Appendix A

Civil Complaint 1983

United State Court of Appeal
For the 11th circuit.

Appendix A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11276-AA

CHARLENE TERRY-ANN WALKER ROSA,
a.k.a. Charlene Rosa,

Petitioner-Appellant,

versus

HOWARD FINKELSTEIN,
DOHN WILLIAMS, JR.,

Respondents-Appellees.

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

ORDER:

Appellant's motion to correct the record, as construed from her "Notice to the Clerk to Correct Record," is DENIED. Captions or designations are "not determinative as to the parties to the action." *Lundgren v. McDaniel*, (814 F.2d) 600, 604 n.2 (11th Cir. 1987).

Appellant's motion to strike the response brief is DENIED.

Appellant's motion for leave to file a supplemental brief is DENIED.

/s/ Adalberto Jordan
UNITED STATES CIRCUIT JUDGE

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11276
Non-Argument Calendar

D.C. Docket No. 0:20-cv-60051-RKA

CHARLENE TERRY-ANN WALKER ROSA,
a.k.a. Charlene Rosa,

Petitioner-Appellant,

versus

HOWARD FINKELSTEIN,
DOHN WILLIAMS, JR.,

Respondents-Appellees.

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

(December 11, 2020)

Before JILL PRYOR, LUCK, and BRASHER, Circuit Judges.

PER CURIAM:

Charlene Terry-Ann Walker Rosa, proceeding *pro se*, appeals the district court's dismissal of her "Civil Liability Suit," which was construed as a petition for writ of habeas corpus under 28 U.S.C. § 2254. Rosa argues that this dismissal was improper because her filing was not a habeas petition but rather a complaint under 42 U.S.C. § 1983. Upon consideration, we conclude that Rosa's arguments lack merit. Accordingly, we affirm the dismissal.

I. BACKGROUND

Rosa is a Florida prisoner convicted and sentenced for first-degree murder. In January 2020, Rosa filed a *pro se* complaint in federal district court titled "Civil Liability Suit." Without mentioning any statute, she asserted that her state public defenders discriminated against her and had made various errors at trial. She asked the court to "find[] that defendants [are] liable for the damage to [her] life and liberty and grant a civil liability jury trial" against her state-court attorneys. The district court dismissed her complaint for lack of jurisdiction because Rosa had previously filed a Section 2254 habeas petition "based on these very same allegations" and had not obtained the authorization required to file a second or successive habeas petition. Rosa timely appealed.

II. STANDARD OF REVIEW

"We review *de novo* whether a petition for a writ of habeas corpus is second or successive." *Osbourne v. Sec'y, Fla. Dep't of Corr.*, 968 F.3d 1261, 1264 (11th

Cir. 2020). Although Section 2254 appeals generally require a certificate of appealability, "no [certificate of appealability] is necessary to appeal the dismissal for lack of subject matter jurisdiction of a successive habeas petition because such orders are not a final order in a habeas corpus proceeding." *Id.* at 1264 n.3 (cleaned up).

III. DISCUSSION

Rosa raises several arguments on appeal, but all of them depend on her argument that the district court misconstrued her "Civil Liability Suit" as a habeas petition when it was actually a complaint under 42 U.S.C. § 1983. We conclude that the district court correctly construed her filing and therefore properly dismissed it as a successive habeas petition.

"We read briefs filed by *pro se* litigants liberally." *Statton v. Fla. Fed. Jud. Nominating Comm'n*, 959 F.3d 1061, 1063 (11th Cir. 2020) (cleaned up). We also "have an obligation to look behind the label of a motion filed by a *pro se* inmate and determine whether the motion is, in effect, cognizable under a different remedial statutory framework." *Gooden v. United States*, 627 F.3d 846, 847 (11th Cir. 2010). Because Rosa's complaint had no statutory label, we must decide whether her claims arise under Section 2254 or Section 1983, which "are mutually exclusive." *Hutcherson v. Riley*, 468 F.3d 750, 754 (11th Cir. 2006) (citation omitted). "When an inmate challenges the circumstances of his confinement but not the validity of his

conviction []or sentence, then the claim is properly raised in a civil rights action under [Section] 1983. *Id.* (citation omitted). But "if the relief sought by the inmate would either invalidate his conviction or sentence or change the nature or duration of his sentence, the inmate's claim must be raised in a [Section] 2254 habeas petition, not a [Section] 1983 civil rights action." *Id.*

Even if a state prisoner cloaks his claim with a request for damages under Section 1983, the district court must peel back the disguise and "consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). Indeed, if a claim for damages is "based on allegations . . . that necessarily imply the invalidity of the punishment imposed, [it] is not cognizable under [Section] 1983." *Edwards v. Balisok*, 520 U.S. 641, 648 (1997).

Here, the district court was correct that Rosa's district court filing challenges her criminal conviction and sentence. First, she asserts that her public defenders' alleged ineffective performance entitles her to "equitable relief from the judgment and sentence on the indictment" of her case. Second, although in the same filing she requests a civil trial against her public defenders and requests "damages," the damages that she claims arise only from her having been "convicted and

sentence[d]." Any award of damages based on her conviction and sentence would "necessarily imply the invalidity of the punishment imposed," so Rosa's claims are "not cognizable under [Section] 1983." *Balisok*, 520 U.S. at 648. Because Rosa's claims challenge her criminal conviction and sentence, the district court correctly construed her filing as a Section 2254 habeas petition.

The district court was also correct that the petition is a procedurally improper successive petition. Under 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive [habeas] application . . . is filed in the district court, the applicant [must] move in the appropriate court of appeals for an order authorizing the district court to consider the application." "Absent authorization from this Court, the district court lacks jurisdiction to consider a second or successive habeas petition." *Osbourne*, 968 F.3d at 1264 (citation omitted). Here, Rosa's filing challenges the same conviction and sentence that she unsuccessfully challenged in a previous habeas petition. Her filing is therefore a successive habeas petition. But Rosa never received the required authorization from this Court to file this petition. Thus, the district court correctly held that it lacked jurisdiction to consider it and properly dismissed it on that ground.

IV. CONCLUSION

For the reasons stated above, we **AFFIRM**.

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 20-11276

District Court Docket No.
0:20-cv-60051-RKA

CHARLENE TERRY-ANN WALKER ROSA,
a.k.a. Charlene Rosa,

Petitioner - Appellant,

versus

HOWARD FINKELSTEIN,
DOHN WILLIAMS, JR.,

Respondents - Appellees.

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

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: December 11, 2020
For the Court: DAVID J. SMITH, Clerk of Court
By: Djuanna H. Clark

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11276-AA

CHARLENE TERRY-ANN WALKER ROSA,
a.k.a. Charlene Rosa,

Petitioner - Appellant,

versus

HOWARD FINKELSTEIN,
DOHN WILLIAMS, JR.,

Respondents - Appellees.

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

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: JILL PRYOR, LUCK, and BRASHER, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel and is DENIED. (FRAP 35, IOP2)

ORD-42

PROVIDED TO
FL WOMEN'S
RECEPTION CENTER
ON 3-10-21 FOR MAILING

Plaintiff Received on The 3-10-21 From Prison Legal mail.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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March 04, 2021

See Attach Motion to Stay and For Certiorari to The Supreme Court.

Clerk - Southern District of Florida
U.S. District Court
400 N MIAMI AVE
MIAMI, FL 33128-1810

Appeal Number: 20-11276-AA
Case Style: Charlene Walker Rosa v. Howard Finkelstein, et al
District Court Docket No: 0:20-cv-60051-RKA

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being forwarded to counsel and pro se parties. A copy of the court's decision was previously forwarded to counsel and pro se parties on the date it was issued.

The enclosed copy of the judgment is hereby issued as mandate of the court. The court's opinion was previously provided on the date of issuance.

Sincerely,

DAVID J. SMITH, Clerk of Court

Not Appellant Fault.

Reply to: Lois Tunstall
Phone #: (404) 335-6191

Enclosure(s)

MDT-1 Letter Issuing Mandate

District Court

~~Exhibit B~~

Civil Complaint 1983

Appendix B

Subject:Activity in Case 0:20-cv-60051-RKA Walker Rosa v. Finkelstein et al Clerk's Notice of Judge Assignment
This is an automatic e-mail message generated by the CM/ECF system.
Please DO NOT RESPOND to this e-mail because the mail box is unattended.
NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court
Southern District of Florida

Notice of Electronic Filing
The following transaction was entered on 1/10/2020 11:42 AM EST and filed on 1/9/2020

Case Name: Walker Rosa v. Finkelstein et al
Case Number: 0:20-cv-60051-RKA

Filer:

Document Number: 2

2(No document attached)

Docket Text:
Clerks Notice of Judge Assignment to Judge Roy K. Altman and Magistrate Judge Lisette M. Reid. <p> Pursuant to Administrative Order 2019-2, this matter is referred to the Magistrate Judge for a ruling on all pre-trial, non-dispositive matters and for a Report and Recommendation on any dispositive matters. (mee)

Appendix B
~~Exhibit B~~

U.S. District Court Southern District of Florida

Exhibit e

Charlene Terry-Ann Walker Rosa L06814
Florida Women Reception Center
3700 NW 111th Place
Ocala, FL 34482-1479

Case: 0:20-cv-60051-RKA #2 2 pages Fri Jan 10 11:51:11 2020

IMPORTANT: REDACTION REQUIREMENTS AND PRIVACY POLICY

Note: This is NOT a request for information.

Do NOT include personal identifiers in documents filed with the Court, unless specifically permitted by the rules or Court Order. If you MUST include personal identifiers, ONLY include the limited information noted below:

- Social Security number: last four digits only
- Taxpayer ID number: last four digits only
- Financial Account Numbers: last four digits only
- Date of Birth: year only
- Minor's name: initials only
- Home Address: city and state only (for criminal cases only).

Attorneys and parties are responsible for redacting (removing) personal identifiers from filings. The Clerk's Office does not check filings for personal information. Any personal information included in filings will be accessible to the public over the internet via PACER.

For additional information, refer to Fed. R. Civ. P. 5.2 and Fed. R. Crim. P. 49.1. Also see the CM/ECF Administrative Procedures located on the Court's website www.flsd.uscourts.gov.

IMPORTANT: REQUIREMENT TO MAINTAIN CURRENT MAILING ADDRESS AND CONTACT INFORMATION

Pursuant to Administrative Order 2005-38, parties appearing pro se and counsel appearing pro hac vice must file, in each pending case, a notice of change of mailing address or contact information whenever such a change occurs. If court notices sent via the U.S. mail are returned as undeliverable TWICE in a case, notices will no longer be sent to that party until a current mailing address is provided.

IMPORTANT: ADDITIONAL TIME TO RESPOND FOR NON-ELECTRONIC SERVICE

Additional days to respond may be available to parties serviced by non-electronic means. See Fed.R.Civ.P.6(d), Fed.R.Crim.P.45(c) and Local Rule 7.1(c)(1)(A). Parties are advised that the response deadlines automatically calculated in CMECF do NOT account for and may NOT be accurate when service is by mail. Parties may NOT rely on response times calculated in CMECF, which are only a general guide, and must calculate response deadlines themselves.

See reverse side

U.S. District Court Southern District of Florida

Charlene Terry-Ann Walker Rosa L06814
Florida Women Reception Center
3700 NW 111th Place
Ocala, FL 34482-1479

Case: 0:20-cv-60051-RKA #4 6 pages Wed Mar 4 23:57:17 2020

IMPORTANT: REDACTION REQUIREMENTS AND PRIVACY POLICY

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- Social Security number: last four digits only
- Taxpayer ID number: last four digits only
- Financial Account Numbers: last four digits only
- Date of Birth: year only
- Minor's name: initials only
- Home Address: city and state only (for criminal cases only).

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Subject:Activity in Case 0:20-cv-60051-RKA Walker Rosa v. Finkelstein et al Report and Recommendations
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U.S. District Court
Southern District of Florida

Notice of Electronic Filing
The following transaction was entered on 3/4/2020 8:50 PM EST and filed on 3/4/2020

Case Name: Walker Rosa v. Finkelstein et al
Case Number: 0:20-cv-60051-RKA

Filer:

Document Number: 4

Docket Text:
REPORT AND RECOMMENDATIONS on 28 USC 2254 case re [1] Application/Petition (Complaint) for Writ of Habeas Corpus filed by Charlene Terry-Ann Walker Rosa; Recommending that Petitioner's Petition for Writ of Habeas Corpus ECF No. [1] be DISMISSED for lack or jurisdiction as an unauthorized successive petition and all pending motions be DENIED as moot. Objections to R&R due by 3/18/2020. Signed by Magistrate Judge Lisette M. Reid on 3/4/2020. <I>See attached document for full details.</I> (fbn)

0:20-cv-60051-RKA Notice has been electronically mailed to:
Noticing 2254 SAG Broward and North CrimAppWPB@MyFloridaLegal.com

Heidi L. Bettendorf
CrimAppWPB@MyFloridaLegal.com, heidi.bettendorf@myfloridalegal.com

0:20-cv-60051-RKA Notice has not been delivered electronically to those listed below and will be provided by other means. For further assistance, please contact our Help Desk at 1-888-318-2260.:
Charlene Terry-Ann Walker Rosa

Service list page 1 only

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-60051-CV-ALTMAN
MAGISTRATE JUDGE REID

CHARLENE ROSA, a/k/a
CHARLENE TERRY-ANN
WALKER ROSA,

Petitioner,

v.

HOWARD FINKELSTEIN, et al.,

Respondents.
_____/

REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE

This matter is before the Court *sua sponte* on Petitioner's *pro se* "Civil Liability Suit" which is in effect a Petition for Writ of Habeas Corpus, filed pursuant to 28 U.S.C. § 2254. [ECF No. 1]. This cause has been referred to the Undersigned for Report and Recommendation on any dispositive matter pursuant to 28 U.S.C. § 636(b)(1)(B) and S.D. Fla. Admin. Order 2019-2. [ECF No. 2].

Petitioner, **Charlene Rosa**, also known as **Charlene Terry-Ann Walker Rosa**, is a prolific filer in both federal and state courts in Florida. In the instant Petition, Petitioner again seeks to challenge her conviction and sentence following a jury trial in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, **Case No. 04010827CF10A**.

However, Petitioner has already filed a petition in this Court challenging this conviction, and the petition was denied. *See Rosa v. Florida,* **Case No. 16-62332-CV-BLOOM,** ECF 53 (Report and Recommendation) 2018 U.S. Dist. LEXIS 56733 (S.D. Fla. Apr. 2, 2018), ECF 61 (Order Adopting Report and Recommendation) (S.D. Fla. May 31, 2018), ECF 78 (Denying Motion for Reconsideration) 2018 U.S. Dist. LEXIS 155854, 2018 WL 4362081 (S.D. Fla. Sept. 12, 2018), ECF 91 (Denying Certificate of Appealability) (S.D. Fla. Sept. 26, 2018), *aff'd*, No. 18-12339-C, 2019 U.S. App. LEXIS 450 (11th Cir. Jan. 7, 2019), *reconsideration denied*, 2019 U.S. App. LEXIS 6880 (11th Cir. Mar. 7, 2019), *cert. denied*, No. 18-9065, 139 S. Ct. 2757 (2019), *petition for rehearing denied*, 140 S. Ct. 31 (2019).

Accordingly, "[b]efore presenting a second or successive petition, the petitioner must obtain an order from the appropriate court of appeals authorizing the district court to consider the petition as required by 28 U.S.C. § 2255(b)(3) and (4).[1]" Rules Governing § 2254 Proceedings, R. 9. No authorization has been granted in this case.

[1] Petitioner is likely aware of this, because she has previously attempted to receive authorization from the Eleventh Circuit to file a successive petition and was denied. *See In re Rosa*, No. 19-10517-C, 2019 U.S. App. LEXIS 6161 (11th Cir. Feb. 28, 2019); *see also In re Rosa*, No. 19-10977-E, 2019 U.S. App. LEXIS 10277 (11th Cir. Apr. 5, 2019); *see also In re Rosa*, No. 19-11519-F, 2019 U.S. App. LEXIS 14214 (11th Cir. May 13, 2019). Petitioner also has another case open making similar allegations which has been recommended to be dismissed as a successive § 2254 petition but remains pending. *See Rosa v. Fla.*, **Case No. 19-62335-CV-SMITH**.

The Court lacks jurisdiction to decide this case absent such an authorization from the United States Court of Appeals for the Eleventh Circuit. *See Gonzalez v. Sec'y. for the Dep't. of Corr.*, 366 F.3d 1253, 1297-98 (11th Cir. 2004) (*en banc*).

Accordingly, it is **RECOMMENDED** that Petitioner's Petition for Writ of Habeas Corpus [ECF No. 1] be **DISMISSED** for lack or jurisdiction as an unauthorized successive petition and all pending motions be **DENIED** as moot.

Objections to this Report and Recommendation may be filed with the District Judge within fourteen days of receipt of a copy of such. Failure to do so will bar a *de novo* determination by the District Judge of anything in the Report and Recommendation and will bar an attack, on appeal, of the factual findings of the Magistrate Judge. *See* 28 U.S.C. § 636(b)(1)(C); *see also Thomas v. Arn*, 474 U.S. 140, 149 (1985).

SIGNED this 4th day of March, 2020.

UNITED STATES MAGISTRATE JUDGE

cc: **Charlene Rosa**
L06814
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PRO SE

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Noticing 2254 SAG Broward and North
Email: CrimAppWPB@MyFloridaLegal.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-60051-CIV-ALTMAN/Reid

CHARLENE ROSA *a/k/a*
CHARLENE TERRY-ANN WALKER ROSA,

Petitioner,

v.

HOWARD FINKELSTEIN *et al.*,

Respondents.
_____/

ORDER

On January 9, 2020, the *pro se* Petitioner, Charlene Rosa ("Rosa"), filed what she called a "Civil Liability Suit" [ECF No. 1]. The Clerk referred the case to United States Magistrate Judge Lisette M. Reid for a ruling on all pre-trial, non-dispositive questions and for a report and recommendation on any dispositive matters [ECF No. 2 (citing Administrative Order 2019-2)]. After the Defendants filed a Motion to Dismiss, Judge Reid issued a Report and Recommendation ("R&R") [ECF No. 4], in which she suggested that Rosa's suit be dismissed because it is a successive petition for writ of habeas corpus, *see* 28 U.S.C. § 2254—and not, as Rosa claims, a civil suit under 42 U.S.C. § 1983. *See generally* R&R.

Because Rosa filed timely objections to the R&R ("Objections") [ECF No. 5], the Court must review *de novo* those portions of the R&R to which Rosa objected. *See* FED. R. CIV. P. 72(b)(3).[1] For the reasons that follow, the Court **ADOPTS** the R&R in full.

[1] *See* FED. R. CIV. P. 72(b)(3) ("Resolving Objections. The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.").

ANALYSIS

The Court agrees with Judge Reid that Rosa's "Civil Liability Suit" is just another in a long line of collateral attacks she has levied against her three consolidated state-court criminal proceedings. Indeed, in case there was any doubt about her intentions, Rosa lists these three criminal cases—Case No. 05-014414CF10A, Case No. 05-01441CF10A, and Case No. 04-010827CF10A—at the very top of her "Civil Liability Suit." She then proceeds to describe, over the course of twenty pages, precisely how her assistant public defenders—the Defendants Finkelstein and Williams—failed to represent her best interests during those criminal cases. *See* Civil Liability Suit at 1. She claims, for instance, that (1) Williams pressured her into confessing, and then coerced her into pleading guilty, because she is Jamaican and "Americans believe that Jamaicans are known drug slingers and murderers"; (2) Williams "refuse[d] to discuss the charge indictment and/or information" with her; (3) both Defendants conspired with the state to "prevent her from knowing about her rights or defenses or from having a fair opportunity to present or litigate them at criminal trial;" and (4) both Defendants engaged in a long litany of other misconduct. *See generally id.* As relief, Rosa asks the Court to "grant a civil liability jury trial" against the Defendants. *Id.* at 18.

Unfortunately for Rosa, she has previously filed a writ of habeas corpus based on these very same allegations (Case No. 16-cv-62332-BLOOM). Judge Bloom dismissed Rosa's Petition under 28 U.S.C. § 2254 on May 31, 2018, *see* R&R at 2, and the Eleventh Circuit affirmed Judge Bloom's decision on January 7, 2019. *Id.*

Under Rule 9 of § 2254, "[b]efore presenting a second or successive petition, the petitioner must obtain an order from the appropriate court of appeals authorizing the district court to consider the petition as required by 28 U.S.C. § 2244(b)(3) and (4)." Although Rosa has, on several

occasions, asked the Eleventh Circuit for this very authorization, the Court of Appeals has denied her request every time. *See* R&R at n. 1 (citing three instances in which Rosa's requests for authorization to file a successive petition were denied). The Court thus lacks subject-matter jurisdiction to consider the merits of Rosa's case. *See Burton v. Stewart*, 549 U.S. 147 (2007) (a district court must dismiss a petition "for lack of jurisdiction" if the prisoner does not receive authorization from the court of appeals before she files a second or successive petition in the district court); *Lambrix v. Sec'y, Dep't of Corr.*, 872 F.3d 1170, 1180 (11th Cir. 2017) (when a petitioner fails to obtain authorization from the court of appeals to file a second or successive habeas petition, "the district courts lack jurisdiction to consider the merits of the petition").[2]

In her Objections, Rosa argues that Judge Reid's recommendation was erroneous because—she claims—it treated Rosa as a person "too poor" and "of a certain class as a Jamaican." Objections at 1. Rosa maintains that her claims of "discrimination, fraud, and malicious prosecution" are "not in the nature of a petition for a writ of habeas corpus," but rather are cognizable under 42 U.S.C. § 1983. *Id.* at 2. But, even assuming that her claims did more than attack her lawyers' conduct during her decade-old criminal proceedings, the statute of limitations for her purported "discrimination, fraud, and malicious prosecution" claims expired many years ago. After all, according to Rosa, the misconduct occurred between 2005 and 2007. *See* Civil Liability Suit at 2. The statute of limitations for discrimination claims in Florida is four years.[3] *See*

[2] Rosa has also attempted to file an Amended Complaint, in which she sought further relief, including a new state-court trial. Judge Reid denied the proposed Amended Complaint on March 19, 2020 [ECF No. 8]. Notably, the Amended Complaint, like the operative Complaint, was a thinly-veiled collateral attack on her underlying, state-court criminal convictions.

[3] To prevail on a discrimination claim under the Florida Civil Rights Act, Fla. Stat. § 760.01 *et seq.*, Rosa was also required to exhaust certain administrative remedies—which she has not done. Fla. Stat. § 760.11.

Fla. Stat. § 95.11(3)(f). The statute of limitations for fraud and malicious prosecution is four years. *See* Fla. Stat. § 95.11(3)(j); Fla. Stat. § 95.11(3)(o). In other words, to the extent that any of Rosa's claims can be liberally construed as arising under 42 U.S.C. § 1983, they are time-barred.

Accordingly, the Court hereby

ORDERS AND ADJUDGES that the R&R [ECF No. 4] is **ADOPTED IN FULL**. The "Civil Liability Suit" [ECF No. 1] is **DISMISSED**. The Clerk of the Court is instructed to **CLOSE** this case, and any pending motions are **DENIED as moot**.

DONE AND ORDERED in Fort Lauderdale, Florida, this 24th day of March 2020.

ROY K. ALTMAN
UNITED STATES DISTRICT JUDGE

cc: Charlene Rosa, *pro se*

Subject:Activity in Case 0:20-cv-60051-RKA Walker Rosa v. Finkelstein et al Order on Motion to Amend/Correct
This is an automatic e-mail message generated by the CM/ECF system.
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NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court
Southern District of Florida

Notice of Electronic Filing
The following transaction was entered on 3/19/2020 2:06 PM EDT and filed on 3/19/2020

Case Name: Walker Rosa v. Finkelstein et al
Case Number: 0:20-cv-60051-RKA

Filer:

Document Number: 8

8(No document attached)

Docket Text:
PAPERLESS ORDER denying [6] Motion to Amend/Correct. Plaintiff/Petitioner seeks to file what she calls an "Amended Complaint" pursuant to 42 U.S.C. 1983 because she insists that this case is a civil action brought pursuant to 42 U.S.C. 1983, and not a federal habeas case brought pursuant to 28 U.S.C. 2254. [ECF Nos. 5, 6, 7]. However, a review of the Proposed Amended Complaint indicates that Plaintiff seeks relief that is exclusively available in a habeas case, specifically a new trial in her state court criminal proceedings. Either way, the Motion is denied because to the extent that she does seek to bring a civil action as opposed to a habeas petition, amendment would be futile because it would either be barred by the statute of limitations or, in the alternative, would be barred by Heck v. Humphrey, 512 U.S. 477 (1994). Plaintiff/Petitioner states that her civil action stems from a 2006 incident where her public defender allegedly discriminated against her in her civil case, causing her to be imprisoned. This case was filed in 2020, nearly 10 years after the four year statute of limitations expired. Alternatively, this case would be barred by Heck, because it would necessarily implicate the validity of her criminal court proceedings, which have not been reversed, expunged, or otherwise invalidated. A plaintiff may not file such a civil action until her conviction as been invalidated, and it is premature if filed before that happens. See Abella v. Rubino, 63 F.3d 1063, 1066 (11th Cir. 1995). To the extent she seeks to bring a habeas action, amendment is denied as futile because the Court lacks jurisdiction over a successive habeas petition absent authorization from the Eleventh Circuit, which has not happened. [See ECF No. 4]. Signed by Magistrate Judge Lisette M. Reid on 3/19/2020. (ac01)

U.S. District Court - Southern District of Florida

Charlene Terry-Ann Walker Rosa L06814
Florida Women Reception Center
3700 NW 111th Place
Ocala, FL 34482-1479

Case: 0:20-cv-60051-RKA #8 2 pages Thu Mar 19 14:21:12 2020

IMPORTANT: REDACTION REQUIREMENTS AND PRIVACY POLICY

Note: This is NOT a request for information.

Do NOT include personal identifiers in documents filed with the Court, unless specifically permitted by the rules or Court Order. If you MUST include personal identifiers, ONLY include the limited information noted below:

- Social Security number: last four digits only
- Taxpayer ID number: last four digits only
- Financial Account Numbers: last four digits only
- Date of Birth: year only
- Minor's name: initials only
- Home Address: city and state only (for criminal cases only).

Attorneys and parties are responsible for redacting (removing) personal identifiers from filings. The Clerk's Office does not check filings for personal information. Any personal information included in filings will be accessible to the public over the internet via PACER.

For additional information, refer to Fed. R. Civ. P. 5.2 and Fed. R. Crim. P. 49.1. Also see the CM/ECF Administrative Procedures located on the Court's website www.flsd.uscourts.gov.

IMPORTANT: REQUIREMENT TO MAINTAIN CURRENT MAILING ADDRESS AND CONTACT INFORMATION

Pursuant to Administrative Order 2005-38, parties appearing pro se and counsel appearing pro hac vice must file, in each pending case, a notice of change of mailing address or contact information whenever such a change occurs. If court notices sent via the U.S. mail are returned as undeliverable TWICE in a case, notices will no longer be sent to that party until a current mailing address is provided.

IMPORTANT: ADDITIONAL TIME TO RESPOND FOR NON-ELECTRONIC SERVICE

Additional days to respond may be available to parties serviced by non-electronic means. See Fed.R.Civ.P.6(d), Fed.R.Crim.P.45(c) and Local Rule 7.1(c)(1)(A). Parties are advised that the response deadlines automatically calculated in CMECF do NOT account for and may NOT be accurate when service is by mail. Parties may NOT rely on response times calculated in CMECF, which are only a general guide, and must calculate response deadlines themselves.

See reverse side

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-60051-CIV-ALTMAN/Reid

CHARLENE ROSA *a/k/a*
CHARLENE TERRY-ANN WALKER ROSA,

Petitioner,

v.

HOWARD FINKELSTEIN *et al.*,

Respondents.
_____/

ORDER

On January 9, 2020, the *pro se* Petitioner, Charlene Rosa ("Rosa"), filed what she called a "Civil Liability Suit" [ECF No. 1]. The Clerk referred the case to United States Magistrate Judge Lisette M. Reid for a ruling on all pre-trial, non-dispositive questions and for a report and recommendation on any dispositive matters [ECF No. 2 (citing Administrative Order 2019-2)]. After the Defendants filed a Motion to Dismiss, Judge Reid issued a Report and Recommendation ("R&R") [ECF No. 4], in which she suggested that Rosa's suit be dismissed because it is a successive petition for writ of habeas corpus, *see* 28 U.S.C. § 2254—and not, as Rosa claims, a civil suit under 42 U.S.C. § 1983. *See generally* R&R.

Because Rosa filed timely objections to the R&R ("Objections") [ECF No. 5], the Court must review *de novo* those portions of the R&R to which Rosa objected. *See* FED. R. CIV. P. 72(b)(3).[1] For the reasons that follow, the Court **ADOPTS** the R&R in full.

[1] *See* FED. R. CIV. P. 72(b)(3) ("Resolving Objections. The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.").

ANALYSIS

The Court agrees with Judge Reid that Rosa's "Civil Liability Suit" is just another in a long line of collateral attacks she has levied against her three consolidated state-court criminal proceedings. Indeed, in case there was any doubt about her intentions, Rosa lists these three criminal cases—Case No. 05-014414CF10A, Case No. 05-01441CF10A, and Case No. 04-010827CF10A—at the very top of her "Civil Liability Suit." She then proceeds to describe, over the course of twenty pages, precisely how her assistant public defenders—the Defendants Finkelstein and Williams—failed to represent her best interests during those criminal cases. *See* Civil Liability Suit at 1. She claims, for instance, that (1) Williams pressured her into confessing, and then coerced her into pleading guilty, because she is Jamaican and "Americans believe that Jamaicans are known drug slingers and murderers"; (2) Williams "refuse[d] to discuss the charge indictment and/or information" with her; (3) both Defendants conspired with the state to "prevent her from knowing about her rights or defenses or from having a fair opportunity to present or litigate them at criminal trial;" and (4) both Defendants engaged in a long litany of other misconduct. *See generally id.* As relief, Rosa asks the Court to "grant a civil liability jury trial" against the Defendants. *Id.* at 18.

Unfortunately for Rosa, she has previously filed a writ of habeas corpus based on these very same allegations (Case No. 16-cv-62332-BLOOM). Judge Bloom dismissed Rosa's Petition under 28 U.S.C. § 2254 on May 31, 2018, *see* R&R at 2, and the Eleventh Circuit affirmed Judge Bloom's decision on January 7, 2019. *Id.*

Under Rule 9 of § 2254, "[b]efore presenting a second or successive petition, the petitioner must obtain an order from the appropriate court of appeals authorizing the district court to consider the petition as required by 28 U.S.C. § 2244(b)(3) and (4)." Although Rosa has, on several

occasions, asked the Eleventh Circuit for this very authorization, the Court of Appeals has denied her request every time. *See* R&R at n. 1 (citing three instances in which Rosa's requests for authorization to file a successive petition were denied). The Court thus lacks subject-matter jurisdiction to consider the merits of Rosa's case. *See Burton v. Stewart*, 549 U.S. 147 (2007) (a district court must dismiss a petition "for lack of jurisdiction" if the prisoner does not receive authorization from the court of appeals before she files a second or successive petition in the district court); *Lambrix v. Sec'y, Dep't of Corr.*, 872 F.3d 1170, 1180 (11th Cir. 2017) (when a petitioner fails to obtain authorization from the court of appeals to file a second or successive habeas petition, "the district courts lack jurisdiction to consider the merits of the petition").[2]

In her Objections, Rosa argues that Judge Reid's recommendation was erroneous because—she claims—it treated Rosa as a person "too poor" and "of a certain class as a Jamaican." Objections at 1. Rosa maintains that her claims of "discrimination, fraud, and malicious prosecution" are "not in the nature of a petition for a writ of habeas corpus," but rather are cognizable under 42 U.S.C. § 1983. *Id.* at 2. But, even assuming that her claims did more than attack her lawyers' conduct during her decade-old criminal proceedings, the statute of limitations for her purported "discrimination, fraud, and malicious prosecution" claims expired many years ago. After all, according to Rosa, the misconduct occurred between 2005 and 2007. *See* Civil Liability Suit at 2. The statute of limitations for discrimination claims in Florida is four years.[3] *See*

[2] Rosa has also attempted to file an Amended Complaint, in which she sought further relief, including a new state-court trial. Judge Reid denied the proposed Amended Complaint on March 19, 2020 [ECF No. 8]. Notably, the Amended Complaint, like the operative Complaint, was a thinly-veiled collateral attack on her underlying, state-court criminal convictions.

[3] To prevail on a discrimination claim under the Florida Civil Rights Act, Fla. Stat. § 760.01 *et seq.*, Rosa was also required to exhaust certain administrative remedies—which she has not done. Fla. Stat. § 760.11.

Fla. Stat. § 95.11(3)(f). The statute of limitations for fraud and malicious prosecution is four years. *See* Fla. Stat. § 95.11(3)(j); Fla. Stat. § 95.11(3)(o). In other words, to the extent that any of Rosa's claims can be liberally construed as arising under 42 U.S.C. § 1983, they are time-barred.

Accordingly, the Court hereby

ORDERS AND ADJUDGES that the R&R [ECF No. 4] is **ADOPTED IN FULL**. The "Civil Liability Suit" [ECF No. 1] is **DISMISSED**. The Clerk of the Court is instructed to **CLOSE** this case, and any pending motions are **DENIED as moot**.

DONE AND ORDERED in Fort Lauderdale, Florida, this 24th day of March 2020.

ROY K. ALTMAN
UNITED STATES DISTRICT JUDGE

cc: Charlene Rosa, *pro se*

Appendix C

Civil Complaint 1983
11th Judicial Circuit Court.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

Charlene Rosa, et.al.
Plaintiff(s),

vs.

Howard Finkelstein (Broward County Public Defender), et.al.
Defendant(s).
_____/

CASE NO. 2017-025724-CA-01
SECTION 25) (Section

NOTICE OF LACK OF PROSECUTION
and
ORDER TO APPEAR FOR HEARING

Notice of Lack of Prosecution: Notice is hereby provided, pursuant to Rule 1.420(e), Fla.R.Civ.P., that the Court intends to dismiss the above-styled action because it appears that there has been no record activity for the last ten (10) months and no stay has been issued or approved by the court.

Order to Appear: The parties are ordered to appear at **11:00 AM**, am/pm, on the **4th day of January, 2021** for a hearing on the Court's motion to dismiss the above-styled cause for lack of prosecution, at the **Dade County Courthouse, 73 W. Flagler Street, Courtroom DCC-Circuit Chambers 1111, Miami, FL 33130**, before the **Honorable Valerie Manno-Schurr**
CA 25) (Section.

To prevent the dismissal of the above-styled cause, **the party opposing the dismissal must appear; AND bring hard copies of recent filings; AND affirmatively establish at least one of the following:**

1. There had been record activity within ten (10) months prior to service of this Notice and Order to Appear; or
2. A stay of the action was in effect within the ten (10) months prior to service of this Notice and Order to Appear; or
3. There has been record activity within sixty (60) days immediately following the service of this Notice and Order to Appear; or
4. The Court issued a stay of the action within sixty (60) days immediately following the service of this Notice and Order to Appear; or
5. At least five (5) days before the hearing, the party opposing the dismissal established good cause, in writing, for the action to remain pending.

The failure of the party opposing the dismissal to appear at the hearing and establish the existence of at least one of the above, shall constitute an abandonment of any justified defense, and the above-styled action shall be dismissed for lack of prosecution on the date of the hearing, set forth above.

Civil Filed
OCT 1 1 2020

DONE and ORDERED in Chambers at Miami-Dade County, Florida, on _____

VALERIE MANNO SCHURR
CIRCUIT COURT JUDGE
CIRCUIT COURT JUDGE

cc: Counsel/Parties of Record

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Alien Simpkins, the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Ave., Suite 2400, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355, Email: ADA@jud11.flcourts.org at least seven (7) days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven (7) days; if you are hearing or voice impaired, call 711.

CHARLENE ROSA
Lowell Correctional Annex
11120 NW Gainesville Road
Ocala FL 34482

United States Court of Appeal 11th circuit
property Exhaust Collateral attack on
Judgment

Appendix D

Appendix G

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-12339-C

CHARLENE TERRY-ANN WALKER ROSA,

Petitioner-Appellant,

versus

STATE OF FLORIDA,
ATTORNEY GENERAL OF THE STATE OF FLORIDA,

Respondents-Appellees.

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

ORDER:

Charlene Terry-Ann Walker Rosa moves for a certificate of appealability ("COA") in order to appeal the dismissal of her 28 U.S.C. § 2254 petition for writ of habeas and denial of her Fed. R. Civ. P. 59(e) motion to alter or amend the judgment. To merit a COA, Rosa must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Because Rosa failed to make a substantial showing of the denial of a constitutional right, her motion for a COA is DENIED.

Rosa's motion for appointment of counsel is also DENIED AS MOOT.

/s/ Stanley Marcus
UNITED STATES CIRCUIT JUDGE

Appendix G

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

January 07, 2019

Clerk - Southern District of Florida
U.S. District Court
400 N MIAMI AVE
MIAMI, FL 33128-1810

Appeal Number: 18-12339-C
Case Style: Charlene Walker Rosa v. State of Florida, et al
District Court Docket No: 0:16-cv-62332-BB

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

All pending motions are now rendered moot in light of the attached order.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Walter Pollard, C
Phone #: (404) 335-6186

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

Appendix G.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

March 07, 2019

Charlene Terry-Ann Walker Rosa
Lowell CI - Inmate Legal Mail
11120 NW GAINESVILLE RD
OCALA, FL 34482-1479

Appeal Number: 18-12339-C
Case Style: Charlene Walker Rosa v. State of Florida, et al
District Court Docket No: 0:16-cv-62332-BB

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.

The enclosed order has been ENTERED.

*Copy of our order entered on January 07, 2019, is enclosed.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Walter Pollard, C/lt
Phone #: (404) 335-6186

MOT-2 Notice of Court Action

United States District Court
Habeas Petition Properly Exhaust
Collateral attack on Judgment
Appendix E

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-cv-62332-BLOOM/White

CHARLENE TERRY-ANN WALKER ROSA,

Petitioner,

v.

JULIE L. JONES,
SEC'Y, FLA. DEP'T OF CORR'S,

Respondent.
_____/

ORDER DENYING MOTION FOR RECONSIDERATION

THIS CAUSE is before the Court upon *pro se* Petitioner's Motion for Reconsideration, ECF Nos. [67, 75]. The Court has reviewed the Motion and the record in this case, and is otherwise fully advised as to the premises. For the reasons set forth below, the Court denies the Motion for Reconsideration.

I. BACKGROUND

Petitioner was charged with first-degree murder of Lola Salzman by bludgeoning and/or stabbing with a knife in violation of Florida Statute § 782.04(1). *See* ECF No. [30-1] at 13–14. On July 5, 2007, the jury found Petitioner guilty of first-degree murder and she was sentenced to a term of life in prison without the possibility of parole. *Id.* at 16–22. After a lengthy history of proceedings in state court, Petitioner timely filed her Petition for *habeas corpus* relief in this Court. *See* ECF No. [1]. Judge White summarized Petitioner's four claims in his Report and Recommendation (the "Report"), including the claim at issue here: that Petitioner's defense

attorney was ineffective for conceding to the authenticity of recorded telephone conversations at trial. ECF No. [53] at 2.

On May 31, 2018, this Court adopted the Report and Judge White's well-reasoned analysis denying Petitioner's claim that her defense attorney was ineffective for not objecting to the authenticity of telephone recording tapes. ECF No. [61], at 16–17. A summary of Judge White's analysis follows. In Petitioner's criminal trial, the State presented taped conversations between Petitioner and two individuals, Maxine Hylton and Omar Nunez. ECF No. [53] at 27–28. On direct examination, both Ms. Hylton and Mr. Nunez testified that they agreed to cooperate with law enforcement and participate in taped conversations with Petitioner, and provided testimony about those recorded conversations. *Id.* Petitioner's defense attorney did not object to the authenticity of the taped conversations when presented at trial, but conducted a thorough cross-examination of both witnesses. *Id.* at 26–28. Judge White concluded that the "state post-conviction court's conclusion that counsel was not deficient for failing to make a meritless objection was consistent with *Strickland* and not objectively unreasonable. Moreover, Petitioner's claim fails because she cannot demonstrate a reasonable probability that the jury would have found her not guilty had the trial court excluded the testimony identifying her voice." *Id.* at 28.

Petitioner filed a Motion for Certificate of Appealability, ECF No. [62], which the Clerk's office construed as a notice of appeal from the final order denying the § 2254 petition, and therefore transmitted a notice of appeal to the Eleventh Circuit Court of Appeal on June 1, 2018. Thereafter, Petitioner filed a Motion for Leave to Proceed *in forma pauperis* for Costs of Transcripts on Appeal. ECF No. [70]. The Eleventh Circuit held that the motion for a certificate of appealability designated an appeal from the magistrate judge's report recommending the

denial of the § 2254 petition, which report was not appealable. However, it construed ECF No. [70] as a timely notice of appeal from the final order denying the § 2254 petition. *See* ECF No. [75] at 2-3. Petitioner filed a Notice of Newly Discovered Evidence, ECF No. [67], and Supplemental Post Judgment Motion, ECF No. [75], which the Eleventh Circuit construed as moving to reconsider the Court's denial of the § 2254 petition. *See* ECF No. [75] at 3. On August 23, 2018, the Eleventh Circuit remanded the case to this Court for the limited purpose of addressing Petitioner's motion to reconsider the denial of the § 2254 petition. *Id.*

The purported newly discovered evidence Petitioner filed includes two memoranda to file by Petitioner's defense counsel in the underlying criminal case, H. Dohn Williams Jr., and six letters from counsel to Petitioner. ECF No. [67], at 23–48. Petitioner has identified as relevant to her Motion for Reconsideration a portion of a memorandum to file dated February 19, 2007, consisting of defense counsel's notes of a meeting with Petitioner discussing the State's evidence in her criminal proceeding. The relevant portion of said memorandum provides:

> I told the client about the portions of the calls that concerned me. She said she did not want to hear the tape-recordings because it was not her voice on the tape recordings or if it was her voice the police manipulated the recording to make her look bad.
>
> I explained to the client that I had heard her voice enough to recognize it and that it was her voice.

Id. at 30. Petitioner alleges that defense counsel provided her with this memorandum after she contacted him following the issuance of Judge White's Report and Recommendation. *Id.* at 21–22. Petitioner further alleges that the language in the memorandum is new evidence that demonstrates defense counsel had a conflict of interest. *See, e.g.*, ECF No. [75] at 5.

II. STANDARD

Petitioner seeks reconsideration of the Court's denial of the § 2254 petition. "While Rule 59(e) does not set forth any specific criteria, the courts have delineated three major grounds justifying reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice." *Williams v. Cruise Ships Catering & Serv. Int'l, N.V.*, 320 F. Supp. 2d 1347, 1357–58 (S.D. Fla. 2004) (citing *Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994)); *see also Burger King Corp. v. Ashland Equities, Inc.*, 181 F. Supp. 2d 1366, 1369 (S.D. Fla. 2002) ("[T]here are three major grounds which justify reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice"). "[R]econsideration of a previous order is an extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources." *Wendy's Int'l, Inc. v. Nu–Cape Const.*, Inc., 169 F.R.D. 680, 685 (M.D. Fla. 1996); *see also Campero USA Corp. v. ADS Foodservice, LLC*, 916 F. Supp. 2d 1284, 1290 (S.D. Fla. 2012) ("A motion for reconsideration is an extraordinary remedy to be employed sparingly.") (citation omitted).

"Motions for reconsideration are appropriate where, for example, the Court has patently misunderstood a party." *Compania de Elaborados de Cafe v. Cardinal Capital Mgmt., Inc.*, 401 F. Supp. 2d 1270, 1283 (S.D. Fla. 2003). But "[a] motion for reconsideration should not be used as a vehicle to present authorities available at the time of the first decision or to reiterate arguments previously made." *Z.K. Marine Inc. v. M/V Archigetis*, 808 F. Supp. 1561, 1563 (S.D. Fla. 1992). "[T]he movant must do more than simply restate his or her previous arguments, and any arguments the movant failed to raise in the earlier motion will be deemed waived."

Compania, 401 F. Supp. 2d at 1283. Simply put, a party "cannot use a Rule 59(e) motion to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Michael Linet, Inc. v. Vill. of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005). could not have raised if she did not know that def. counsel was claiming to recognized the alleged voice as hers?

III. DISCUSSION

The new evidence Petitioner submitted does not change the Court's conclusion. This Court determined that Petitioner's claim that defense counsel was ineffective for failing to object to the authenticity of the recordings did not satisfy the *Strickland* standard. Alternatively, to the extent that Petitioner intends to raise a new argument that her criminal defense counsel had an "actual conflict," or in other words, "inconsistent interests," *see Freund v. Butterworth*, 165 F.3d 839, 859 (11th Cir. 1999), Petitioner's claim is procedurally time-barred, and in any event, fails on the merits.

Prejudice is presume. babe on conflict & interest.

not procedural barred it was raised & exhausted in the state court & determined in claims in District court.

A. Ineffective Assistance of Counsel

Although Petitioner's Motion for Reconsideration seeks to advance a claim characterized as a "conflict of interest," based on newly discovered evidence, Petitioner has merely recycled and repackaged the previously asserted ineffective assistance of counsel claim. In prior briefing Petitioner contended that her attorney agreed with her that it was not Petitioner's voice on the recordings but he chose not to object for strategic reasons. Now Petitioner claims that her attorney recognized her voice on the recordings despite Petitioner's insistence that it was not her voice. Whether defense counsel recognized her voice or not, at bottom, Petitioner's claim is that counsel was ineffective for not objecting to the authenticity of the phone recordings.

This Court's conclusion that counsel satisfied *Strickland's* deferential standard is unchanged by the newly submitted internal memorandum. Counsel will not be deemed

unconstitutionally deficient because of tactical decisions. *Adams v. Wainwright*, 709 F.2d 1443, 1445 (11th Cir. 1983); *Ford v. Strickland*, 696 F.2d 804, 820 (11th Cir. 1983) (*en banc*); *see United States v. Costa*, 691 F.2d 1358, 1364 (11th Cir. 1982). Even if in retrospect the strategy appears to have been wrong, the decision will be held ineffective only if it was so patently unreasonable that no competent attorney would have chosen it. *Adams v. Balkcom*, 688 F.2d 734, 738 (11th Cir. 1982) (citing *Washington v. Strickland*, 693 F.2d 1243, 1254 (5th Cir. 1982) *also citing Ford v. Strickland*, 696 F.2d 804, 820 (11 Cir. 1983) (*en banc*)); *Baldwin v. Blackburn*, 653 F.2d 942, 946 (5th Cir. 1981), *cert. den'd*, 456 U.S. 950 (1982); *Beckham v. Wainwright*, 639 F.2d 262, 265 (5th Cir. 1981). The burden of proof to establish ineffectiveness and prejudice is on the petitioner. *Washington*, 693 F. 2d at 1262.

The new evidence -- that defense counsel recognized Petitioner's voice in the phone call recordings -- does not demonstrate that the strategy to not object to the authenticity of the tapes was wrong, much less that it was patently unreasonable. It is well-settled in Florida that voice identification is admissible and that testimony attesting to the "identity of the accused even by one who has heard his voice" is "direct and positive proof of a fact." *Martin v. State*, 100 Fla. 16, 24 (Fla. 1930); *see England v. State*, 940 So. 2d 389, 401 (Fla. 2006), *cert. den'd by England v. Florida*, 549 U.S. 1325 (2007); *Cason v. State*, 211 So. 2d 604, 604 (Fla. 2d DCA 1968). At Petitioner's criminal trial, the individuals who recorded the taped conversations with Petitioner identified her voice on the tapes. Defense counsel's decision not to make a baseless objection to the authenticity of the voice recordings is no less reasonable given that counsel was able to identify Petitioner's voice in the tapes.

B. Conflict of Interest

To the extent that Petitioner intends to raise a claim that her defense attorney had a conflict of interest, it is a new claim that was not exhausted in state court, and therefore is procedurally defaulted. *See Footman v. Singletary*, 978 F.2d 1207, 1211 (11th Cir. 1992) ("a *habeas* petitioner may not present instances of ineffective assistance of counsel in his federal petition that the state court has not evaluated previously"); *McNair v. Campbell*, 416 F.3d 1291 (11th Cir. 2005) (holding, pursuant to § 2254(b)(1), *habeas* petitioners generally cannot raise claims in federal court if those claims were not first exhausted in state court).

"To properly exhaust a claim" it is not "sufficient that a somewhat similar state-law claim was made." *Kelley v. Sec'y for Dep't of Corr.*, 377 F.3d 1317, 1343–44 (11th Cir. 2004). The Eleventh Circuit has provided further guidance on failure to exhaust claims of ineffective assistance of counsel:

> To properly exhaust a claim, "the petitioner must afford the State a full and fair opportunity to address and resolve the claim on the merits." *Keeney*, 504 U.S. at 10, 112 S.Ct. at 1720. It is not sufficient merely that the federal habeas petitioner has been through the state courts, *Picard v. Connor*, 404 U.S. 270, 275-76, 92 S.Ct. 509, 512, 30 L.Ed.2d 438 (1971) .... The petitioner must present his claims to the state courts such that they are permitted the "opportunity to apply controlling legal principles to the facts bearing upon (his) constitutional claim." *Picard*, 404 U.S. at 277, 92 S.Ct. at 513 (alteration in original).
>
> Thus, the prohibition against raising non-exhausted claims in federal court extends not only to broad legal theories of relief, but also to the specific assertions of fact that might support relief. For example, habeas petitioners may not present particular factual instances of ineffective assistance of counsel in their federal petitions that were not first presented to the state courts. *Footman v. Singletary*, 978 F.2d 1207, 1211 (11th Cir. 1992).

Id.

In *Kelly*, the district court granted petitioner's *habeas* relief for ineffective assistance of counsel on the ground that defense counsel failed to investigate and present evidence on behalf

of petitioner. *Id.* at 1347. The district court's decision rested on defense counsel's reliance on a disbarred attorney conducting the pre-trial investigation. *Id.* The Eleventh Circuit compared that claim to the most similar claim raised in state court to determine whether the claim had been properly exhausted. *Id.* In state court, petitioner argued that her trial attorneys "failed to investigate, develop, or present readily available evidence that would have supported their own defense theories..." *Id.* Additionally, petitioner's brief to the Florida Supreme Court mentioned the disbarred attorney in one paragraph, stating that the disbarred attorney "did much of the investigation and preliminary legal work." *Id.* at 1349. Accordingly, the Eleventh Circuit held that the district court should have dismissed petitioner's ineffective assistance claim because petitioner did not notify "the State that he intended to challenge his conviction on the ground that his attorneys were constitutionally deficient in their duty to investigate or because they relied on [a disbarred attorney] for that chore." *Id.* at 1348. The Court concluded that petitioner failed to present[] the state court with this particular legal basis for relief in addition to the facts supporting it." *Id.* at 1350.

Here, Petitioner for the first time on Motion for Reconsideration is alleging that her attorney had a conflict of interest. Petitioner offers this as a new legal theory to explain why her attorney failed to object to the authenticity of the phone recordings. he is the one that said the tapes was authentic. The facts on which this new claim is based are distinct from Petitioner's claim in state court. In Petitioner's Amended Motion for Post-Conviction Relief, she claimed:

> Defendant states that counsel visited her at the county jail to play a tape that the State claimed was conversation, between her and State witness Omar Nunez and Maxine Hylton. Defendant told counsel that she had no such conversation with either Maxine Hylton or Omar Nunez. More over [*sic*], she asserted that was NOT her voice. Defendant questioned counsel, as to whether or not he thought that it sounded like her voice, and he agreed that it did not sound like her voice. Counsel said but it sounded good, it said that Dutch did [it], not you.

ECF No. [30] at 217.

These facts are distinct from those asserted in the Motion for Reconsideration. The claim presented to the state court was that Petitioner's defense counsel agreed that the voice on the tapes did not belong to Petitioner whereas Petitioner now contends defense counsel believed that the voice on the recordings belonged to Petitioner. Thus, the state court was not presented with the conflict of interest theory or the facts supporting it.

Although the Court's analysis could end here, the Court will also address the merits of Petitioner's conflict of interest claim. A *habeas* petitioner who claims that he was denied his Sixth Amendment right to the effective assistance of trial counsel because his lawyer had a conflict of interest must show "that an actual conflict of interest adversely affected his lawyer's performance." *Cuyler v. Sullivan,* 446 U.S. 335 (1980); *accord Freund v. Butterworth,* 117 F.3d 1543, 1571 (11th Cir. 1997), *vacated,* 135 F.3d 1419 (11th Cir. 1998). This standard has been applied in two traditional contexts: a lawyer's "simultaneous representation" of clients with adverse interests, and a lawyer's "successive representation" of a client against whom a former client appears as a witness. *See, e.g., McConico v. Alabama,* 919 F.2d 1543, 1546 (11th Cir. 1990) (noting that a conflict of interest may arise in either context). Although, conflicts of interests have been found in some other contexts, this Court is not persuaded that the new evidence demonstrated that Petitioner's defense counsel has an actual conflict of interest that affected his performance.

"An 'actual conflict' of interest occurs when a lawyer has 'inconsistent interests.'" *Freund v. Butterworth*, 165 F.3d at 859 (quoting *Smith v. White*, 815 F.2d 1401, 1405 (11th Cir. 1987). Petitioner does not claim that defense counsel's interests were compromised by any

factor external to the representation of Petitioner, such as the representation of any other client. Defense counsel's belief that he recognized Petitioner's voice on the recorded phone conversations does not give rise to inconsistent interests. Moreover, even if Petitioner could demonstrate that her defense counsel had inconsistent interests, Petitioner has not shown that her lawyer's performance was affected.

It is therefore **ORDERED AND ADJUDGED** that Petitioner's Motion for Reconsideration of the Court's denial of the § 2254 Petition, **ECF Nos. [67, 75]**, is **DENIED**.

DONE AND ORDERED in Miami, Florida, this 12th day of September, 2018.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Charlene Terry-Ann Walker Rosa
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Homestead Correctional Institution
Inmate Mail/Parcels
19000 SW 377th Street
Florida City, FL 33034
PRO SE

Exhibit Y

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-cv-62332-BLOOM/WHITE

CHARLENE TERRY-ANN WALKER ROSA,

Petitioner,

v.

JULIE L. JONES,
SEC'Y, FLA. DEP'T OF CORR'S,

Respondent.
_____/

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

THIS CAUSE is before the Court upon *pro se* Petitioner's Petition for Writ of Habeas Corpus, ECF No. [7], filed pursuant to 28 U.S.C. § 2254 (the "Petition"), which was previously referred to the Honorable Patrick A. White for a Report and Recommendation on any dispositive matters. *See* ECF No. [3]. On April 2, 2018 Judge White issued a Report and Recommendation (the "Report"), recommending that the Petition be denied on the merits as to claims 1, 2, and 4 and procedurally barred as to claim 3. *See* ECF No. [53]. The Report also recommended that a certificate of appealability be denied and that the case be closed. In the Report, Petitioner was advised that "[o]bjections to this report may be filed with the District Judge within fourteen days of receipt of a copy of the report." *Id.* at 38. She then timely filed Objections and separately filed an Application for Certificate of Appealability. *See* ECF Nos. [54] and [59]. The Court has since conducted a *de novo* review of Magistrate Judge White's Report and Recommendation, Petitioner's Objections, the record, and is otherwise fully advised. *See Williams v. McNeil*, 557 F.3d 1287, 1291 (11th Cir. 2009) (citing 28 U.S.C. § 636(b)(1)).

I. BACKGROUND

Petitioner was charged with first-degree murder of Lola Salzman by bludgeoning and/or stabbing with a knife in violation of Florida Statute § 782.04(1). *See* ECF No. [30-1] at 13-14. On July 5, 2007, the jury found Petitioner guilty of first-degree murder and she was sentenced to a term of life in prison without the possibility of parole. *Id.* at 16-22. After a lengthy history of proceedings in state court, Petitioner timely filed her Petition for habeas relief in this tribunal. *See* ECF No. [1]. The Report summarized Petitioner's four claims as follows:

> 1. Ineffective assistance of counsel where counsel's opening statements prejudiced her from receiving a fair trial. Petitioner's conviction was obtained by an involuntary concession of guilt without understanding the nature of the charge and the consequences of a plea since Counsel did not have Petitioner's affirmative, explicit consent to concede her guilt. Counsel's opening and closing statements, and cross examination of witnesses were a demonstration of evidence conceding Petitioner's guilt.
>
> 2. Ineffective assistance of counsel where:
>
> (A) Counsel was ineffective for conceding to the authenticity of the telephone conversations;
>
> (B) Counsel elicited testimony that Petitioner's blood was found on a picture on a wall at the crime scene
>
> (C) Counsel admitted to or failed to challenge evidence presented that Petitioner extorted a friend to collect payment from the victim.
>
> (D) Counsel knowingly presented false testimony that Petitioner had a scar on her hand and that she showed it to police at the time of the arrest as evidence that the scar was a result of the "alleged murder" of the victim;
>
> (E) Counsel informed the jury that Petitioner left the country because of her consciousness of guilt;
>
> (F) Counsel conceded to facts in the prosecution's case without Petitioner's consent, which denied meaningful adversary testing; and
>
> (G) Counsel refused to "strategize" with Petitioner.

3. Ineffective assistance of counsel where Petitioner was shackled throughout the entire trial in front of the jury, which prejudiced the Petitioner in violation of her right to a fair trial.

4. Ineffective assistance of counsel where counsel failed to:

(A) Call Dr. Edward Greenburg to testify as an expert witness who would have stated that the victim died of natural causes. Counsel improperly conceded that the victim died as a result of 43 stab wounds; and

(B) Assert an alibi defense with the testimony of Thomas Fairbough.

ECF No. [53] at 2-4. Ultimately, the Report concluded that, as to claims 1, 2, and 4, the Petition failed on the merits and, as to claim 3, it was procedurally barred for failure to exhaust the remedy in state court.

II. OBJECTIONS

Petitioner's lengthy Objections raise multiple arguments, which the Court summarizes as follows: (1) the Report did not contain a verbatim recitation of her four claims for relief; (2) Petitioner did not receive the assistance of counsel to prepare her Petition and did not know she could file additional grounds for habeas relief; (3) the Report should have not relied upon the recitation of facts contained within the opinion issued by Florida's Fourth District of Appeals in her direct appeal; (4) claim 3 is not procedurally barred because she has uncovered new evidence of her actual innocence; (5) the Report erred in finding that claim 1 did not constitute ineffective assistance of counsel; and (6) the Report misconstrued her position as to claim 2(a) regarding the authenticity of telephone conversations. *See* ECF No. [54]. In addition, Petitioner separately filed an Application for Certificate of Appealability. The Court addresses each issue in turn.

a. Objection Number 1

Petitioner did not object to the recommendation that claims 2(B) through 2(G) and 4 be denied on the merits, other than to argue that the report failed to verbatim recite all claims and

supporting facts from her Petition. She claims that this failure rendered the Report inadequate and deprived her of a fair and impartial review of her constitutional claims. *See* ECF No. [54] at 6-9. However, Judge White explicitly states in the Report that he reviewed the Petition at ECF No. [7], and he accurately summarized each of Petitioner's claims. *See* ECF No. [53]. The Report need not include a word-for-word recitation of all claims and facts. The Report reflects that Judge White meticulously analyzed each of the four claims in the Petition along with all subparts and the underlying record. *Id.* Therefore, Petitioner's objection is without merit and is overruled. And, because Petitioner did not raise any substantive objections to the recommendation that claims 2(B) through 2(G) and claim 4 be denied on the merits, she has foregone the right to otherwise object to the legal analysis and factual findings made by Judge White as to these specific claims.

b. Objection Number 2

Petitioner next contends that conflict-free counsel should have been appointed to assist her with the preparation of her Petition. It should be noted that prior to the instant objection, Petitioner filed no less than four motions requesting the appointment of counsel and on four occasions, Petitioner's request was denied. *See* ECF Nos. [10], [11], [32], [39], [49], [50], [57], [58]. In support of her objection, Petitioner argues that she is financially indigent and cannot afford counsel and lacks the intellectual ability to properly articulate legal arguments in support of her request for habeas relief. *See* ECF No. [54]. More specifically, Petitioner states she has an intellectual quotient of 72 and is, therefore, intellectually disabled, referring to a report prepared by the Department of Corrections.

A petitioner does not have a constitutional right to counsel during post-conviction collateral attack proceedings. *See Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987) ("Our cases

establish that the right to appointed counsel extends to the first appeal of right, and no further. . . . We think that since a defendant has no federal constitutional right to counsel when pursuing a discretionary appeal on direct review of his conviction, *a fortiori,* he has no such right when attacking a conviction that has long since become final upon exhaustion of the appellate process."). The decision whether to appoint counsel on a petition for habeas relief is subject to the discretion of the trial court and "will not be overturned absent a showing of fundamental unfairness which impinges on the due process rights of the petitioner." *Vandenades v. United States*, 523 F.2d 1220, 1225–26 (5th Cir. 1975).

Petitioner's claim of intellectual disability is belied by the record. While she attached an Intake Psychological Screening report dated July 10, 2007 to support her fourth Motion for Appointment of Conflict-Free Counsel, ECF No. [57], indicating that her IQ is 72, the report also concluded she has no mental retardation and does not suffer from any mildly impaired adaptive functions. *Id.* at 21. Further, a review of the record reveals that Petitioner has filed lengthy, eloquent, and detail-oriented filings throughout the proceedings in which she has cited to relevant standards, case law, and the state-court record. Contrary to her claim, her filings reveal she is able to articulate legal arguments in support of her request for relief. Because the record does not reveal a need for an evidentiary hearing, the appointment of counsel is not mandatory, and there has been no showing that the interest of justice requires an appointment of counsel, Petitioner's objection on this basis is overruled. *See* Rules Governing Section 2254 Cases Rule 8(c); see *McGriff v. Dept. of Corr's*, 338 F.3d 1231 (11th Cir. 2003); *Thomas v. Scott*, 47 F.3d 713, 715 (5th Cir. 1995).

Also intertwined with this objection is Petitioner's claim that this Court only allowed her to pursue four of her thirty claims for habeas relief. *See* ECF No. [54] at 2. Petitioner states that

the Court ordered her to file an amended motion and only allowed her to use the space provided in the form, preventing her from adding extra pages. *Id.* Again, Petitioner's claim is belied by the record. Although the Court required that she use the form petition, she was repeatedly informed that her motion and its incorporated memorandum of law could be up to twenty pages excluding the title page, signature pages, certificates of good faith, and certificate of service. *See* ECF No. [4]. In addition, Petitioner was informed that she could file an amended petition within the twenty-page limit and could *exceed* such a limitation with prior leave of court and upon a showing of good cause. *Id.* The Order did not limit Petitioner to the space provided within the form and did not prevent her from adding pages. *Id.* Despite this, Petitioner opted to file a sixteen-page application, raising only four claims, and never requested leave of Court to file a petition exceeding twenty pages so that she could raise all thirty claims for relief. The Court, therefore, finds this objection to be without merit.

c. Objection Number 3

Next, Petitioner objects to the Report's reliance upon and recitation of facts contained within the Fourth District of Appeals' opinion issued in her direct appeal. *See* ECF No. [54] at 9-12. She argues that, because she did not receive effective assistance of counsel during the trial, the facts as explained in the appellate court should not be considered as she "denie[s] all the allegations in the direct appeal." *Id.* at 11. The Court finds no error in the Report's reliance upon and recitation of facts from the Fourth District Court of Appeals' decision when discussing the underlying facts of the offense and procedural history. The appellate court's opinion provides a recitation of the evidence presented at trial, regardless of whether Petitioner disagrees with the veracity of such evidence and how her case was presented to the jury. As further

explained below, this Court finds that Petitioner failed to prove her claims of ineffective assistance of counsel, rendering her objection on this point moot.

d. Objection Number 4

As to her next objection, Petitioner argues that claim 3 is not procedurally barred. She does not dispute Judge White's conclusion that she failed to exhaust claim 3 in state court by waiting to raise the claim until her third amended motion for post-conviction relief filed on January 2, 2015. Instead, she argues that the Court should consider an exception to the procedural time bar to prevent a miscarriage of justice. *See* ECF No. [54] at 13. Specifically, she asserts a claim of actual innocence, which allows consideration of a time-barred or procedurally-barred claim. *See McQuiggin v. Perkins*, 569 U.S. 383 (2013). While Petitioner is correct that "actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar," the Supreme Court has explained that "tenable actual-innocence gateway pleas are rare." *McQuiggin*, 569 U.S. at 386. A prisoner may present a constitutional claim, such as ineffective assistance of counsel, on the merits despite a procedural bar only upon a "credible showing of actual innocence." *Id.* at 392–93. "To be credible, such a claim requires petitioner to support his allegations of constitutional error with **new reliable evidence**—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial." *Schlup v. Delo*, 513 U.S. 298, 324 (1995) (emphasis added). "[A] petitioner does not meet the threshold requirement unless he persuades the district court that, **in light of the new evidence**, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." *McQuiggin*, 569 U.S. at 386 (citing *Schlup*, 513 U.S. at 329 and *House v. Bell*, 547 U.S. 518, 538 (2006) (emphasis added)). "The gateway should open only when a petition presents '**evidence** of

innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error." *Id.* at 401 (emphasis added). It should also be noted that "[u]nexplained delay in presenting new evidence bears on the determination whether the petitioner has made the requisite showing." *McQuiggin*, 569 U.S. at 399. Such unexplained delay "should seriously undermine the credibility of the actual-innocence claim." *Id.* at 400.

In support of her objection, Petitioner argues that on June 29, 2017, she discovered "new evidence" when the prison law librarian, Ms. Green, informed her that the computer revealed an amended indictment or information[1] filed on August 23, 2007 – one month after she was convicted. *Id.* at 14. This amended document charged Petitioner with two counts: first-degree murder (Count I) and "'Solicit to Commit Robbery" (Count II). *Id.* According to Petitioner, this newly discovered evidence was filed of record on August 23, 2007 by the Hallandale Police Department in Case No. 062005CF01014414A88810 and established that the State conceded defense counsel's theory of solicitation in which Petitioner solicited Ivan McKenzie a/k/a Dutch to extort payment from the victim and that it was Dutch – not Petitioner – who killed the victim. *Id.* Had the State presented the amended charging document to defense counsel prior to trial, Petitioner argues that her counsel would not have pursued a strategy in which he admitted to third-degree murder. *Id.* at 16.

Despite these arguments, Petitioner has not presented the Court with any evidence of her actual innocence. She simply provides allegations that the prison law librarian, Ms. Green, informed her of the August 23, 2007 amended indictment or information. Petitioner did not

[1] It is unclear whether Petitioner claims the State filed an amended indictment or amended information as she uses the two words interchangeably in her Objections. *See* ECF No. [54] at 14-16.

supply the Court with a copy of the alleged amended indictment or information that forms the basis of her claim of actual innocence or an affidavit from Ms. Green attesting to the discovery. Instead, Petitioner simply provides an unsubstantiated allegation, which falls far short of satisfying the demanding standard articulated in *Schlup*. Given the lack of evidence, the Court cannot evaluate the claim to determine whether it supports Petitioner's actual innocence argument.

The Court also finds no merit in the argument that an amended information or indictment filed in August of 2007 in the public docket of the Seventeenth Judicial Circuit in and for Broward County, Florida constitutes *newly discovered* evidence. Had Petitioner exercised any degree of diligence, she could have discovered such readily available information. Even if she truly "discovered" this public filing on June 29, 2017, Petitioner still waited until after the issuance of the Report (more than nine months) to raise her actual innocence argument and did so without any supporting evidence. Petitioner's failure to supply any reliable evidence and her unexplained delay in raising this argument fail to satisfy the exacting standard under *Schlup*. *See Jemison v. Nagle*, 158 F. App'x 251, 256 (11th Cir. 2005) (holding that the district court did not abuse its direction in failing to conduct an evidentiary hearing when the petitioner did not produce any reliable evidence to support the claim of actual innocence, such as the allegedly exculpatory DNA report or its results). For these reasons, Petitioner cannot avail herself of this exception to resurrect her procedurally barred claim of ineffective assistance of counsel - claim 3. Petitioner's objection is, therefore, overruled.

e. Objection Number 5

Next, Petitioner argues that defense counsel lacked the authority to waive her right against self-incrimination and her right to confront her witnesses when her counsel informed the

jury that the essential facts and elements of the prosecution's case were not in dispute and made a concession of guilt as to lesser-included offenses. *See* ECF No. [54] at 20-26. This objection relates to Judge White's recommendation that claim 1 be denied on the merits because Petitioner failed to demonstrate that her counsel's performance was deficient and prejudicial. *Id.*

Section 2254(d) only allows federal courts to grant habeas relief if the state court's resolution of those claims: "(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding." 28 U.S.C. § 2254(d). Applying this standard, a state court's decision will be deemed "contrary to" clearly established Supreme Court precedent if either (1) "the state court applies a rule that contradicts the governing law set forth in [Supreme Court] cases," or (2) "the state court confronts a set of facts that are materially indistinguishable from a decision of [the Supreme] Court and nevertheless arrives at a result different from [the Supreme Court's] precedent." *Williams v. Taylor*, 529 U.S. 362, 405–06 (2000).

In a § 2254 petition for habeas relief based on a claim of ineffective assistance of counsel, "[t]he pivotal question is whether the state court's application of the *Strickland* standard was unreasonable." *Harrington v. Richter*, 562 U.S. 86, 101 (2011). This is *not* the same as asking whether defense counsel's performance fell below *Strickland*'s standard. *Id.* Under *Strickland*, a habeas petitioner was must satisfy a two-prong inquiry: (1) defense counsel's performance was deficient and (2) the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "A state court must be granted a deference and latitude that are not in operation when the case involves review under the *Strickland* standard

itself." *Id.* "A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Id.* (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). "[I]t is not an unreasonable application of clearly established Federal law for a state court to decline to apply a specific legal rule that has not been squarely established by th[e Supreme] Court." *Id.* (quoting *Knowles v. Mirzayance*, 556 U.S. 111, 122 (2009)). This standard under § 2254 was intended to be a difficult one to satisfy. *Id.* at 102 ("If this standard is difficult to meet, that is because it was meant to be.").

The Court must now apply these principles to Petitioner's claim that her counsel's performance was ineffective when he allegedly waived her right against self-incrimination as well as her right to confront her witnesses by conceding her guilt to lesser-included offenses. When the state trial court ruled on this claim and denied the habeas relief, it adopted the State's arguments contained within its response brief. *See* ECF No. [30-1] at 658. The State, in turn, argued that defense counsel never conceded Petitioner's guilt to the crime charged – first degree murder – and instead made arguments in closing argument that she was a principal to a third-degree murder only after the State presented its evidence and that this tactic was a matter of trial strategy to admit only a lesser-included offense. *Id.* at 633-634. Under *Strickland*, Petitioner bears the burden of proving that her counsel's concession "was objectively unreasonable and that, but for the concession, a reasonable probability exists that the outcome of his trial would have been different." *Harvey v. Warden, Union Corr. Inst.*, 629 F.3d 1228, 1249–53 (11th Cir. 2011). The Court now considers whether Petitioner's objection to the Report has merit.

The Eleventh Circuit Court of Appeals has considered similar claims of ineffective assistance of counsel. *See e.g. McNeal v. Wainwright*, 722 F.2d 674, 676–77 (11th Cir. 1984).

In *McNeal*, the defendant was also charged with first-degree murder and received a life sentence. *Id.* Much like in this case, McNeal's counsel never stated that he was guilty of murder and instead argued that the government had, at most, proven manslaughter as there was no evidence of premeditation. *Id.* Finding that "[a]n attorney's strategy may bind his client even when made without consultation" and that there was an overwhelming amount of evidence against McNeal, the Eleventh Circuit held that it "cannot be said that the defense strategy of suggesting manslaughter instead of first degree murder was so beyond reason as to suggest defendant was deprived of constitutionally effective counsel." *Id.* (citing *Thomas v. Zant*, 697 F.2d 977, 987 (11th Cir. 1983)). More recently, the Eleventh Circuit denied habeas relief for a similar ineffective assistance of counsel claim, finding no error in the Florida Supreme Court's determination that the petition failed to prove a deficient performance or prejudice under *Strickland*. *See Atwater v. Crosby*, 451 F.3d 799, 809 (11th Cir. 2006) (finding that Florida Supreme Court did not unreasonably apply or reach a decision contrary to clearly established federal law when, in light of the overwhelming evidence of guilt presented by the state and in an effort to save the defendant's life, defense counsel argued in closing that there was no evidence of premeditation but that the evidence may support second-degree murder). In a thorough analysis of the *Strickland* prejudice prong, the Eleventh Circuit more recently denied habeas relief when the Florida Supreme court reasoned that a concession to first-degree murder during opening statement "merely restated facts that the jury would soon hear when the State introduced [the defendant's] confession into evidence." *Harvey*, 629 F.3d at 1252. Although defense counsel in *Harvey* conceded first-degree murder in opening without first consulting the defendant, the Eleventh Circuit determined that the Florida Supreme Court's finding of no prejudice was not "an unreasonable determination of the facts." *Id.* (quoting 28 U.S.C. §

2254(d)(2)). This is because the State's evidence against the defendant was overwhelming and included his confession, making it "very difficult to see how the outcome of the trial would have been different had Watson not conceded Harvey's guilt, as charged in the indictment." *Id.*

Petitioner argues the Report unreasonably concluded that the concession of guilt was a trial strategy as such a concession was a departure from constitutional principles established by the United States Supreme Court. *See* ECF No. [54] at 24. She further contends that due process does not allow an attorney to admit facts that amount to a guilty plea without the client's consent and that her entry of a not guilty plea required the State to prove the charged offense and any lesser-included offenses beyond a reasonable doubt. *Id.* at 24-25. According to Petitioner, defense counsel's presentation to the jury was "the functional equivalent of a guilty plea," demonstrating that she satisfied both prongs of *Strickland*. *Id.* at 25.

Upon review of the record, the Court concludes that the state court's resolution of this ineffective assistance of counsel claim did not result in a decision that "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" and did not result "in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding." 28 U.S.C. § 2254(d). During opening statement, defense counsel did *not* concede that Petitioner was guilty of the crime charged, first-degree murder. To the contrary, defense counsel repeatedly stated in opening that "Ms. Rosa did not kill Lola Salzman." *See* ECF No. [31-1] at 367-368. Instead, defense counsel provided a preview of the State's evidence consisting of telephone calls in which Petitioner admitted she enlisted Dutch's assistance to collect money owed by the victim and that the encounter with the victim went awry when she

took a knife and swung it at Petitioner. *Id.* at 364, 366. Defense counsel then argued that Dutch killed the victim. *Id.*

During trial, the State presented evidence that the victim's neighbor saw Petitioner walk into the victim's apartment on the date of her death, July 4, 2002, and later leave hurriedly from the apartment. *See Rosa v. State*, 27 So. 3d 718 (Fla. 4th DCA 2010). Three of Petitioner's fingerprints were found at the scene. *Id.* Cell phone records also confirmed that Petitioner made numerous calls from the victim's apartment on the date of her death. *Id.* Also on this date, Petitioner changed her upcoming departure flight to Jamaica from July 11, 2002 to July 5, 2002 and then again from July 5, 2002 to the evening of July 4, 2002 – the day the victim was killed. *Id.* She then travelled to Jamaica using a passport in the name of "Alicia Lueyen." *Id.* Tape recordings of Petitioner's conversations revealed that she admitted to sending Dutch to collect money from the victim and then stated that Dutch hit the victim with a phone when she threatened to call the police. *Id.* In other taped conversations, she provided conflicting information, stating that she went to a lady's house to collect money on one call, that she did not know what happed to the lady but she probably died in another call, and that she did not know anything about the victim in yet another call. *Id.* And, after her arrest, she voluntarily stated that she worked as an aide for the victim, confronted her about the money owed with her friend Frost, and when doing so, the victim attempted to stab her with a knife. *Id.* Frost then struck the victim in the face followed by them leaving the victim on the floor and driving away in the same vehicle the neighbor described. *Id.*

At the close of the State's case, the Court, the State and defense counsel discussed the inclusion of several lesser-included offenses on the verdict form and in the jury instructions, such as first-degree murder, second-degree murder, third-degree murder, and manslaughter. *See* ECF

No. [31-1] at 1233-1234. The inclusion of these lesser offenses formed part of defense counsel's trial strategy. *Id.* at 1344 ("[T]hat's our theory, Dutch killed her. She set this course of action in motion by asking Dutch to get her money."). At the commencement of the charge conference, the Court turned to the Petitioner and said: "Ms. Rosa, you need to participate in this process." *Id.* at 1234. Petitioner did not voice any objection to the inclusion of the lesser-included offenses in the jury instructions at any point during the charge conference. *See* ECF No. [31-1] at 1233-1252. Thereafter, in closing argument, Petitioner's counsel argued as follows:

> I have never, since this trial started, asserted to you that my client was innocent or was not involved, I would lose all credibility with you if I did, but what I have come before you to say is that my client is not guilty, not guilty of first degree murder; rather, my client committed a much lesser crime, and you're going to get an instruction on that, and that crime is that she committed the crime of third degree murder. That's why we're here today.

See ECF No. [31-1] at 1338.

Given the overwhelming evidence presented by the State against Petitioner, it cannot be said that the defense strategy of conceding third-degree murder instead of first-degree murder "was so beyond reason as to suggest defendant was deprived of constitutionally effective counsel." *McNeal v. Wainwright*, 722 F.2d 674, 676–77 (11th Cir. 1984). In fact, as pointed out in closing, defense counsel believed the defense would have lost credibility had he argued that Petitioner was innocent or not involved at all. *See* ECF No. [31-1] at 1338. "In this light, counsel cannot be deemed ineffective for attempting to impress the jury with his candor and his unwillingness to engage in 'a useless charade.'" *Fla. v. Nixon*, 543 U.S. 175, 192 (2004); *see also Atwater v. Crosby*, 451 F.3d 799, 809 (11th Cir. 2006). Petitioner likewise failed to present any evidence of prejudice by the comments made during opening as defense counsel simply

restated the facts that the State would introduce at trial. *Harvey*, 629 F.3d at 1252. And, in light of the vast amount of evidence presented by the State, Petitioner failed to demonstrate that the outcome of the trial would have been any different had defense counsel not conceded a lesser-included offense. *Id.* Based on the foregoing, the Court cannot conclude that the state trial court unreasonably applied or reached a decision contrary to clearly established federal law or unreasonably determined the facts in light of the evidence presented in the state court proceeding. Thus, Petitioner's claim number 1 is denied on the merits and her objection to the Report is overruled.

f. Objection Number 6

Petitioner's final objection relates to claim 2(a). She argues that the Report misconstrued her position regarding the authenticity of telephone conversations. *See* ECF No. [54] at 27. According to the Objections, her position is not that her counsel was ineffective by failing to object to the presentation of the recorded telephone conversations. *Id.* Instead, she states she "wants the State to present its alleged telephone conversations and all it [sic] evidence to the jury. What she is saying is that she object [sic] to the authenticity of the alleged tapes and all the state evidence for the jury to decide the credibility of the witnesses and the state entire evidence, she is entitle [sic] to that absent that right the jury verdict is unreliable." *Id.* On the one hand, she does not fault her defense counsel for failing to object to the admission of the recorded conversations because she wants the State to present the evidence to the jury and, on the other hand, she objects to the authenticity of the tapes and wants the jury to decide the credibility of the witnesses. Petitioner's objection is irreconcilably inconsistent and unintelligible. To the extent Petitioner claims her attorney was ineffective for not objecting to the authenticity of the

tapes, the Court adopts Judge White's well-reasoned analysis on this point. Therefore, this objection is also overruled.

g. Certificate of Appealability

Finally, Petitioner filed a separate Application for Certificate of Appealability. *See* ECF No. [59]. The Court first finds that Petitioner's Application for Certificate of Appealability is untimely as it is, in reality, a belated objection to Judge White's recommendation that no Certificate of Appealability be issued. *See* ECF No. [59]. Petitioner was cautioned in the Report that she had fourteen days upon her receipt to file her objections with the district court. *See* ECF No. [53] at 38. Although her objections, addressed above, were timely filed, her Application for Certificate of Appealability, which is an additional objection, was not. Petitioner admittedly received the Report on April 6, 2018. *See* ECF No. [54] at 1. She was, therefore, required to provide *all* of her objections to prison officials for mailing no later than April 20, 2018 under the prisoner mailbox rule. *See Newnam v. McDonough*, 2008 WL 539065 (N.D. Fla. Feb. 22, 2008) (citing *Washington v. United States*, 243 F.3d 1299, 1301 (11th Cir. 2001)) (noting that pursuant to the prisoner mailbox rule, "a pleading is considered filed by an inmate on the date it was delivered to prison authorities for mailing, which (absent contrary evidence) the court assumes is the date he signed it"); *see also Garvey v. Vaughn*, 993 F.2d 776, 783 (11th Cir. 1993) (stating that "the date of filing shall be that of delivery to prison officials of a complaint or other papers destined for district court for the purpose of ascertaining timeliness"). Although Petitioner did not date the Certificate of Service, prison officials at Homestead Correctional Institutional stamped the legal mail as received by them on April 25, 2018. *See* ECF No. [59] at 1, 14. Thus, Petitioner failed to timely file this specific objection to the Report as it was filed five days after the deadline.

Despite the untimeliness of the objection, the Court will consider the merits of the request. As explained in Judge White's Report, a certificate of appealability should only be issued if the Petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). If the district court rejects the Petitioner's constitutional claims on the merits, the Petitioner must establish that reasonable jurists would find such an assessment of the constitutional claims to be debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). If the district court rejects a claim for procedural reasons, then the petitioner must show 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." *Id.* Petitioner has made no such showing as to the Report's denial of claims 1, 2 and 4 on the merits or the denial of claim 3 on procedural grounds. Indeed, the arguments she raises are simply a recitation of the same arguments raised in her Objections, which the Court rejected above and are not subject to debate by reasonable jurists. Thus, Petitioner's objection to Judge White's recommendation that a Certificate of Appealability be denied is also overruled.

In sum, the Court finds Judge White's Report to be well reasoned and correct. The Court agrees with the analysis in Judge White's Report, finds no merit in Petitioner's Objections, and concludes that the Petition must be denied on the merits as to claims 1, 2, and 4 and dismissed as procedurally barred as to claim 3 for the reasons set forth in the Report.

For the foregoing reasons, it is **ORDERED and ADJUDGED** as follows:

1. Magistrate Judge White's Report and Recommendation, **ECF No. [53]**, is **ADOPTED**;

2. Petitioner's Petition, **ECF No. [7]**, is **DENIED** on the merits as to claims 1, 2, and 4 and **DISMISSED** as procedurally barred as to claim 3;

3. Petitioner's Objections, **ECF No. [54]**, are **OVERRULED**;

4. Petitioner's Application for Certificate of Appealability, **ECF No. [59]**, is **DENIED.**

No Certificate of Appealability shall issue;

5. All pending motions are **DENIED AS MOOT**; and

6. The Clerk shall **CLOSE** this case.

DONE and ORDERED in Miami, Florida, this 31st day of May, 2018.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Charlene Terry-Ann Walker Rosa
L06814
Homestead Correctional Institution
Inmate Mail/Parcels
19000 SW 377th Street
Florida City, FL 33034
PRO SE

The Honorable Patrick A. White

Supreme Court of the United States
Habeas Petition / Certiorari
Properly Exhausted

Appendix F

17th Judicial Circuit
Criminal Trial

Appendix H

28

DIVISION: CRIMINAL

17th JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY

DIVISION: FZ

JUDGMENT

THE STATE OF FLORIDA VS. CASE NUMBER

DEFENDANT Charlene Bosa 04-10827 CF 10A

☐ Probation Violator

State Attorney S. Frankel

Court Reporter M. Happ

The Defendant, Charlene Bosa being personally before this Court represented by D. Williams G. Sheets, his attorney of record, and having:

INSTR # 107254485
OR BK 44397 Pages 1348 - 1349
RECORDED 07/30/07 16:44:43
BROWARD COUNTY COMMISS ON
DEPUTY CLERK 2080
#25, 2 Pages

(Check applicable provision)

☑ Been tried and found guilty of the following crime(s)
☐ Entered a plea of guilty to the following crime(s)
☐ Entered a plea of nolo contendre to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME	ADD'L MONIES IMPOSED
1	murder 1°	782.04(1)	CLF	

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

The Defendant is hereby ordered to pay the sum of Fifty dollars ($50.00) pursuant to F.S. 960.20 (Crimes Comp. Trust Fund). The Defendant is further ordered to pay the sum of Five Dollars ($5.00) as court costs pursuant to F.S. 943.25(4). Fines imposed as part of a sentence pursuant to F.S. 777.083 are to be recorded on the Sentence page(s).

(Check if applicable)

Stayed & Withheld Imposition of Sentence ( ) The court hereby stays and withholds the imposition of sentence as to count(s) _____ and places the Defendant on probation for a period of _____ under the supervision of the Department of Corrections (conditions of probation set forth in a separate order)

Sentence Deferred Until Later Date ( ) The court hereby defers imposition of sentence until _____ (Date)

(✓) Pay $200.00 Trust Fund pursuant to F.S. 938.05 (1) (b) (c)

Count(s) _____: _____ DAYS/MONTHS BROWARD COUNTY JAIL W/CREDIT _____ DAYS TIME SERVED.

The Defendant in open court was advised of his right to appeal from this Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing indigence.

_____
JUDGE

I hereby certify that a true and correct copy of the above and foregoing was served on the State Attorney by: ( ) hand delivery (✓) U.S. mail and to the Defense Attorney by: ( ) hand delivery (✓) U.S. mail this 5 day of July 20 07.

_____
Deputy Clerk

ICC 112-65 JUDGMENT

2

CIRCUIT COURT DISPOSITION ORDER IN AND FOR BROWARD COUNTY, FLORIDA

Case Number 0401082 7CF10A Arrest Number _____ BCCN # _____

State of Florida VS ROSA, CHARLENE AKA WALKER, CHARLENE

Judge [redacted] T. Leveson Cash bond / Return to depositor / Surety bond / IC

Cash bond number(s) _____

Charges: 001 MURDER IN THE FIRST DEGREE

( ) REMANDED ( ) REMAIN IC ( ) UNTIL PICKED UP BY _____ OR
BED AVAILABLE AT _____

( ) Arraignment ( ) Change of Plea ( ) Guilty ( ) No Contest ( ) PSI/PDR ( ) Sentencing / Re-Sentencing
( ) Trial by Jury ( ) Trial by Court ( ) First VOP / VOCC ( ) Final VOP / VOCC ( ) Admits Allegations
( ) Convicted by Jury/Court ___ ( ) Acquitted by Jury /Court ___ ( ) Dismissed ___ ( ) Speedy
( ) Discharged ___ ( ) Nolle Prosequi ___ ( ) Found Incompetent/Committed to Child/Family Services
( ) Adj. Guilty ___ ( ) Adj. Withheld ___ ( ) Adj. Delinquent ___
( ) Committed to DJJ/Level ___ ( ) Sentence Withheld ( ) Previous Sentence Vacated
( ) PSI Ordered ___
Adj. and Sentence deferred to ___

Type of Probation / Community Control:
( ) Youthful Offender ( ) Drug Offender ( ) Sexual Offender ( ) Habitual Offender ( ) Mental Health ( ) County
PROBATION/COMM. CONTROL: ( ) Revoked ( ) Reinstated ( ) Modified ( ) Terminated
( ) Extended ___ ( ) All previous special conditions apply
WARRANT: ( ) Dismissed ( ) Withdrawn ( ) Served in open court

SENTENCE: ***(PROBATION/COMM.CONTROL)***
COUNT(S): ___
___ ( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control ( ) followed by
___ ( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control
( ) each count concurrent/consecutive ( ) concurrent ( ) consecutive to case number ___
COUNT(S): ___
___ ( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control ( ) followed by
___ ( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control
( ) each count concurrent/consecutive ( ) concurrent ( ) consecutive to case number ___

SENTENCE: ***(INCARCERATION)***
COUNT(S): 1 ( ) One year plus one day ( ) LIFE ( ) Years ( ) Months ( ) Days
( ) BCJ (✓) FSP, w/credit for 679 days T/S
( ) followed by ___ ( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control
( ) each count concurrent/consecutive ( ) concurrent/consecutive ( ) to case number ___
( ) any other sentence ( ) Work release ( ) prison sentence suspended
COUNT(S): ___ ( ) One year plus one day ( ) ___ ( ) Years ( ) Months ( ) Days
( ) BCJ ( ) FSP, w/credit for ___ days T/S
( ) followed by ___ ( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control
( ) each count concurrent/consecutive ( ) concurrent/consecutive ( ) to case number ___
( ) any other sentence ( ) Work release ( ) prison sentence suspended

JUDGE ___

DEPUTY CLERK ___ **DATE** 7/5/07

FILE COPY

6B-1 1CC 14-1 REV. 9/01

DIVISION: CRIMINAL	SENTENCE (AS TO COUNT I)	CASE NUMBER 04-10827 CF10A

OTHER PROVISIONS

FIREARM/DESTRUCTIVE DEVICE	[ ]	It is further ordered that the _____ year mandatory minimum imprisonment provision of Florida Statute 775.087(2) and (3) is hereby imposed for the sentence specified in this count
THREE-TIME VIOLENT FELONY OFFENDER	[ ]	The Defendant is adjudicated a three-time violent felony offender and has been sentenced to an extended term in accordance with the provisions of Florida Statute 775.084. The requisite findings by the court are set forth in a separate order or as stated on the record in open court.
SHORT-BARRELED RIFLE, SHOTGUN, MACHINE GUN	[ ]	It is further ordered that the five-year minimum provisions of Florida Statute 790.22(2) are hereby imposed for the sentence specified in this count.
CONTINUING CRIMINAL ENTERPRISE	[ ]	It is further ordered that the 25 year mandatory minimum sentence provisions of Florida Statute 893.20 are hereby imposed for the sentence specified in this count.
RETENTION OF JURISDICTION	[ ]	The court retains jurisdiction over the defendant pursuant to Florida Statutes 947.16 (3).
JAIL CREDIT	[✓]	It is further ordered that the defendant shall be allowed a total of 679 days as credit for time incarcerated prior to imposition of this sentence.
PRISON CREDIT	[ ]	It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to re-sentencing.
CONSECUTIVE CONCURRENT AS TO OTHER COUNTS	[ ]	It is further ordered that the sentence imposed by this court shall run _____ consecutive to _____ concurrent with (check one) the sentence set forth in count _____ of this case.
CONSECUTIVE CONCURRENT AS TO OTHER CONVICTIONS	[ ]	It is further ordered that the composite term of all sentences imposed for the courts specified in this order shall run _____ consecutive to _____ concurrent with (check one) the following: _____ Any active sentence being served. _____ Specific Sentences: _____

PSI ORDERED YES [ ] NO [✓]

In the event the above sentence is to the Department of Corrections, the Sheriff of Broward County, Florida, is hereby ordered and directed to deliver the Defendant to the Department of Corrections at the facility designated by the Department together with a copy of this Judgment and Sentence and any other documents specified by Florida Statutes.

The Defendant in Open Court was advised of his right to appeal from this Sentence by filling notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to assistance of counsel in taking said appeal at the expense of the State upon showing of indigence.

In imposing the above sentence, the court further recommends _____

DONE AND ORDERED in Open Court at Broward County, Florida, this 5 day of July, 2007

JUDGE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by: [ ] Hand Delivery [ ] U.S. Mail and to the Defense Attorney by: [ ] Hand Delivery [ ] U.S. Mail this 5 day of July, 2007

ICC 112-78 Criminal Sentence

[ ] 17th Judicial Circuit and for Broward County

CLOCK IN

DIVISION: Criminal FX

SENTENCE

as to Count I

THE STATE OF FLORIDA VS.

Charlene Rosa

DEFENDANT

CASE NUMBER

04-10827 CF10A

The Defendant, being personally before this court, accompanied by his attorney, D. Williams and having been adjudicated guilty herein, and the court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he sentenced as provided by law, and cause shown,

Check One

☐ and the Court having on _____ deferred imposition of sentence until this date.

☐ and the Court having previously entered a judgment in this case on the defendant now resentences the defendant.

☐ and the Court having placed the Defendant on Probation/Community Control and having subsequently revoked the Defendant's Probation/Community Control.

IT IS THE SENTENCE OF THE COURT that:

The Defendant pay a fine of $ _____, pursuant to F.S. 775.063, plus $ _____, at the 5% surcharge required by F.S. 960.25.

☒ The Defendant is hereby committed to the custody of the Department of Corrections.

☐ The Defendant is hereby committed to the custody of the Sheriff of Broward County, Florida.

☐ The Defendant is hereby sentenced as a youthful offender in accordance with F.S. 958.04.

TO BE IMPRISONED (check one: unmarked sections are inapplicable)

☐ For a term of Natural Life.

☒ For a term of LIFE (MIN. MAND.)

☐ Said SENTENCE IS SUSPENDED for a period of _____ subject to conditions set forth in this Order.

If "split" sentence complete either paragraph

☐ Followed by a period of _____ on Probation/Community Control under the supervision of the Department of Correction according to the terms and conditions of supervision set forth in separate order entered herein.

☐ However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the defendant shall be placed on Probation/Community Control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of Probation/Community Control set forth in a separate order entered herein.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by: [ ] Hand delivery [ ] U.S. Mail and to the Defense Attorney by: [ ] Hand delivery [ ] U.S. Mail this 5 day of July, 20 07.

DIVISION: CRIMINAL	SENTENCE (AS TO COUNT 2)	CASE NUMBER (04) 06-10827CF10A

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS
(As to Count 2)

By appropriate notation, the following provisions apply to the sentence imposed:

MANDATORY/MINIMUM PROVISIONS:

BATTERY ON THE ELDERLY ☐ It is further ordered that the three (3) year mandatory minimum imprisonment provisions of F.S. 784.08(1) are hereby imposed for the sentence specified in this court.

DRUG TRAFFICKING ☐ It is further ordered that the _____ mandatory minimum imprisonment provisions of Florida Statute 893.135(1) are hereby imposed for the sentence specified in this court.

CONTROLLED SUBSTANCE WITHIN 1000 FEET OF SCHOOL ☐ It is further ordered that the three year minimum imprisonment provision of Florida Statute 893.13(1)(e) 1, are hereby imposed for the sentence specified in this court.

HABITUAL FELONY OFFENDER ☐ The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in this sentence in accordance to the provisions of Florida Statute 775.084(4). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

HABITUAL VIOLENT OFFENDER ☐ The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in this sentence in accordance with the provision of Florida Statute 775.084(4). A minimum term of _____ year(s) must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

LAW ENFORCEMENT PROTECTION ACT ☐ It is further ordered that the Defendant shall serve a minimum of _____ years before release in accordance with Florida Statute 775.0823.

CAPITOL OFFENSE ☑ It is further ordered that the Defendant shall serve no less than ~~25 years~~ LIFE in accordance with the provisions of Florida Statute 775.082(1).

VIOLENT CAREER CRIMINAL ☐ The defendant is adjudicated a violent career criminal offender and has been sentenced to a term in accordance with the provision of Florida Statute 775.084(4)(c). A minimum term of _____ year(s) must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

PRISON RELEASEE REOFFENDER ☐ The defendant is sentenced as a prison releasee reoffender and must serve a term of imprisonment of _____ years in accordance with the provisions of Florida Statute 775.082(8)(a)2.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by: [X] Hand delivery [ ] U.S. Mail and to the Defense Attorney by: [ ] Hand delivery [ ] U.S. Mail this 5 day of July 2007

FORM ICC1

Charlene Rosa aka 2 OF 2

State of Florida VS Charlene Walker Case Number 04-10827CFAES

SPECIAL CONDITIONS OF PRISON SENTENCE:

( ) Habitual Violent Offender mandatory minimum _____ years Ct(s) _____
( ) Violent Career Criminal mandatory minimum _____ years Ct(s) _____
( ) Prison Releasee Reoffender mandatory minimum _____ years Ct(s) _____
( ) Firearm mandatory minimum _____ years Ct(s) _____
( ) Other mandatory minimum _____
( ) Habitual Offender Ct(s) _____ ( )Youthful Offender ( ) Sexual Predator/Offender ( ) Boot Camp
( ) Drug Treatment ( ) Tier _____ Program
( ) To be given credit for all time previously served in prison, to be calculated by Department of Corrections

SPECIAL CONDITIONS OF PROBATION:

( ) _____ days BCJ w/credit for _____ days T/S ( ) work release ( ) Boot Camp
( ) ATTAC ( ) Work release after successful completion of ATTAC ( ) Electronic Monitor ( ) Drug Treatment
( ) BSO/SAP ( ) Upon successful completion of drug program jail sentence shall be terminated

( ) _____ hours of Community Service
( ) $_____ COS waived/ imposed
( ) Anger Mangement Program
( ) BARC ( ) followed by _____
( ) Blood draw per F.S. 943.325 - 2 samples for conviction of sexual assaults; lewd or indecent acts; homicides (782.04) aggravated battery; home invasion robbery or carjacking
( ) Curfew _____
( ) Drug / Alcohol evaluation and treatment recommended
( ) Forfeit weapon / firearm
( ) F.A.C.T.
( ) House of Hope
( ) IRT ( ) followed by _____
( ) May transfer probation to _____
( ) May travel _____ for work purposes
( ) No contact with minor children without adult supervision
( ) No contact directly or indirectly with victim(s) or victim's family or others listed
( ) No driving without valid driver's license
( ) No drugs or alcohol
( ) Enter and successfully complete _____
( ) Drug Court Monitoring/Hearing set _____
( ) Other _____

( ) Obtain GED or High School diploma
( ) Peg Program
( ) Psychological / Psychiatric evaluation and treatment necessary
( ) Random drug/alcohol testing
( ) Random urinalysis/waive cost
( ) Recommend 2-year Driver's License Suspension
( ) Restitution ordered $_____/amount reserved
( ) Restitution converted to a civil lien
( ) Spectrum
( ) Substance abuse evaluation
( ) Turning Point Bridge Program/Aftercare
( ) Work Permit
( ) Make donation of $ _____ to _____

COSTS

( ) $200 Trust Fund
( ) $50 VC each count
(✓) $5 Assessment each count
( ) $50 SN1
( ) $15 CFF each count
(✓) $40 PD application fee waived / imposed
( ) $100 OTF
( ) $20 CSTF
( ) $2 T.C. each count
( ) $65 AC each count
( ) $201 DVC
( ) $151 RCP
( ) $101 CAM
( ) $20 SN1
(✓) $ 1,500.- PD fee
( ) $_____ fine plus $_____ surcharge count(s) _____
( ) $_____ Court Costs count(s) _____ ( ) $_____ Extradition costs
( ) Pay balance of previously imposed costs ( ) Waive all court costs
(✓) Balance of court costs and fees converted to a civil lien
( ) PD fee converted to a civil lien
( ) Other _____

JUDGE _____

DEPUTY CLERK _____ DATE 7/5/07

112-81 Dispo. 2nd Page

White: FILE Green: Sheriff's Yellow: Probation Pink: Defendant Gold: Defense Attorney

17th Judicial Circuit in and for Broward County
Criminal Division

UNIFORM COMMITMENT TO CUSTODY OF DEPARTMENT OF CORRECTIONS

The Circuit Court of BROWARD County in the **SPRING** Term, **2007** in the case of
STATE OF FLORIDA

VS.

Charlene Rosa — 04-10827CF10A
(DEFENDANT) **(CASE NUMBER)**

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, TO THE SHERIFF OF SAID COUNTY AND THE DEPARTMENT OF CORRECTIONS OF SAID STATE, GREETINGS :

The above named defendant having been duly charged with the offense specified herein in the above styled Court, and having been duly convicted and adjudged guilty of and sentenced for said offense by said Court, as appears from the attached certified copies of indictment/information, Judgment and Sentence, and Felony Disposition and Sentence Data form which are hereby made parts hereof;

Now therefore, this is to command you, the said Sheriff, to take and keep and, within a reasonable time after receiving this commitment, safely deliver the said defendant, together with any pertinent investigation Report prepared in this case, into the custody of the Department of Corrections of the State of Florida; and this is to command you, the said Department of Corrections, by and through your Secretary, Regional Directors, Superintendents, and other officials, to keep and safely imprison the said defendant for the term of said sentence in the institution in the state correction system to which you, the said Department of Corrections, may cause the said defendant to be conveyed to thereafter transferred. And these presents shall be your authority for the same. Herein fail not.

CLERK OF CIRCUIT & COUNTY COURT — IN GOD WE TRUST — FLORIDA — BROWARD COUNTY

WITNESS the Honorable J. Levenson
Judge of said Court, as also
Howard C. Forman, Clerk, and the
Seal thereof, this 3 **day of** July, 2007
Howard C. Forman, Clerk

BY _____
Deputy Clerk

ICC 112-39 UNIFORM CUSTODY DEPT OF CORRECT