

20-7633
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
MAR 27 2021
OFFICE OF THE CLERK

Sam S. Alford — PETITIONER
(Your Name)

Secretary, vs.
Florida Dept. of Corrections — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit, U.S. District Court for the Northern
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE) District of
Florida

PETITION FOR WRIT OF CERTIORARI

Sam S. Alford, 580812
(Your Name)
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Sneads, FL 32460
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—
(Phone Number)

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A. QUESTIONS PRESENTED

Whether the court of appeals improperly denied the Petitioner a certificate of appealability under 28 U.S.C. §2253(c) on his claim that his counsel rendered ineffective assistance of counsel by failing to advise defendant of the risks associated with consolidation, which deprived defendant the right to give informed consent regarding consolidation?

Whether a criminal defendant is denied his right to effective assistance of counsel when a defendant's consent to a course of action against prevailing state and federal law is obtained where counsel acknowledges failing to advise of the risks?

B. PARTIES INVOLVED

The parties involved are identified in the style of the case.

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The question presented is important

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Other Authority

United States Constitutional Amendments 5th, 6th, and 14th.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides that 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; or shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to...have the Assistance of Counsel for his defense”. “The right to counsel is the right to the effective assistance of counsel”. *McMann v Richardson*, 397 U.S.759, 771, n.14 (1970)

The Fourteenth Amendment provides that no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Petitioner, SAM S. ALFORD, requests the court to issue a writ of certiorari to review the judgement/order of the Eleventh Circuit Court of Appeals entered in this case on December 28, 2020 (reconsideration/rehearing denied on January 19, 2020).

D. CITATION TO ORDER BELOW

The order below was not reported.

E. BASIS FOR JURISDICTION

The jurisdiction of the Court is revoked pursuant to 28 U.S.C. §1254 to review the final judgment of the Eleventh Circuit Court of Appeals.

F. CONSTITUTIONAL PROVISION INVOLVED

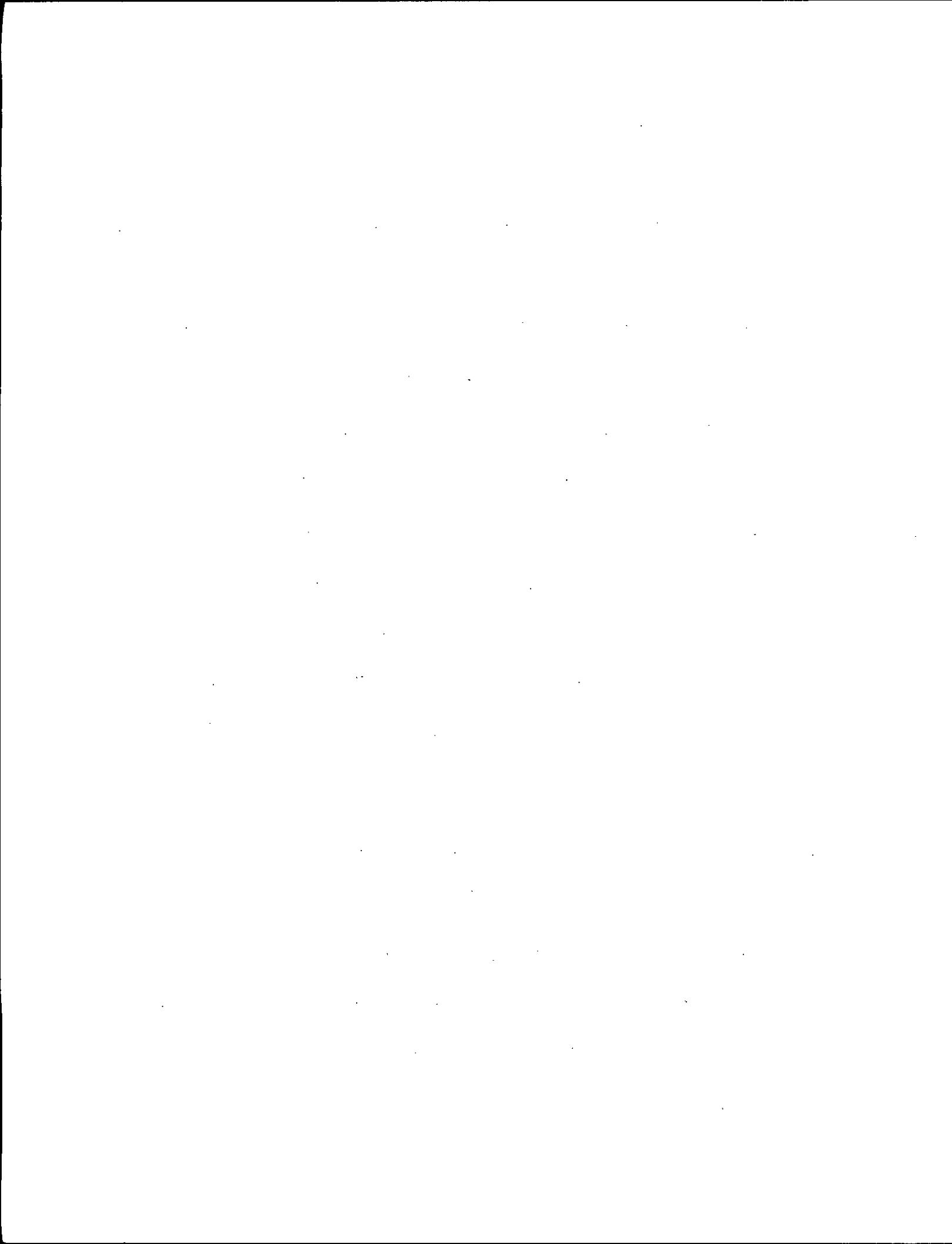
The Fifth, Sixth and Fourteenth. Attached

G. STATEMENT OF THE CASE

In 2007, Mr. Alford was charged with three counts of sexual battery and two counts of lewd or lascivious molestation. He was also charged in a separate case with one count each of sexual battery and lewd or lascivious molestation. The two young women making the allegations were sisters, D.F. and E.F. The case proceeded to trial in 2008. Mr. Alford's theory of defense was that the entirety of the

allegations were made up by Ms. Dunn, (D.F.'s and E.F.'s mother) in retaliation when she found out he was seeing someone else. At the conclusion of the trial, the jury found Mr. Alford guilty. The state trial court sentenced Mr. Alford to life imprisonment. On direct appeal, the Florida First District Court of Appeal, per curiam affirmed Mr. Alford's convictions and sentences. See *Alford v. State*, (Fla. 1st DCA 2011). Mr. Alford subsequently filed a state postconviction motion pursuant to Florida Rule of Criminal Procedure 3.850. The postconviction court summarily denied some claims and ordered an evidentiary hearing. After the evidentiary hearing the state postconviction court denied Mr. Alford's rule 3.850 motion. Mr. Alford appealed the denial and the Florida First District Court of Appeals reversed one of the summarily denied claims of the rule 3.850 motion. See *Alford v. State*, 166 So.3d 219 (Fla. App. 2015).

The State Appellate Court's findings were "This court has held that consolidation is not proper in molestation cases where the offenses occurred at different times and places and involved different victims". *Roark v State*, 620 So. 2d 237 239 (Fla. 1st DCA 1993). Furthermore, "Contrary to the trial court's conclusion, the record does not conclusively refute appellant's claim insofar as he alleges defense counsel failed to



advise him of the dangers posed by consolidating the cases. Moreover, this court has rejected the position that misjoinder would constitute harmless error in all familial sexual battery cases where the misjoined offenses would be admissible as collateral crime evidence".

The State Appellate Court remanded the case for an evidentiary hearing addressing whether there was a strategic benefit to consolidation and whether Mr. Alford was warned of the serious risks associated with consolidation.

Pursuant to the Florida District Court's order, an evidentiary hearing was held on the claim. After testimony from both of Mr. Alford's attorneys, the state postconviction court denied Mr. Alford's claim although Mr. Alford's attorney testified that they did not advise Mr. Alford "in the terms of what the risks were". Mr. Alford appealed the state postconviction court's ruling, which was affirmed without an opinion. *Alford v. State*, 222 So.3d 1202 (Fla. App. 2017) Thereafter, Mr. Alford timely filed a petition pursuant to 28 U.S.C. § 2254. Mr. Alford raised several claims in the petition – one of which is the focus of the instant pleading: (1) Defense counsel provided ineffective assistance by moving to consolidate cases unrelated in time, place, or victim, and failed to advise Mr. Alford of the risks associated with consolidation of the cases. The district court denied Mr. Alford's §

2254petition. Mr. Alford filed a Writ of Certiorari and was denied. Mr. Alford timely filed his Application for Certificate of Appealability and subsequently a reconsideration of Certificate of Appealability in the Eleventh Circuit. On January 19, 2021 Mr. Alford was denied a reconsideration of Certificate of Appealability.

H. REASON FOR GRANTING THE WRIT

The question presented is important.

The petitioner contends that the Eleventh Circuit erred by denying him a certificate of appealability on his ineffective assistance of counsel claim. As explained below, the Petitioner has made “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c) (2).

On remand, the Florida First District Court of Appeals held that it would be improper to consolidate defendant’s cases stating, “Contrary to the trial court’s conclusion, the record does not conclusively refute appellant’s claim insofar as he alleges defense counsel failed to advise him of the dangers posed by consolidating the cases”. Furthermore, “In this case, absent consent of appellant, consolidation would not be warranted where the offenses occurred at different times and places and involved different

(although related) victims". "Because appellant's claim that defense counsel was ineffective for moving to consolidate the cases without advising him of the risks is not conclusively refuted by the record, the trial court's summary denial of this claim is reversed and remanded for an evidentiary hearing". (Appendix A attached) This ruling holds that it was the defendants consent, obtained by counsel, that allowed consolidation of the cases.

Defendant's consent was sought after counsel advised of the strategic benefits without advising of the risks. Counsel's failure to advise defendant of the risks, deprived defendant of the right to give an informed consent. During a motion hearing on the issue, trial counsel acknowledged that defendant was not advised of the risks associated with consolidation stating "I don't know that we put it in the terms of what the risks were". "I think it was more so in the sense of the advantages that we felt were there to try the cases together". (excerpt attached)

In their order, the Florida First District Court of Appeals ruled that absent consent of appellant, consolidation would not be warranted if defendant was not advised of the risks associated with consolidation. Counsel acknowledged and testified that defendant was not advised of the risks associated with consolidation. Defendant has demonstrated a substantial

showing of a denial of a constitutional right and should be afforded the right to relief deemed proper by this court. A defendant's consent to a course of action deemed improper in a plethora of state and federal law cannot be considered valid, especially where the risks of such a controversial decision are not clearly informed.

To obtain postconviction relief on the basis of ineffective assistance of counsel, a defendant must show (1) that counsel's performance was deficient and (2) that the deficient performance prejudices the defense.

Strickland v Washington, 466 U.S. 668 (1984).

Accordingly, for all of the reasons set forth above, Mr. Alford submits he has made "a substantial showing of the denial of a constitutional right" 28 U.S.C. § 2253(c)(2) and is entitled to relief pursuant to 28 U.S.C. § 2254(d). 28 U.S.C. § 2253(c)(2) provides that a COA may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right. Finally, 28 U.S.C. § 2253(c)(3) provides that the COA under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2). In *Miller-El v Cockrell*, 537 U.S. 322, 336, 123 S. Ct. 1029, 1039 (2003), the Supreme Court observed that a COA will issue only if the requirements of § 2253 have been satisfied. § 2253(c) permits the issuance of a COA only where

a petitioner has made a substantial showing of the denial of a constitutional right. The Supreme Court in *Miller-El* recognized that determining whether a COA should be issued “requires an overview of the claims in the habeas petition and a general assessment of their merits.” Petitioner has demonstrated that counsel’s performance was deficient. Furthermore, advising consolidation without informing defendant of the risks associated thereof was prejudicial to defendant’s case.

APPENDIX

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| APPENDIX A | Decision of State Court of Appeals |
| APPENDIX B | Decision of State Trial Court |
| APPENDIX C | Decision of Federal Court |

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sam S. Alford

Date: March 24, 2021

