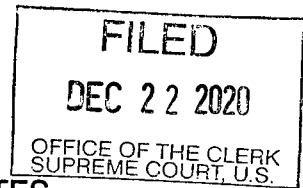


20-7688  
No. \_\_\_\_\_

ORIGINAL

\_\_\_\_\_  
IN THE

SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_



RODERICK B. LEWIS — PETITIONER  
(Your Name) (PROSE)

VS.

SEC., FLA. D.O.C. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF FLORIDA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RODERICK B. LEWIS  
(Your Name)

1760 HIGHWAY 67 NORTH  
(Address)

CARRABELLE, FLA. 32322  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## QUESTION(S) PRESENTED

1.) CAN A STATE PROCEDURAL RULE OR STATE PROCEDURAL DEFAULT PRECLUDE A FEDERAL COURT FROM REVIEWING A DEFENDANT'S FEDERAL CONSTITUTIONAL CLAIMS?

2) CAN A CONSTITUTIONAL CLAIM OF INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL BE BARRED BY THE SUBSECTIONS GOVERNED BY THE ACT OF 1996 (AEDPA)?

## 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:

- U.S.D.C. MIDDLE DISTRICT COURT OF FLORIDA (TAMPA)

## RELATED CASES

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### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

☐ For cases from **federal courts**:

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☐ is unpublished.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

☒ reported at 8:20-cv-2255-T-02AAS; 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☒ is unpublished.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 E to the petition and is

☒ reported at SC20-1778; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the SECOND DISTRICT APPEAL court appears at Appendix F/G to the petition and is

☐ reported at 2D19-3429 / 2D20-0800; 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 \_\_\_\_\_.

☐ 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: \_\_\_\_\_, 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. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was DECEMBER 8, 2020.  
A copy of that decision appears at Appendix E.

☐ 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

SECTION 2254(i) PROVIDES THAT THE INEFFECTIVENESS OR INCOMPETENCE OF COUNSEL DURING FEDERAL OR STATE COLLATERAL POST-CONVICTION PROCEEDINGS SHALL NOT BE GROUND FOR RELIEF. "CAUSE", HOWEVER, IS NOT SYNONYMOUS WITH A "GROUND FOR RELIEF". A FINDING OF CAUSE AND PREJUDICE DOES NOT ENTITLE THE PRISONER TO HABEAS RELIEF. IT MERELY ALLOWS A FEDERAL COURT TO CONSIDER MERITS OF A CLAIM THAT OTHERWISE WOULD HAVE PROCEDURALLY DEFAULTED. MARTINEZ V. RYAN, 566 U.S. 1, 132 S. CT. 1309, 182 L. ED. 2d. 272 AT 288

U.S. CONSTITUTION AMENDMENT 6

U.S. CONSTITUTION AMENDMENT 14

28 U.S.C. § 2244 (b)(3). BEFORE A SECOND OR SUCCESSIVE APPLICATION PERMITTED BY THIS SECTION IS FILED IN THE DISTRICT COURT, THE APPLICANT SHALL MOVE IN THE APPROPRIATE COURT OF APPEALS FOR AN ORDER AUTHORIZING THE DISTRICT COURT TO CONSIDER APPLICATION.

## STATEMENT OF THE CASE

LEWIS IS A FLORIDA PRISONER SERVING A LIFE SENTENCE FOR FIRST DEGREE MURDER AND FALSE IMPRISONMENT. IN 2004, LEWIS FILED HIS ORIGINAL § 2254 PETITION, WHICH THE U.S.D.C. MIDDLE DISTRICT OF FLORIDA (TAMPA) DENIED (SEE APPENDIX-A, DISTRICT COURT ORDER).

IN SEPTEMBER 2020, LEWIS FILED AN APPLICATION FOR LEAVE TO FILE A SECOND OR SUCCESSIVE HABEAS PETITION RAISING TWO CLAIMS. (1) THAT HIS APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO FEDERALIZE HIS THREE CLAIMS RAISED ON DIRECT APPEAL AND (2) THAT THE INEFFECTIVENESS OF COUNSEL EXCUSED PROCEDURAL DEFAULT.

HE ARGUES THAT HE WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL DURING HIS DIRECT APPEAL. LEWIS ARGUES THAT APPELLATE COUNSEL'S FAILURE TO COMPLY WITH STATE PROCEDURAL RULE PREVENTED THE FEDERAL COURT FROM ADJUDICATING HIS CLAIMS ON THE MERITS. (SEE APPENDIX-A- DISTRICT COURT ORDER AT Pgs 2-3) AND (APPENDIX-B- SUCCESSIVE 2254 PETITION WITH BRIEF).

HE ARGUED THAT WHEN A STATE APPOINTED COUNSEL'S PERFORMANCE FALLS BELOW CONSTITUTIONAL STANDARDS, THAT ATTORNEY FAILURES ARE CHARGEABLE TO THE STATE.

SECOND, LEWIS ARGUED THAT THE ACT OF 1996 (AEDPA) DOES NOT PREVENT HIM FROM RELYING ON THE INEFFECTIVENESS OF HIS APPELLATE COUNSEL TO SHOW CAUSE TO EXCUSE PROCEDURAL DEFAULT OF CLAIMS PRESENTED IN HIS DIRECT APPEAL. LEWIS ASSERTS THAT THE U.S. SUPREME COURT IN MARTINEZ V. RYAN, 566 U.S.1 (2012), HELD THE INEFFECTIVENESS OF COUNSEL MAY PROVIDE CAUSE TO EXCUSE PROCEDURAL DEFAULT, AND THAT THE ACT OF 1996 (AEDPA) DOES NOT BAR SUCH A CLAIM.

ON 9-28-20 THE U.S.D.C. MIDDLE DISTRICT (FLA.) DISMISSED LEWIS SUCCESSIVE PETITION PURSUANT TO SECTION 2244(b)(3), ASSERTING THAT LEWIS WAS REQUIRED TO OBTAIN AUTHORIZATION FROM THE ELEVENTH CIRCUIT COURT OF APPEAL. (SEE APPENDIX - C - DISTRICT COURT ORDER)

SUBSEQUENTLY TO THE MIDDLE DISTRICT ORDER, LEWIS FILED A WRIT OF CERTIORARI WHICH WAS POSTMARKED OCTOBER 12, 2020 AND RECEIVED OCTOBER 23, 2020 BY THE CLERK OF THE U.S. SUPREME COURT.

THE CERTIORARI WAS RETURNED FOR THE FOLLOWING REASONS: THAT HIS CASE MUST BE REVIEWED BY A U.S. COURT OF APPEAL OR BY THE HIGHEST STATE COURT IN WHICH A DECISION COULD BE HAD. PURSUANT TO 28 U.S.C. 1254 AND 1257. (SEE APPENDIX - D)

LEWIS THEN FILED A WRIT OF HABEAS CORPUS WITH THE SUPREME COURT OF FLORIDA ALLEGING THE SAME CLAIMS ON DECEMBER 1, 2020. ON DECEMBER 8, 2020 THE SUPREME COURT (FLA.) DISMISSED LEWIS PETITION ASSERTING THAT THE COURTS JURISDICTION TO ISSUE EXTRAORDINARY WRITS MAY NOT BE USED TO SEEK REVIEW OF AN UNELABORATED DECISION FROM A DISTRICT OF APPEAL THAT IS ISSUED WITHOUT OPINION OR AN EXPLANATION. (SEE APPENDIX-E- ORDER OF SUPREME COURT (FLA.) WITH HABEAS PETITION ATTACHED.)

## REASONS FOR GRANTING THE PETITION

THE PETITIONER [LEWIS] ASSERTS THAT IT IS WELL SETTLED THAT THE EXISTANCE OF A STATE PROCEDURE DEFAULT DOES NOT DIVEST A FEDERAL COURT OF JURISDICTION ON COLLATERAL REVIEW.

WAINWRIGHT V. SYKES, 433 US 72, 82-84, 53 L. Ed. 2d 594, 97 S. Ct. 2497 (1977).

THE RATIFICATION OF THE FOURTEENTH AMENDMENT BY THE CITIZENS OF THE SEVERAL STATES EXPANDED FEDERAL HABEAS POWERS EVEN FURTHER WITH A CORRESPONDING DIMINUTION OF STATE SOVEREIGNTY. THUS "THE SOVEREIGNTY OF THE STATES IS LIMITED BY THE CONSTITUTION ITSELF. GARCIA V. SAN ANTONIO METROPOLITAN TRANSIT AUTHORITY, 469 US 528, 848, 83 L. Ed. 2d 1016, 105 S. Ct. 1005 (1985).

SINCE 1867, CONGRESS HAS ACTED WITHIN ITS CONSTITUTIONAL AUTHORITY TO "INTERPOSE THE FEDERAL COURTS BETWEEN THE STATES AND THE PEOPLE, AS GUARDIANS OF THE PEOPLE'S FEDERAL RIGHTS TO PROTECT THE PEOPLE FROM UNCONSTITUTIONAL ACTION. MITCHELL V. POSTER, 407 US 225, 242, 82 L. Ed. 2d 705, 92 S. Ct. 2151 (1972).

IN THE CASE AT BAR THE PETITIONER WAS REPRESENTED DURING HIS DIRECT APPEAL BY STATE APPOINTED COUNSEL. APPELLATE COUNSEL RAISED THREE CLAIMS WHICH WERE PROCEDURALLY BARRED BECAUSE COUNSEL FAILED TO COMPLY WITH STATE PROCEDURAL RULES. (SEE APPENDIX-A; ORDER DENYING ORIGINAL 2254 PETITION AT P. 9, 2-3.)

THE PETITIONER ASSERTS THAT HE WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COMPETENT COUNSEL UNDER THE SIXTH AMENDMENT TO THE U.S. CONSTITUTION.

THIS CONSTITUTIONAL GUARANTEE APPLIES TO THE WHOLE COURSE OF A CRIMINAL PROCEEDING. THIS ALSO INCLUDES THE RULE THAT DEFENDANTS HAVE A RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL. SEE, E.G. HALBERT V. MICHIGAN, 545 US 605, 125 S. CT. 2582, 162 - L. ED. 2D. 552 (2005); EVITT V. LUCEY, 469 US. 387, 105 - S. CT. 830, 83 L. ED. 2D. 821 (1985).

LEWIS ALSO ASSERT THAT THE FEDERAL COURT HAD JURISDICTION TO REVIEW HIS PETITION, BECAUSE THE SUPREME COURT HAS HELD THAT "CAUSE AND PREJUDICE" DOES NOT ENTITLE A PRISONER TO HABEAS RELIEF. IT MERELY ALLOWS A FEDERAL COURT TO CONSIDER THE MERITS OF CLAIMS THAT OTHERWISE WOULD HAVE BEEN PROCEDURALLY BARRED. MARTINEZ V. RYAN,

566 US 1, 132 S. CT. 1309, 182 L. ED. 2D. 272 AT 288 (2012).

MOREOVER AN ATTORNEY'S ERRORS DURING DIRECT APPEAL MAY PROVIDE "CAUSE" TO EXCUSE PROCEDURAL DEFAULT. COLEMAN V THOMPSON, 501 US 722 AT 754, 111 S. CT. 2546, 115 L. ED. 2D. 640 (1991).

ALSO THE SERVICE OF A LAWYER FOR EVERY LAYMAN BE NECESSARY TO PRESENT AN APPEAL IN A FORM SUITABLE FOR APPELLATE CONSIDERATION ON THE MERITS. EVITT, SUPRA, AT 393-96, 105 S. CT. 830, 83 L. ED. 2D. 821.

LEWIS CONTENDS THAT HE HAD RIGHT TO COUNSEL, THEREFORE ATTORNEY'S ACTS AND OVERSIGHTS ARE IMPUTED TO THE STATE. FOR WHEN A STATE IS CONSTITUTIONALLY OBLIGED TO PROVIDE COUNSEL, BUT FAILS TO PROVIDE AN EFFECTIVE ONE, THE ATTORNEY'S FAILURES THAT FALL BELOW THE STANDARDS SET FORTH IN, STRICKLAND V. WASHINGTON, 466 US 668 AT 686, 104 S. CT. 2052, 80 L. ED. 2D. 674, ARE CHARGEABLE TO THE STATE, NOT THE PRISONER. MURRAY V. CARRIER, 477 US 478 - AT 488, 106 S. CT. 2639, 91 L. ED. 2D. 397 (1986).

AND WHEN A DEFENDANT'S CONSTITUTIONAL RIGHTS ARE VIOLATED, THE SIXTH AMENDMENT REMEDIES SHOULD BE TAILORED TO THE INJURY SUFFERED, THEREFORE NEUTRALIZE - G THE TAINT OF THE VIOLATION. UNITED STATES V. MORRISON, 449 US 361 AT 365, 101 S. CT. 665, 66 L. ED. 2D. 564 (1981)

IN ADDITION THE U.S. SUPREME COURT HAS HELD THAT THE ACT OF 1994 (AEDPA) DOES NOT PRECLUDE A DEFENDANT FROM RELYING ON THE INEFFECTIVENESS OF A POST-CONVICTION COUNSEL AS CAUSE TO EXCUSE A PROCEDURAL DEFAULT.

MARTINEZ, SUPRA, AT 288, 132 S. CT. 1309, 132 L. ED. 2D. 272.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Roderick B. Lewis

Date: 12-22-20

PROVIDED TO FRANKLIN CI  
FOR MAILING ON

12/22/2019

INMATE INITIALS R.L.