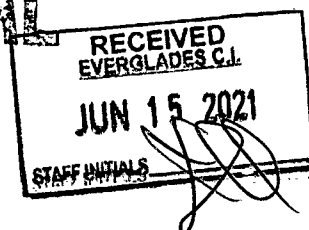


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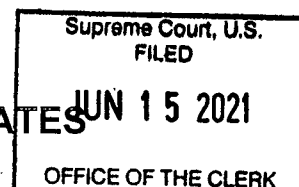
**20-8442**



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**IN THE**  
**SUPREME COURT OF THE UNITED STATES**

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**LUCKNER PIERRE – PETITIONER**

(Your Name)

**VS.**

**ATT. GEN., STATE OF FLORIDA – RESPONDENT(S)**

**ON PETITION FOR A WRIT OF CERTIORARI TO**

**U.S. COURT OF APPEAL FOR THE ELEVENTH CIRCUIT**

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

**PETITION FOR WRIT OF CERTIORARI**

**Luckner Pierre**

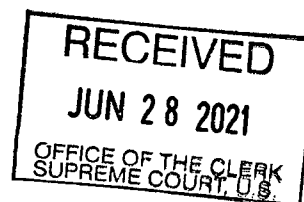
(Your Name)

**1599 SW 187th Avenue**

**Miami, Florida, 33194 – 2801**

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(Phone Number)



## QUESTION(S) PRESENTED

1. Whether the U.S. Court of Appeal for the 11<sup>th</sup> Circuit denied the Petitioner his Procedural Due Process Right and access to Court when it declined to grant him C.O.A. so the denial decision of the U.S. District Court for the Southern District could be reviewed on appeal?
2. Whether the Petitioner as a mentally retarded person with barely a 3<sup>rd</sup> grade education, who speaks no English, was competent enough to knowingly and intelligently waive his Miranda warning to remain silent and to have counsel present during police interrogation without the assistance of a certified Creole interpreter?
3. Whether the Petitioner as a mentally retarded person who speaks no English was competent enough to knowingly and intelligently waive his right to testify on his own behalf without the assistance of a certified Creole interpreter?
4. Whether the Petitioner as a mentally retarded person who speaks no English but only Creole was competent enough to knowingly and intelligently waive his right to a jury trial without the assistance of a certified Creole interpreter?
5. Whether the Petitioner as a mentally retarded person who speaks no English was competent enough to knowingly and intelligently reject a favorable plea without the assistance of a certified Creole interpreter.

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Secretary Department of Corrections

Attorney General, State of Florida

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APPENDIX C – The United States Court of Appeals denied a timely filed Petition for Rehearing/Reconsideration.

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

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

**OPINIONS BELOW**

☒ For cases from **federal courts**:

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

☐ reported at \_\_\_\_\_; or,  
☒ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

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

☐ reported at \_\_\_\_\_; or,  
☒ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ appears at Appendix     to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 2<sup>nd</sup>, 2021.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition rehearing was denied by the United States Court of Appeals on the following date: May 11, 2021, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_(date) on \_\_\_\_\_(date) in Application No. \_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

☐ For cases from **state courts**:

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

☐ A timely petition rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_(date) on \_\_\_\_\_(date) in Application No. \_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

1. U.S. Constitution Amend 6, 14, right to an effective representation before, during and after trial.
2. U.S. Constitution Amendment 5, due process right to representation during post conviction proceedings.
3. U.S. Constitutional Procedural Due Process right to an appeal.



## **STATEMENT OF THE CASE**

Defendant appealed his judgment and sentence to the United States District Court for the Southern District of Florida whereas the Court adopted the Magistrate Report and Recommendation in its entirety, denying the Petition for Writ of Habeas Corpus Section § 2254 and also denied the Petitioner's C.O.A.

The Petitioner subsequently requested for C.O.A. from the U.S. District Court for the Southern District of Florida to no avail. He further filed for C.O.A. to the United States Court of Appeal, 11<sup>th</sup> Circuit. Such request was denied. He then filed for Reconsideration to no avail.

This Petition for Certiorari is now before this Honorable Court in good faith as a result of the above.

## **REASONS FOR GRANTING THE PETITION**

The Petitioner was denied his constitutional right to due process and a fair trial where as the decision to deny him the right to appellate review, conflicting with other Appellate Courts on the same issue as indicated in the questions presented for review and will be demonstrated below.

The Petitioner has demonstrated through the record in his Motion for Reconsideration that the U.S. Court of Appeals has overlooked the facts in this case that reasonable jurist would have found that the District Court's assessment of the constitutional claims debatable or wrong that the issues deserve encouragement to proceed further. Denying the Petitioner his constitutional right to be heard on appeal for redress resulted in a fundamental miscarriage of justice.

With respect to Question Two presented for review, the record clearly indicates that the Petitioner's Miranda Warning was substantially violated. It also indicates that the police took advantage of his mental capacity like a five year old child and had him talk without a proper Miranda Warning as revealed in police translation.

To be noted, the detective who did the Creole translation was not a certified Creole interpreter. He had to translate the words by using other words that were not understood by the Petitioner, which conveyed a different meaning contrary to what it was designed to be. This defect caused the Petitioner to be unable to comprehend the warning, coupled with his mental deficiency and consequently he involuntarily signed the Miranda Warning waiver form and talked by incriminating himself under

duress by fear and the threat exerted upon himself by Detective Désert, that he understood.

The following is the correct and exact translation from the Miranda Warning that was administered to Mr. Pierre by a certified Creole interpreter.

**MIRANDA WARNING STANDARD FORMAT WITH  
THE CREOLE ACCURATE TRANSLATION**

**I am required to warn you before you make any statement that you have the following constitutional rights.**

**Créole translation: Mwen fèt pou'm di ou vèyé zo ou, avan ou pale, ké ou genyen dwa constitution ba ou ké mwen pwal di ou.**

- 1) You have the right to remain silent and not answer any questions.**  
**Créole translation: Ou gen dwa pou'w pa pale é pou'w pa répon'n pies kèsyon.**
- 2) Any statement you make must be freely and voluntarily given.**  
**Créole translation: Tout sa ou di fôk pa genyen pies moun ki di ou sa pou ou di.**
- 3) You have the right to presence and representation of a lawyer of your choice before you make any statement and during any questioning.**  
**Créole translation: Ou genyen yon dwa pou'w genyen yon avoka la avek ou. Ou genyen yon dwa pou'w chwazi avoka ké ou vlé ya, pou ki la avek ou avan ké ou Kômansé pale pandan ké ou Ap pale tou.**
- 4) If you cannot afford a lawyer, you are entitled to the presence and representation of a Court appointed lawyer before you make any statement and during questioning.**  
**Créole translation: Si ou pa kapab pèyé yon avoka, ou genyen dwa pou tribunal pèyé yon avoka pou ou, pou ki la avek ou avan ké ou désidé pou ou répon'n kèsyon ké yo ap posé ou.**

- 5) If at any time during the interview you do not wish to answer any questions, you are privileged to remain silent.

Créole translation: Si pandan ké yo ap pozé ou késyon, é ou pa ta renmén répon'n késyon ankô, you genyen dwa pou ou pa di anyen ankô.

- 6) I can make no threats or promises to induce you to make a statement. This must be of your own free will.

Créole translation: Mwen pa ka fé ou pé, é mwen pa kap ofri ou anyen pou ankourajé ou pale. Sé ou vlé pale pou kont ou pou ou palé.

- 7) Any statement can be and will be used against you in a court of law.

Créole translation: Tout sa ké ou di, yo ka utilize li kont oumen'm é yo pwal utilizé'l kont ou pou yo kondané ou nan tribunal.

If the warning was accurately translated like in the above, the Defendant would have never waived that fundamental right to talk without the presence of an attorney. Now comparing the verbatim translation of what Detective Désert told the Defendant in Créole with the English version of the Standard Miranda warning above.

Interpreter: Mwen se dépité, Patrick Désert. Mwen pral li tout yo ki antre yen ave ou. Ou gen dwa pou rété an sil ans, ok ou Pa bezwen reponn oken kesyon. Ou Konprann sa?

English translation: I am Deputy Patrick Désert. I am going to read all they that enter with you. You have right to say in silent, ok you don't need to answer any question. You understand that?

Interpreter: Ou konprann sa m di ou la? Si ou pa ka li, si out to gen paske ou konnen tou bagay avoka fé ou ka péyé. Pandan nap pale la gen tout privilej pou lan ou kab pou mwen pa bezwen pale anko ou we

sa m di ou fosé. Epi pandan nap pale mwen pa ka fundamental error ou okenn pwomes.

English translation: You understand what I am saying? If you can't do it, if you had because you know everything a lawyer you have to pay. While I am speaking have all privileges that in you can for me don't need talk again you we what I am saying to you force. Again while I am speaking I can't do you any promises.

Interpreter: Tout sa mwen sot di yo nan sa, mwen pral fé ou siyen ni. Siyati ou vle di wi mwen te li ou yo e wi ou konprann yo. Ou konprann sa mwen di ou la?

English translation: Evrything that I just told you, I am going to make you sign it. Your signature means yes I read them to you and yes you understand them.

As it can be seen, the translation from the record indicates that there was a miscommunication in the translation of the Miranda Warning from Detective Patrick Désert, to the Defendant. It was like day and night where the translation of the Miranda Warning from the detective was very difficult to be understood even by an English speaking person.

Before trial, defense counsel was well aware of the content of the Defendant's interview to the police in which the Defendant admitted that he had sexual intercourse with the victim. He further gave details about each encounter and still, defense counsel made no effort to secure her own interpreter.

The record does not reflect whether defense counsel ever investigated the background of the Defendant, his upbringing and his level

of education to ascertain whether he was competent enough to waive his right to remain silent.

Had she done so, she would have discovered that the Haitian people in general are afraid of the police, because of their past experience under a brutal government in Haiti. This alone would have explained why he volunteered to tell on himself. Additionally, because the interview was poorly conducted, it can be seen that the way Detective Désert administered the Miranda Warning, it placed the Defendant in fear, particularly where Detective Désert told him that "I am going to make you sign it."

Following that statement, the Defendant felt compelled to sign the form and began telling on himself like a child and answered yes to every following question. He believed if he did not sign and told on himself they will kill him.

Furthermore, had defense counsel investigated his level of education, she would have discovered that the Defendant is mentally retarded with barely a third grade education and with a mental capacity of a five year old child. Then defense counsel would have ordered a psychological evaluation coupled with an IQ test.

A very low IQ result along with the psychologist's report indicating

that he is indeed mentally retarded, it would have been ground for defense counsel to file a Motion to Suppress his confession, because his mental retardation would have made him incompetent to waive his right to remain silent. That Motion would have been granted and changed the outcome.

Defense counsel never fully investigated the content of the translation of the Miranda Warning whether it was accurate or properly administered. Had she done so, she would have discovered that the warning was done in violation of the Defendant's constitutional right as indicated by Detective Désert's inaccurate translation.

Counsel's inaction of failing to file a Motion to Suppress and or obtain a suppression hearing fell well below the standard of the professional norms in effective representation, which deprived the Defendant of a right to a fair trial.

A competent counsel would not have failed to suppress the Defendant's interview. Instead, a proficient attorney would have recognized the Miranda violation through the inconsistencies in the translation and insured that a suppression hearing was held. Prejudice to the Defendant is therefore presumed.

The U.S. Court of Appeals in its review of the record may have overlooked the facts stated above supporting the Petitioner's contention

that counsel was indeed ineffective.

Here, the District Court in its review of the full transcript of the interview as ground to deny relief, failed to indicate the inaccuracy of the Créole translation of the Miranda Warning. Had the translation been accurate, the Petitioner would have never agreed to waive his right to remain silent, to have an attorney present nor to sign any waiver form. The District Judge mistakenly focused only on the Petitioner's answers to the police, but not on the Miranda Warning translation which was the focus or the central point of the issue.

The Petitioner as a pro se litigant understood that once his 3.850 Motion for post Conviction Relief was denied, and by giving notice to the trial Court that he is appealing the denial of the issues presented, it was sufficient for the denial of all the available State Court remedies on all the issues. Therefore, his Motion was supposed to be construed liberally as an unskilled person in the law. To deny him the opportunity for this issue to be heard on appeal, a fundamental miscarriage of justice would result. *Martinez v. Ryan*, 566 U.S. 1, 16 (2012); *Coleman v. Thompson*, 501 U.S. 772, 749-50 (11<sup>th</sup> Cir. 1991); *Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966); *Stancle v. State*, 917 So. 2d 911, 913 (Fla. 4<sup>th</sup> DCA 2005).

With respect to Question Three, the record does not indicate that



defense counsel ever told the Appellant that he has the right to testify on his own behalf. However, the record indicates that the Petitioner indeed was misled by defense counsel when she falsely told the Petitioner that “the only way for him to be able to testify on his own behalf was if he opted for a bench trial.” That decision not to testify was predicated on the above misinformation told to him by defense counsel.

Had he known he has a fundamental right to testify in front of a jury, he would not have waived such a right. *Chacon v. State*, 735 So. 2d 569, 570 (Fla. 2d DCA 1999); *Norton v. State*, 851 So. 2d 862, 863 (Fla. 2d DCA 2003); *Lara v. State*, 528 So. 2d 984, 984-85 (Fla. 3d DCA 1988).

The record also indicates that the Amended Information was substantial, making it more difficult for defense counsel to properly defend his client which would have required a change in defense strategy. It would have also required by due process to have a new waiver signed and be rearranged and repled.

The record also does not reflect that the Petitioner was colloquied by the Judge on that subject to make sure that the decision was voluntarily and intelligently made. Therefore, it was unreasonable for defense counsel to have allowed the Petitioner to waive his fundamental right to testify on his own behalf.

The U.S. Court of Appeals may have overlooked the above facts when the decision was made to deny the Petitioner the right to appeal the District Court's erroneous denial resulted in a fundamental miscarriage of justice. This Honorable U.S. Supreme Court should therefore accept jurisdiction to correct such gross miscarriage of justice.

With respect to Question Four, it is unreasonable for the U.S. Court of Appeals to conclude that the trial Court's colloquy confirms that Mr. Pierre knowingly, intelligently and voluntarily waived his right to a jury trial, whereas a review of the colloquy clearly demonstrates that it was inadequately conducted for the following reasons:

Trial Judge never inquired about the Petitioner's level of education to ascertain whether he was competent enough to understand what a jury trial is to waive it. Had the Judge done so, he would have discovered that Mr. Pierre is mentally retarded, having a severe cognitive deficiency with barely a third grade education. Someone with such a low level of education is deemed incompetent to voluntarily waive such fundamental right. Therefore, it was unreasonable for the Judge to have neglected to make sure of such an important inquiry, and for defense counsel to remain mute, not bringing this fact to the Judge's attention was not reasonable.

Furthermore, the Court should have ordered a mental evaluation as

well as an IQ examination before allowing Mr. Pierre to waive or accept his waiver. In the absence of the above, the waiver could not be deemed voluntarily made. Additionally, at no time during the entire proceeding, defense counsel ever made an inquiry as to Mr. Pierre's level of education to ascertain whether he was able to comprehend the process, the difference between a jury trial and a bench trial, the advantages and disadvantages between the two. Certainly, a mentally retarded person like Mr. Pierre can't comprehend that and to be noted, he is not an English speaker, does not understand it, can't read nor write it.

Without considering the above facts, it is ~~hard~~ to comprehend where the U.S. Court of Appeals derived its conclusion from. That decision by the Court to deny the Petitioner the right to appeal is in conflict with other U.S. Court of Appeals with respect to the issue that a mentally retarded is deemed incompetent to knowingly, voluntarily, and intelligently waive any right. Such issue has already been decided and the U.S. Court of Appeals, 11<sup>th</sup> Circuit failed to comply with the Stare Decisis Doctrine, thus created a new conflict with such prior ruling, and needs to be rectified by this Honorable U.S. Supreme Court, because, it was predicated on a deficient act of counsel, and but for that deficient act of counsel he would not have waived his right to a jury trial. The record does not reflect that the Petitioner

was ever asked if he wanted a bench trial or a trial by a jury of his peers.

With respect to Question Five, during the course of the trial, the prosecutor repeatedly made reference to the plea offer of seventeen years that the Petitioner had rejected. However, the Petitioner initially stated that he would accept the offer, but during the Judge's colloquy of Petitioner, he changed his mind and turned down the offer and the Judge set the case for trial.

In light of *Cottle v. State*, 733 So. 2d 963 (Fla. 1999), failure to properly convey a plea offer can constitute ineffective assistance of counsel.

Here counsel was obligated to explain to the Petitioner the pros and Cons of going to trial, the strength and weakness of the State's case against him as well as how much time he would face in the event he is found guilty. Had defense counsel explained to him how strong the State's case was against him and strongly advised him to accept the plea because she could not guaranteed him the case can be won, the Petitioner would have never changed his mind to proceed to trial.

Counsel, therefore, failed to do the above, a fact that the U.S. Court of Appeals has overlooked. As a consequence of counsel's ineffectiveness, the Petitioner is serving 8 more years than the 17 years that was offered to

him, a total of 47% more.

Furthermore, the Judge's colloquy was inadequately conducted due to the fact that the Court never made an inquiry as to the Petitioner's voluntariness of rejecting the plea. The Judge was required to inquire as to the Petitioner's cognitive development whether he was able to comprehend basic intellectual communication. The Judge should have ordered an IQ examination coupled with a psychological evaluation to ascertain whether he was competent enough to making such critical decision.

The Petitioner with barely a third grade education is considered illiterate. His communication clearly demonstrates that he is mentally retarded. By not ordering a psychological evaluation on the Petitioner before accepting his decision to reject the plea denied him due process of law. The Petitioner's constitutional rights were substantially violated as indicated by the record.

**Counsel was ineffective for failing to object to the trial Court's misadvising the Petitioner about having to plea guilty in order to accept the plea which led him to reject the plea.**

Trial Court did allow the Petitioner to file an Amended Motion on this issue, however before the Petitioner could amend the issue, the State filed a judicial notice where the Court accepted the State's judicial notice as an amended to the State's Response and subsequently summarily denied the

## CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Pierre Luckner

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Date: 6 - 15, 2021