petitioner has stated a valid claim of the denial of a constitutional right. But in the context of a request for a COA to appeal the procedural denial of a Rule 60(b) motion, there is a question as to whether we look to the underlying habeas petition or § 2255 motion when making this inquiry, to the Rule 60(b) motion itself, or perhaps to some combination of the two. In *Spitznas*, we appeared to look at the underlying habeas petition without firmly resolving the issue. *See Spitznas*, 464 F.3d at 1225 (quoting *Slack* test verbatim as test applicable when considering whether to issue a COA as to the denial of a true Rule 60(b) motion but not applying first part of test). Two other circuits that have considered this question in the habeas context have looked either to the Rule 60(b) motion first and, finding no constitutional claim to support issuing a COA, to the underlying petition, *see Reid v. Angelone*, 369 F.3d 363, 371 (4th Cir. 2004), or to the underlying petition in light of the grounds asserted in support of the Rule 60(b) motion, *see Kellogg v. Strack*, 269 F.3d 100, 104 (2d Cir. 2001) {2007 U.S. App. LEXIS 11}(per curiam).

(3). As the Court in Dulworth v. Jones, 496 F.3d 1133 pointed out:

For example, in *Reid v. Angelone*, 369 F.3d 363, 371 (4th Cir. 2004), the petitioner sought to appeal the denial of a Rule 60(b) motion that asserted the district court erred in not allowing her to withdraw her habeas application. The court held that

> [b]ecause this claim is procedural in nature, we may not grant a COA unless Reid establishes (a) "that jurists of reason would find it debatable whether the [Rule 60(b) motion] states a valid claim of the denial of a constitutional right" and (b) "that jurists of reason would find it debatable {2007 U.S. App. LEXIS 10}whether the district court was correct in its procedural ruling." *Id.* (quoting *Slack*, 529 U.S. at 484) (second alteration in original). Because the petitioner's Rule 60(b) claim was not constitutional in nature, however, the court had to determine where to look for the source of the constitutional claim for part one of the standard. If it looked solely to her Rule 60(b) motion, a COA could never issue. The court concluded it was appropriate to look to her underlying habeas petition, and in particular to those claims in the petition "that the district court may reexamine if we conclude that its procedural ruling [i.e., its ruling on the Rule 60(b) motion] was erroneous." *Id.* at 371. The Second Circuit followed a similar path in *Kellogg v. Strack*, 269 F.3d 100, 104 (2d Cir. 2001) (per curiam), holding that
>
> a COA should issue only if the petitioner shows that (1) jurists of reason would find it debatable whether the district court abused its discretion in denying the Rule 60(b) motion, and (2) jurists of reason would find it debatable whether the underlying habeas petition, in light of the grounds alleged to support the 60(b) motion, states a valid claim of the denial of a constitutional {2007 U.S. App. LEXIS 11}right.

(4). The Second Circuit has provided a noteworthy articulation of the substance of *Slack*'s two-part test, as applied in the specific context of Rule 60(b) motions:

> [A] COA should issue only if the petitioner shows that (1) jurists {2010 U.S. App. LEXIS 10}of reason would find it debatable whether the district court abused its discretion in denying the Rule 60(b) motion, and (2) jurists of reason would find it debatable whether the underlying habeas petition, in light of the grounds alleged to support the 60(b) motion, states a valid claim of the denial of a constitutional right. *Kellogg v. Strack*, 269 F.3d 100, 104 (2d Cir. 2001) (per curiam). Speaking arguably in dictum, we noted favorably the Second Circuit's test, indicating that it dealt with the question of where in the context of procedural Rule 60(b) claims "to look for the source of the constitutional claim for part one of the [*Slack*] standard." *Dulworth*, 496 F.3d at 1137. The conclusion the Second Circuit reached was that "it was appropriate to look to [petitioner's] underlying habeas petition." *Id.*

(5). In this case the ELEVENTH CIRCUIT, by looking solely to the 60(b) motion for the Source of the Constitutional claim for part one of the ("COA") Standard, has completely insulated the final order denying 60(b) relief from appellate review, thus effectively eviscerating the "UNQUESTIONABLY VALID ROLE [IT PLAYS] IN HABEAS CASES" GONZALEZ v. CROSBY, 545 U.S 524, 533-534 and thwarting an entire class of habeas petitioner from a Constitutionally adequate process to contest their loss of liberty.

III. THIS CASE IS IDEAL FOR THIS HONORABLE COURT TO RESOLVE THESE QUESTIONS IN THE FIRST INSTANCE, WHERE THE FED.R.CIV.P 60(b) MOTION IS A "TRUE RULE 60(b) MOTION" AND THE UNDERLYING HABEAS/2255 CONSTITUTIONAL CLAIM MAKES A PRIMA FACIE SHOWING THAT THE PETITIONER IS AN ACTUALLY INNOCENT AMERICAN FOR WHICH HAS BEEN SILENCED AND PREVENTED FROM HOLDING THE GOVERNMENT ACCOUNTABLE TO THE JUDICIARY FOR HIS INCARCERATION

A. THE FED.R.CIV.P 60(b) CLAIM IS FOUND IN (ECF#367) AND IS A TRUE RULE 60(b) MOTION

(1). The petitioners Rule 60(b)(6) claim at (ECF#367) states explicitly (WORD FOR (WORD:

"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) AS SUPPLEMENTED (Docket#187 pg 5-17) IN LIGHT OF THE 'INSTRUCTIVE' CLARAFICATION OF BROWN v. UNITED STATES, 688 Fed Appx. 644, 651-653 (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"

(2). The motion, among other things, simply contrasts the district courts legal premise for its procedural ruling for which precluded a merits determination found in (ECF#196 pg 12) Stating explicitly WORD FOR WORD as follows:

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.

With the "INSTRUCTIVE" clarification of BROWN v. UNITED STATES, 688 Fed. Appx 644, 651-652 (11th Cir MAY 5, 2017) stating explicitly WORD FOR WORD AS follows:

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).

to PROVE UNEQUIVOCALLY THAT ITS PROCEDURAL RULING WAS INCORRECT AND WRONG!

(3) For added emphasis the motion directs the Courts attention to its district Court colleague in WARE v. UNITED STATES, 2018 U.S. dist. lexis 12839 (S.D. GA) for which does a masterful job in explaining why the exact procedural bar in this case is erroneous by stating WORD FOR WORD AS FOLLOWS;

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 Ms. Hawk's performance as ineffective.

B. THE CONSTITUTIONAL CLAIM IS FOUND IN THE UNDERLYING 28 U.S.C § 2255 PETITION AT (ECF #156 GROUND ONE) AS AMENDED BY (ECF #187 pg 5-14)

(1). On a timely filed 28 U.S.C § 2255 motion (ECF #156) as Amended at (ECF #187 pg 5-14) the petitioner Stated respectively WORD FOR WORD as follows:

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; (2)

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.

for which was framed accordingly on appeal of the denial of 2255 at #17-14707 on JUNE 8, 2018 Stating explicitly WORD FOR WORD AS FOLLOWS:

(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 in part that the district court's decisionwas 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.

CF: ROUSE v. LEE, 314 F.3d 698, 701-702 (4th cir 2002):

. Given the responsibilities that immediate appellate {314 F.3d 702} courts shoulder under the COA framework, however, it seems prudent to follow the approach of our sister circuits and take a "quick look" at Rouse's constitutional claims to determine{2003 U.S. App. LEXIS 8} if any of these claims "facially allege the 'denial of a constitutional right'." *Jefferson v. Welborn*, 222 F.3d 286, 289 (7th Cir. 2000); *see also Mateo v. United States*, 310 F.3d 39, 41 (1st Cir. 2002); *Valerio v. Crawford*, 306 F.3d 742, 767 (9th Cir. 2002) (*en banc*).

(2). This has been recognized as a valid claim for the denial of a Constitutional right by this Court 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).

(3). Albeit suppressed and hidden by the systematic erroneous rulings of the Courts below, the evidence and factual development of the petitioners habeas/2255 claim for relief substantiates the allegations and makes a PRIMA FACIE showing of being Actually Innocent of this Federal case. See INTER ALIA:

(i). The SWORN TESTIMONY FROM THE TRIAL ATTORNEY HIMSELF, OBTAINED FROM AN EVIDENTIARY HEARING TAKING PLACE ON JAN. 28, 2014 BEFORE THE U.S. DIST. COURT FOR THE NORTHERN DISTRICT OF FLORIDA STATING:

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# 220 pg 51-58)

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 pg 55-56)

(ii) THE SWORN AFFIDAVIT FROM THE TRIAL ATTORNEY STATING:

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 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 28-29)

(IV). THE PROOF THAT THE UNITED STATES CHARGED THE PETITIONER WITH BOTH OF THE "CONTROLLED BUYS" WHICH SERVED AS THE ONLY PROBABLE CAUSE PREDICATES FOR ISSUANCE OF THE SEARCH AND ARREST WARRANTS THAT ARE DISPOSITIVE TO THE INDICTMENT, AND, THE PROOF THAT THE JURY FOUND THE PETITIONER "NOT GUILTY" OF THEM BOTH, FOR WHICH AS A CONSEQUENCE TO THE UNITED STATES, IF AND WHEN COMPETENTLY LITIGATED UNDER FRANKS V. DELAWARE 438 U.S. 154; 98 S.Ct. 2674 (1978) AND ITS "PREPONDERANCE OF THE EVIDENCE" STANDARD, RENDERS THE PETITIONER ACTUALLY INNOCENT PURSUANT TO THE "FRUIT-OF-THE-POISONOUS-TREE" DOCTRINE, WONG SUN V. UNITED STATES, 371 US 471, 485, 488, 83 S.Ct. 407, 416, 418 (1963).

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)

IV. CORRECTING SYSTEMIC INSTITUTIONAL INJUSTICE IS A MATTER OF NATIONAL IMPORTANCE, AND BELOW, THE CONDUCT OF THE COURTS THREATEN TO EMBARASS THE JUDICIAL BRANCH OF THE U.S. GOVT. BY DISPLAYING THAT THERE ARE TWO JUDICIAL SYSTEMS FOR WHICH GOVERN THE SOUTHEAST REGION OF THE U.S.: ONE WHERE EQUAL JUSTICE UNDER THE LAW IS PROVIDED AND THE OTHER WHERE A SYSTEMATIC MANIPULATION OF PROCEDURE AND A DELIBERATE DISREGARD OF LAW ARE UTILIZED TO SILENCE U.S. CITIZENS ON HABEAS CORPUS KEEPING THEM FROM HOLDING THE GOVT. ACCOUNTABLE TO THE JUDICIARY FOR THEIR WRONGFUL INCARCERATION.

A. THE INJUSTICE, ARBITRARINESS AND CAPRICIOUSNESS OF THE NORTHERN DISTRICT OF FLORIDA AND THE ELEVENTH CIRCUIT IS FLAGRANTLY OBVIOUS AND CLEAR.

(1). Contrary to the courts below, a claim that "counsel was ineffective in failing to raise a Fourth Amendment issue" is and has been a valid claim for the denial of a constitutional right for 34 years. See Kimmelman v. Morrison, 477 U.S 365 (1986).

(2). Contrary to the courts below, an ineffective assistance of counsel [Kimmelman v. Morrison claim] raised for the first time on 28 U.S.C. § 2255 CANNOT BE PROCEDURALLY BARRED. See. Massaro v. United States, 538 U.S. 500, 504 (2003); Brown v. United States, 683 Fed. Appx. 644, 651-652 (11th Cir 2017)

(3). Contrary to the Courts below, a Fed.R.Civ.P. 60(b) motion for relief from Judgment with respect to a "procedural ruling that precluded a merits determination" is governed by [clause (6)] of the rule not [clauses (1) thru (3)]. See Klapprott v. United States, 335 U.S. 601, 614-15 (1949); Bucklon v. Secy, 606 Fed. Appx. 490 (11th Cir 2015)

(4). In light of how simple and uncomplicated the errors are to see, the intransigence of the Courts suggests the deliberate thwarting and suppression of ANTONIO U. AKEL, a U.S. citizen of Black and Brown lineage, from proving his innocence and wrongful incarceration on habeas/2255 review. CF:

As stated by the Supreme Court in Kimmelman v. Morrison:

> Because collateral review will frequently be the only means through which an accused can effectuate the right to counsel, restricting the litigation of some Sixth Amendment claims to trial and direct review would seriously interfere with an accused's right to effective representation. A layman will ordinarily be unable to recognize counsel's errors and evaluate counsel's professional performance; consequently a criminal defendant will rarely know that he has not been represented competently until after trial or appeal, usually when he consults another lawyer about his case. (1986 U.S. App. LEXIS 7) 477 U.S. 365, 378, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986) (internal citation omitted).

See (ECF #187 pg 5-14):

> 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.

CF (ECF # 220 pg 51-52):

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: 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.

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)

CONCLUSION

With Respect, the petitioner ANTONIO AKEL is a United States citizen whom has been Suppressed from being heard on HABEAS REVIEW and thus unable to hold the Govt. accountable to the Judiciary for his wrongful incarceration. Please Honorable Justices allow him to be heard for he has languished in prison for 13 years. The petition for a writ of certiorari should be granted.

Respectfully submitted,

ANTONIO U. AKEL

Date: OCTOBER 8th, 2020