No. 21-5243

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES GIVENS
Petitioner

vs.

STATE OF FLORIDA
Respondent(s)

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT
(MIDDLE DIST. OF FLORIDA)
and
THE 11TH CIRCUIT COURT OF APPEAL'S
(DENIAL OF A COA)

PETITION FOR WRIT OF CERTIORARI

CHARLES GIVENS DC# 615984
Okeechobee C. I.
3420 N.E. 168th Street
Okeechobee, Florida, 34972

QUESTION(S) PRESENTED

1. WHETHER THE ELEVENTH CIRCUIT COURT OF APPEALS ERRED IN ISSUING AN UNELABORATED OPINION DENYING A CERTIFICATE OF APPEALABILITY AFTER DENIAL OF A COA BY THE DISTRICT COURT

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 to the proceeding in the court whose judgment is the subject of this petition is as follows:
* Mark S. Inch, Sec'y, Fl. Dep't of Corr.

RELATED CASES

1. United States Court of Appeals for the Eleventh Circuit
Charles Givens. v. Sec'y, Dep't of Corrections, Attorney General, State of Florida, et al;
Case No.: 20-14112-A
Disposition: Unelaborated denial of COA on April 6, 2021.

2. United States District Court (Middle District of Florida)
Charles Givens. v. Sec'y, Dep't of Corrections, et. al.
Case No.: 5:17-CV-160-Oc-10PRL
Disposition: Denied with no COA on September 29, 2020

3. 5th Judicial Circuit Court (Lake County)
State of Florida v. Charles Givens
Case No.: 2012-CF-1065-A
Judgment: June 11, 2013

4. 5th District court of Appeal
Charles Givens v. State of Florida
Case no.: 5D14-0778
Disposition: Per Curiam aff'd. w/out opinion on May 12, 2015.

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28 U.S.C. § 1254(1)

28 U.S.C. § 2253(c); (c) (2)

28 U.S.C. § 2254

Rule 22 (b) (2) FRAP

Eleventh Circuit Rule 22-1

Eleventh Circuit Rule 27-2

Rule 12 (b) (6) FRAP

TABLE OF AUTHORITIES

CASES

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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

[✓] is unpublished

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The opinion of the United States District Court appears at Appendix C to the petition and is

[✓] is unpublished.

JURISDICTION

[✓] For cases from federal courts:
The date on which the United States Court of Appeals decided my case was April 6, 2021.

[✓] No petition for rehearing was filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1), and *Hohn v. United States*, 524 U.S. 236, 238, 252 (1998) (United States Supreme Court has jurisdiction under 28 U.S.C. §1254(1) to review denials of an application for a Certificate of Appealability by a Circuit Judge or panel).

STATEMENT OF THE CASE AND FACTS ALLEGED ON HABEAS CORPUS PETITION

Petitioner was charged by information in Lake County, Florida, with one count of Second -Degree Murder. On April 29, 2012, Petitioner walked into the Leesburg Police Department and told officers that he had just killed his wife, Carol Benton. He provided the officers with the victims address and the police found her body, which had multiple puncture wounds in her chest and back. Petitioner informed the police that the victim had picked up a knife and came at him in a way that suggested she was going to stab him. He informed the police that he "blanked out" and did not remember much of what happened.

Petitioner's trial commenced on June 10, 2013. Officer Gus Escalante of the Leesburg Police Department testified that shortly after 4:30 p.m., on April 29, 2012, Petitioner entered the police station and stated he had just killed his wife. Later, Petitioner told Officer Stevens that he had just killed his girlfriend by stabbing her to death. Petitioner had blood on his shirt, shoes and shorts. Officer Escalante drove to the victim's address and, in approaching the apartment, he noticed what appeared to be blood leading up to the apartment. He testified he did not enter the apartment but could see the victim lying on the floor. Sgt. Allen Carter testified that he was one of the first two police officers to arrive on the scene. He noticed blood drops leading to the apartment. The apartment door was open 2-3 inches and he entered and saw the victim. There were no signs of life and it was apparent the victim had bled profusely. Later, the victim was pronounced dead. He took photos of the crime scene which were published to the jury.

Crime scene investigator Amanda Wolford testified that she had taken photos of the crime scene, which were published to the jury. Ms. Wolford also testified she had collected physical evidence from the scene including a knife found in the sink. She did not find anything else in the sink and there was nothing

in the drainer. She stated she did not find any other knife outside of a drawer. Ms Wolford checked the knives in the drawers and found they did not have any blood on them. There was a question of whether Petitioner lived at the residence, but Ms. Wolford did not find any male clothing in the house. She did, however, find some items belonging to Petitioner in a utility closet outside the residence. Ms. Wolford did not find any sign of forced entry.

EMT Mark Fuser testified that he arrived with the ambulance at the Leesburg Police Department and found Petitioner sitting in a chair. Initially, Petitioner would not tell them what happened. He did, however, state he had killed his wife.

Police officer Jeremy Stevens testified he was with Officer Escalante when Petitioner entered the police station. Petitioner informed them he had just killed his wife. They sat him in the lobby and he again told them he had killed his wife. Officer Stevens testified Petitioner had a puncture wound on his leg. Petitioner had blood on his pants and shoes. Before he was transported to the hospital, Petitioner was advised of his *Miranda* [1] rights, and he agreed to speak with Officer Stevens. Petitioner was brought to the hospital and Officer Stevens went to the hospital and interviewed Petitioner. Officer Stevens recorded the interview.

During the trial on June 10, 2013, Officer Stevens' interview of Petitioner was played to the jury and contained an [alleged] confession by Petitioner. After the audio recording was played, the trial court took a recess for about twenty minutes. When the recess concluded, defense counsel requested another recess for approximately five minutes. After the second recess, defense counsel informed the court Petitioner wanted to enter a plea to the court. Court recessed for the evening.

On June 10, 2013, Petitioner signed a Waiver of Rights and Agreement to Enter Plea, and pleaded guilty to the charge solely on the advice of counsel. The

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[1] *Miranda v. Arizona,* 384 U.S. 436 (1966)

Waiver of Rights contained a statement saying Petitioner requested a term of imprisonment of 35 years, but he understood the judge could enter any legal sentence up to life imprisonment. There was a line on the plea agreement for Petitioner to initial and he did. At that point, the trial court held a change of plea hearing.

During the colloquy on June 11, 2013, Petitioner stated he read and understood the Waiver of Rights and had signed it the night before and initialed any subsequent changes that day. He stated he understood he was waiving any defenses he had and that he was entering the plea freely and voluntarily. He stated it was his decision to enter the plea based upon advice from counsel. Petitioner further stated under oath that he understood he could be sentenced to Life in prison. He acknowledged he was entering a guilty plea because he was guilty of the crime. There was a discussion of the various plea negotiations and the prosecutor informed the court the negotiations were unsuccessful because the victims family would settle for nothing less than life. When asked by the prosecutor, Petitioner stated he had been unaware of the damage he had done to the victim, but he did not have any questions about what was discussed in the courtroom.

On October 21, 2013, the trial court sentenced Petitioner to life in prison. On October 25, 2013, Petitioner wrote a letter to the trial court stating it was never his intention to plea to the court. He accused defense counsel of misleading him by informing him the trial court would rule in his favor and he would not receive a life sentence. The trial court construed Petitioner's letter as a motion to withdraw plea and set it for a hearing and appointed conflict counsel. The trial court held a hearing on March 6, 2014, at which time Petitioner and trial counsel testified. On March 7, 2014, the trial court entered an order denying Petitioner's motion to withdraw plea.

Petitioner filed an appeal with the Fifth District Court of Appeal, and the Office of the Public Defender filed a brief alleging trial court error in denying motion to withdraw plea. The Public Defender also filed a motion to withdraw [as counsel] pursuant to *Anders v. California,* 386 U.S. 738 (1967). Petitioner filed a *pro se* supplemental brief alleging the trial court erred in not advising him of the potential for a life sentence; by denying his motion to withdraw plea; and for reclassifying his conviction from a first-degree felony to a life felony. On May 12, 2015, the Fifth DCA per curiam affirmed Petitioner's judgment and sentence. *See, Givens v. State,* 166 So.3d 805 (Fla. 5th DCA 2015). The Mandate issued on June 5, 2015.

Petitioner filed a *pro se* motion for post-conviction relief (under Fla. R. Crim. P. 3.850) on December 10, 2015, raising five (5) grounds of ineffective assistance of trial counsel and one (1) ground of prosecutorial misconduct. On March 7, 2016, the trial court entered an order summarily denying the motion without an evidentiary hearing. Petitioner filed a motion for rehearing on March 22, 2016, which was denied on March 30, 2016. Petitioner appealed and the Fifth DCA per curiam affirmed the trial court on June 21, 2016. *See Givens v. State,* 216 So.3d 639 (Fla. 5th DCA 2016). The Mandate issued on July 15, 2016.

Petitioner filed a successive motion for post-conviction relief on August 15, 2016, which was dismissed on August 24, 2016, since the grounds raised had already been addressed by the motion to withdraw plea and previous motion for post-conviction relief. Petitioner filed a *pro se* motion for rehearing, which was denied by the trial court. Petitioner appealed. The Fifth DCA per curiam affirmed the trial court's dismissal of the successive motion on February 7, 2017. *See Givens v. State,* 229 So.3d 1247 (Fla. 5th DCA 2017). The Mandate issued on March 3, 2017

Petitioner filed his Petition for Writ of Habeas Corpus on April 5, 2017. In it he raised seven (7) grounds for relief:

1. He is actually innocent of second-degree murder.
2. Trial counsel was ineffective for failing to depose the State's witnesses.
3. Trial counsel was ineffective for failing to develop a self-defense strategy.
4. Trial counsel was ineffective because she was not assigned to his case long enough before going to trial.
5. His plea was involuntary because he was coerced by trial counsel.
6. His speedy trial rights were violated when trial counsel waived them without his permission.
7. Trial counsel was ineffective for failing to object when the wrong evidence (i.e., the knife allegedly used in the incident) was introduced at trial.

The State contended that Grounds 1, 2, 4, and 6 were not properly exhausted in the State courts and are without merit; and Grounds 3, 5, and 7, though exhausted, are without merit.

On September 29, 2020, the District Court (without a magistrate's report and recommendation) issued an 'Order Denying Petition'. On October 27, 2020, Petitioner filed a Notice of Appeal to the Eleventh Circuit Court of Appeals (case no.: 20-14112-A), and filed a COA brief on January 7, 2021. Without elaborating, the Eleventh Circuit Court denied petitioner's Application for a Certificate of Appealability on April 6, 2021.

This Petition for Certiorari timely follows.

REASONS FOR GRANTING THE PETITION

INTRODUCTION

On October 27th , 2020, pursuant to 28 U.S.C. § 2253, Rule 22 (b) (2) FRAP, and Eleventh Circuit Rule 22-1, Petitioner, Charles Givens (hereafter "Petitioner") moved the 11th Cir. Court for the issuance of a Certificate of Appealability ("COA"), following denial of a COA request to the District Court. [Appendixes G, B].

On April 6, 2021, the Eleventh Circuit Court of Appeals issued an unelaborated decision to deny a COA.

STANDARD OF REVIEW FOR A COA

After denial of an application for COA to the district court, a petitioner may petition (file an application) to the [Eleventh] Circuit Court of Appeal to obtain the COA. The Appellate Court may issue a COA from the denial of a §2254 petition "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). The applicant must show that "reasonable jurists could debate whether (or, for that matter, agree that) his petition should have been resolved in a different manner or that the issues he presented are 'adequate to deserve encouragement to proceed further'" *Slack v. McDaniel,* 529 U.S. 473 (2000)(quoting *Barefoot v. Estelle,* 463 U.S. 893 & n. 4 (1983).

Applying this standard, Petitioner believes he has shown that "reasonable jurists could debate the District Court's resolution of his substantive grounds for federal habeas corpus relief, or at a minimum, that his grounds for relief are adequate to deserve encouragement to proceed further."

The Petitioner only raised three (3) grounds (out of 7) on his COA (Grounds 3, 5 and 7) of his original habeas §2254 petition.

ARGUMENT

The standard to acquire a COA is "relatively low". *See, e.g. Jennings v. Woodford,* 290 F. 3d 1006, 1010 (9th Cir. 2002)[citing *Slack* at 483]. Moreover, because the COA ruling is not an adjudication of the merits of the appeal, it does not require a showing that the appeal will succeed. *Miller -El v. Cockrell*, 123 S. Ct. 1029, 537 U.S. at 337.

On Petitioner's COA, he argued the following:

GROUND THREE - Jurists of reason could disagree and find debatable the District Court's resolution of his constitutional claim of Ineffective Assistance of Counsel, where counsel failed to discuss a trial strategy of self-defense with him prior to trial, and that jurists of reason could conclude the merits of the argument made in Ground Three are adequate to proceed further.

In Petitioner's §2254 habeas petition, for ground three the Petitioner argued that his position was always self-defense, and that at no time before trial or even at trial did his attorney, Ms. Hammond ever discuss any trial strategies surrounding presenting a self-defense case at trial. In fact, also arguing that his attorney did not ever even visit him in the County Jail for over a year after his arrest. The Petitioner had even brought his attorney's "lack of participation" [sic] in his self-defense case to the judge's attention at a pre-trial hearing, placing the I.A.C. firmly on the record. He informed the trial court of counsel's violation of his rights by filing crucial motions without his knowledge or consent, and how she was not preparing him for trial. He also claimed that he told the judge that counsel was not providing discovery information or obtaining the services of necessary experts to prove his actions were in self-defense. He argued on his habeas that but for counsel's deficient performance, he would not have entered his guilty plea (in the middle of

trial), but would have proceeded with the trial, confident that counsel would have some sort of self-defense strategy to present. The mere fact counsel told the jury that "There is the defense of self-defense and Mr. Givens raised that defense the day he gave his statement to the police and he will give it to you again during his trial ... she did threaten him with a knife and attacked him ..." [DE #24, pg. 11] in no way refutes his claim, as she had never discussed with Petitioner whether he was to be taking the stand, nor had she prepped him to do so, and she had no other witnesses at all to testify to such. In no way does this refute that she was ineffective for going into trial unprepared for a self-defense strategy - which is exactly why (after his out-of-court meetings with his attorney in the middle of trial) he panicked when he realized she had no defense to present. This led him to have to throw himself on the mercy of the court by changing his plea to guilty, in the middle of trial ... . Something he had never previously contemplated. *See,* [DE #24, pg. 10-11; State court's postconviction denial quotes].

Therefore, Petitioner has met the *low* standard of *Slack v. McDaniel,* 529 U.S. 473, 478 (2000).

This Honorable Court should grant Certiorari on this ground, and remand to the District Court for an evidentiary hearing or the 11th Circuit for briefing.

GROUND FIVE - Jurists of reason could disagree and find debatable the District Court's resolution of his constitutional claim of ineffective assistance of counsel where the claim was that Petitioner's attorney, in the middle of trial, after telling Petitioner that other than him testifying directly counsel had no other evidence /testimony to present a self-defense defense, that Petitioner's only other option was to immediately take a plea to avoid a life sentence; and that the judge would not give him a life sentence if he did so. Whether he was told by the Court that he was "facing" up to life if he pled openly (which is immaterial also because he was always facing up to life - plea or no plea) has no bearing on this claim. What he

was "facing" by law and what he was told by counsel (that he wouldn't get life if he pled guilty) are two completely different things. The issue is still a debatable one.[2] And since the issue goes to "credibility", it is improper for a court to weigh credibility using only a cold transcript. An evidentiary hearing must have been held to determine such by the federal court (NOTE: Petitioner did not receive an "evidentiary" hearing with counsel examining his previous attorney(s), on this claim - just oral arguments with questions from the judge). [DE #24, pgs. 14-21]. Therefore an evidentiary hearing is proper in the federal court.

In the least, Petitioner has met the *low* standard of *Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

This Honorable Court should grant Certiorari on this ground, and remand to the District Court for an evidentiary hearing or to the 11th Circuit for briefing.

GROUND SEVEN - Jurists of reason could disagree and find debatable the district court's resolution of his constitutional claim of ineffective assistance of counsel, for failure to object to the wrong evidence being entered into the trial.

The debatable issue raised was that the State introduced a weapon that was not the weapon used in this incident.

At [DE #24, pg. 20] the district court made an unsupported assertion (that trial counsel's objection - had one been made - "could not be supported by competent evidence or argument"). That, in and of itself, is speculative as to what such an objection would have accomplished. The proper/correct weapon is almost always crucial to the defense to prove material facts, especially a/the murder

[2] As stated by the district court [DE #24, pg. 13] the Petitioner had already signed a 30-year plea deal that was rejected by the prosecutor (during trial), so noone in their right mind (or not coerced) would not continue the trial. No reasonably intelligent person would then open plea, knowing the judge is now going to give between 30 and life, a life sentence either way to a man of Petitioner's age.

weapon itself. This alone is debatable, and would make for a good argument on appeal.

Petitioner has met the *low* standard of *Slack v. McDaniel*, 529 U.S. 473, 478 (2000).

This Honorable Court should grant Certiorari on this ground, and remand to the District Court for an "actual" evidentiary hearing with counsel to represent the Petitioner, or to the 11th Circuit Court for briefing.

CONCLUSION

The Petition for Writ of Certiorari should be granted. The case should be remanded to the District Court for an evidentiary hearing with counsel to represent the Petitioner, or it should be remanded to the Eleventh Circuit Court of Appeals for briefing on the three (3) claims (out of seven originally raised), as Petitioner has met the low standard of *Slack*.

Respectfully Submitted,

/s/ Charles Givens

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