No. 21-5513

IN THE

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER M.

SECKINGTON- PETITIONER

(Your Name)

vs.

MARK INCH, SECRETARY,

FL DEPT. OF CORRECTIONS, et.al- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA

(Name of Court that Last Ruled on Merits of Your Case)

PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER M. SECKINGTON

(Your Name)

Hamilton Correctional Institution

11419 SW CR 249

(Address)

Jasper, FL 32052-3735
(City, State,Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Question 1:

What must a Defendant show in order to demonstrate an Eighth Amendment violation where Petitioner was sentenced to in essence life for possession of over one tablespoon of urine, an unusable liquid, that tested positive for a trace amount of amphetamine.

Question 2:

Is it contrary to or involve an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States for Florida Law, Wilder v. State, 194 So.3d 1050 (Fla. 1st DCA 2016) which held that the weight of ANY unusable/unmarketable mixture or substance, such as "urine" CAN be used to convict a defendant for the "King Pin" crime of trafficking in amphetamine, and over rule Federal Law, Chapman v. United States, 111 S. Ct. 1919, 1924 (1991) a U.S. Supreme Court case which held "Congress adopted a market-oriented approach to punishing drug trafficking under which the total quantity of what is DISTRIBUTED... is used to determine the length of the sentence" when unusable mixtures are never DISTRIBUTED?

Question 3:

What must a defendant show in order to demonstrate a Sixth Amendment violation where Defense Counsel files a Motion to Withdraw due to "Ethical Conflict" which claims "the Attorney/ Client Relationship is Irrevocably Broken" 61 days before trial, then the trial judge grants the motion to withdraw and the same trial judge then reappoints the same defense counsel 19 hours before trial absent a knowing and intelligent waiver of the defendant's right to conflict-free counsel when defendant verbally objected twice to the reappointment, he was told to "shut up or you will be going to trial tomorrow with no counsel."

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

RELATED CASES

State v. Seckington, No. 13-2709-CFA 18th Judicial Circuit Court for Seminole County, Florida
Judgment entered October 29, 2014

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Seckington V. State	No. 5D14-4245	Fla. 5th DCA	10/20/15
Seckington V. State	No. 5D16-0273	Fla. 5th DCA	04/05/16
Seckington V. State	No. 5D16-3987	Fla. 5th DCA	01/25/17
Seckington V. State	No. 5D17-1865	Fla. 5th DCA	09/14/17
Seckington V. State	No. 5D17-2623	Fla. 5th DCA	12/12/17
Seckington V. State	No. 5D17-2845	Fla. 5th DCA	10/18/17
Seckington V. State	No. 5D17-3564	Fla. 5th DCA	12/15/17
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Seckington V. State	No. 5D17-4110	Fla. 5th DCA	01/22/18
Seckington V. State	No. 5D18-0037	Fla. 5th DCA	02/02/18
Seckington V. State	No. 5D18-1195	Fla. 5th DCA	06/22/18
Seckington V. State	No. 5D18-1739	Fla. 5th DCA	07/03/18
Seckington V. State	No. 5D18-1998	Fla. 5th DCA	07/13/18
Seckington V. State	No. 5D18-2306	Fla. 5th DCA	8-9-18
Seckington V. State	No. SC18-0645	Fla. Supreme Ct.	09/11/18
Seckington V. State	No. SC18-1547	Fla. Supreme Ct.	03/26/19
Seckington V. State	No. SC18-1572	Fla. Supreme Ct.	12/04/18
Seckington V. State	No. 6:18-cv-828-ORL-31 DCI	U.S. Dist. Ct.Middle Dist.	07/11/18
Seckington V. State	No. 6:18-cv-1530-ORL-18KRS	U.S. Dist. Ct.Middle Dist.	09/26/18
Seckington V. State	No. 6:18-cv-1531-ORL-41 NRS	U.S. Dist. Ct.Middle Dist.	unknown
Seckington V. State	No. 6:18-cv-1531-ORL-41 KRS	U.S. Dist. Ct.Middle Dist.	02/14/19
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Seckington v. Mark Inch, No. 20-11857-E, U.S. Court of Appeals for the Eleventh Circuit.
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Seckington v. Mark Inch, No.20-13899-E, U.S. Court of appeals for the Eleventh Circuit.
Judgment entered April 2, 2021

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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 2020 U.S. App. LEXIS 27123; 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 _____ 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 _____ court 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

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was April 2, 2021.

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

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: MAY 25, 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 for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 6 Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment 8 Bail Punishment.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment 14

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Florida Statute 893.135 (7)

(7) For the purpose of further clarifying legislative intent, the Legislature finds that the opinion in Hayes v. State, 750 So.2d 1 (Fla. 1999) does not correctly construe legislative intent. The Legislature finds that the opinions in State v. Hayes, 720 So.2d 1095 (Fla. 4th DCA1998) and State v. Baxley, 684 So.2d 831 (Fla. 5th DCA1996) correctly construe legislative intent.

Florida Statute 893.135 (1)(f)

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(f) 1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of amphetamine, as described in s. 893.03(2)(c)2., or methamphetamine, as described in s. 893.03(2)(c)5., or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture of amphetamine or methamphetamine, commits a felony of the first degree, which felony shall be known as "trafficking in amphetamine," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity involved:

a. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of $50,000.

b. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of $100,000.

c. Is 200 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of $250,000.

2. Any person who knowingly manufactures or brings into this state 400 grams or more of amphetamine, as described in s. 893.03(2)(c)2., or methamphetamine, as described in s. 893.03(2)(c)5., or of any mixture containing amphetamine or methamphetamine, or ~~phenylacetone, phenylacetic acid, pseudoephedrine,~~ or ephedrine in conjunction with

other chemicals and equipment used in the manufacture of amphetamine or methamphetamine, and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of amphetamine, a capital felony punishable as provided in ss. 775.082 and 921.142. Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

Florida Rule Of Court

3.190. PRETRIAL MOTIONS.

(c) Time for Moving to Dismiss Unless the court grants further time, the defendant shall move to dismiss the indictment or information either before or at arraignment. The court in its discretion may permit the defendant to plead and thereafter to file a motion to dismiss at a time to be set by the court. Except for objections based on fundamental grounds, every ground for a motion to dismiss that is not presented by a motion to dismiss within the time provided herein, shall be considered waived. However, the court may at any time entertain a motion to dismiss on any of the following grounds:

(4) There are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the defendant.

U.S.S.G. § 2D1.1 2D1.1

The term "mixture" in U.S.S.G. § 2D1.1 does not include unusable mixtures.

STATEMENT OF THE CASE

Question 1:

This claim was raised as Ground 7 of § 2254 (See Appendix G page 26).

About 8 years ago Petitioner was arrested, tried and convicted for trafficking in amphetamine which carries up to a 30 year sentence.

The evidence at trial claimed that Petitioner possessed or manufactured over one tablespoon (14 grams) of urine or unknown unusable liquid that tested positive for a trace amount of amphetamine.

In this case the DEA Lab and the FDLE Lab did not produce ANY proof of usable or marketable amphetamine.

In this case the DEA Lab and the FDLE Lab did not produce ANY proof that the unknown liquid was NOT urine.

Petitioner who was 55 received in essence a life sentence.

Petitioner is claiming the sentence he received for possession or manufacturing liquid waste amounts to a constitutional violation of the "Cruel and Unusual Punishment" 8th Amendment.

Question 2:

On September 17th, 2013 a search warrant was executed and a DEA Agent collected more than a tablespoon (14 grams) of urine or an unknown unusable liquid that field tested positive for a trace amount of amphetamine and sent it to the DEA Lab for further testing.

The DEA Chemist testified that the unknown liquid weighed over 14 grams and tested positive for a trace amount of amphetamine and was never told to determine how much usable amphetamine was in the mixture or determine what the liquid was.

The Trial Judge and State Attorney told the Jury that it does not matter what the liquid is as long as it tests positive for amphetamine and weighs more than 14 grams, that is all that is required for trafficking in amphetamine.

The Petitioner claims the unknown unusable liquid is urine, the DEA Agent said it looks like

toxic chemicals but has no scientific proof.

Florida Statute 893.135(7) states that; "the opinion in State v. Hayes, 720 So.2d 1095 (Fla. 4th DCA 1998) is legislative intent," which when summarized states that the mixture or substance must be usable/marketable to establish the threshold weight for trafficking relying on Chapman and U.S. v. Rolande-Gabriel, 938 F.2d 1231(11th Cir. 1991) as the Court's authorities.

The evidence that is most favorable to the State is that the unknown liquid mixture or substance is unusable/unmarketable and therefore Petitioner is not guilty of trafficking in amphetamine because the trafficking in amphetamine crime never occurred.

When Petitioner presented this argument to the Trial Court in the form of a 3.850 motion the Judge stated, "Florida Court's are not bound by United States Supreme Court cases." Inferring Wilder is controlling whether Petitioner possessed over 14 grams of amphetamine "rejecting the use of the market-oriented approach adopted in Chapman." (See Appendix D page 3).

The Florida 5th DCA agreed with the Trial Court. Petitioner's ground 5 of his §2254 to the District Court was rejected claiming State law meaning Wilder is controlling. The District Court stated "Florida law allows for a Defendant to be convicted of trafficking in methamphetamine so long as there is some amount, no matter how small, of methamphetamine in a mixture" (See Appendix B page 16).

The 11th Circuit Court of Appeals agreed with the District Court, that urine, pool water, toilet water, waste water and dog crap can be used to establish the threshold weight of 14 grams for trafficking in amphetamine and sentence the accused up to 30 years as a "King Pin" drug trafficker for half a shot glass of urine (See Appendix A page 2).

However, the U.S. Supreme Court and most of the U.S Circuit Court's are in agreement that unusable/unmarketable mixtures cannot be used to establish the threshold weight for trafficking. The 11th Circuit has been using the "usable/ marketable rule" since 1991.

Question 3:

This claim was raised in the § 2254 as Ground 1 (See Appendix G page 6).

On 9-18-13 Petitioner was arrested for Count 1 Trafficking in Amphetamine and Count 2 Misdemeanor possession of cannabis and the Public Defenders Office was appointed and did nothing to prepare for trial. After about 15 days the Public Defender withdrew because of an unknown conflict of interest.

The Trial Judge appointed Regional Conflict Counsel who did nothing to prepare for trial for about 6 months. On or about 3-15-14 Petitioner hired private attorney Buckley Blankner for $10,000 who disappeared and did nothing to prepare for trial for about 90 days, then he reappeared in court and was promptly fired.

The Trial Judge then appointed Registry Attorney Justin Hausler on or about June 12th, 2014 who did not discuss the case with the Petitioner after June 12th, 2014 and did nothing to prepare for trial. On July 17th, 2014, Petitioner filed a demand for a "Nelson Hearing." (See Nelson v. State, 274 So.2d 256 (Fla. 4th DCA 1073) (Objection to Counsel's Conduct). (See Appendix "E" Exhibit A or ROA page 91) which was ignored by the Trial Judge. On August 12th, 2014, Hausler filed a Motion to Withdraw due to "Ethical Conflict" which claims "The Attorney/Client Relationship is Irrevocably Broken" (See Appendix "E" Exhibit C or ROA p. 97).

On August 20th, 2014 Petitioner filed a request for "Nelson Hearing."(See Appendix "E" Exhibit B, or ROA p.100) which was ignored by the Trial Judge. On 8-27-14 Defense Motion to Withdraw was granted by the Trial Judge. On 8-27-14 Petitioner requested conflict-free counsel to assist him in his preparation for trial which was denied by the Trial Judge and appointed Haulser as stand by counsel (See Appendix "E" Exhibit D or ROA p. 102). On September 8, 2014, Petitioner filed a request for a "Nelson Hearing." (See Appendix "E" Exhibit E or ROA 112) which was ignored by the Trial Judge. At a pretrial conference, on or about October 11, 2014, Petitioner requested a continuance to prepare for trial which the Trial Judge denied and ordered the trial to start the next day. Petitioner then requested conflict-free counsel other than Haulser who still had the unresolved "Ethical Conflict." The Trial

Judge stated that Haulser was stand by counsel and would be Petitioner's counsel to pick a Jury tomorrow morning. Petitioner again objected to Hausler's reappointment and the Trial Judge stated "Shut up or you will be going to trial tomorrow with no lawyer." Haulser had still done nothing to prepare for trial.

The Federal District Court Judge wrote in his order that "after a search of online records in Seminole County, Florida there is no record of Hausler's reappointment." (See Appendix B page 6). Hausler proceeded to trial 19 hours after his reappointment without doing anything to prepare for trial. Hausler still had the unresolved "Ethical Conflict" and "The Attorney/Client Relationship was Irrevocably Broken." Petitioner who was 55 years old was convicted and sentenced to in essence the rest of his natural life. Hausler had a duty to withdraw from representing Petitioner because of the unresolved "Ethical Conflict" but failed to do so. This resulted in Ineffective Assistance Counsel; I.A.C. and in essence the denial of counsel at trial.

The following is an extensive list of things Defense Counsel failed to do before and during trial because of the adverse affect of the "Ethical Conflict" that Hausler wrote about in his Motion to Withdraw as Counsel of Record 61 days before trial. (See Appendix "F")

REASONS FOR GRANTING THE PETITION

Question 1:

This United States Supreme Court should exercise its discretionary jurisdiction and grant the Petition for Writ of Certiorari for the following reasons:

The 11th Circuit Court of Appeal has entered a decision that Petitioner's case does not amount to "Cruel and Unusual Punishment" which is in conflict with the 4th U.S. Circuit Court on the same important matter. See Hart v. Coiner, 483 F.2d 136 (4th Cir. 1973) and the United States Supreme Court in Solem v. Helm, 463 U.S. 277, 77 L. Ed 2d 637, 103 S. Ct 3001(1983) which "remains the only case in which the United States Supreme Court declared a sentence unconstitutional based on its length."

According to Justice Kennedy, the 8th Amendment "forbids only extreme sentences that are grossly disproportionate to the crime." Helm at 288.

Petitioner was convicted and sentenced to in essence life for possessing or manufacturing an unknown liquid waste, which constitutes "extraordinary circumstances".

Petitioner is asking this Court to decide that his sentence is significantly disproportionate to the crime, and therefore prohibited by the 8th Amendment.

In Ingraham v. Wainwright, 430 U.S. 651, 667, 51 L. Ed 2d 711, 97 S. Ct. 1401 (1977) the U.S. Supreme Court held "Eighth Amendment imposes substantive limits on what can be made criminal and punished as such..." See also Robinson V. California, 37 U.S. 660, 8 L. Ed 758, 82 S. Ct. 1417 (1962) "Statute...violates the Eighth and Fourteenth Amendments.

Every citizen of the United States that was surveyed thinks it is "Cruel and Unusual Punishment" to sentence the accused to extremely long sentences or life for possessing or manufacturing something with no "Street Value" and will never find its way into the hands of amphetamine consumers.

If Courts are aloud to sentence probationers or defendants to life or extremely long sentences for possessing or manufacturing ANY MIXTURE, including Urine, that contains a trace amount of

dangerous illegal drugs, there are not enough prisons in America to hold all the violators in Central Florida alone.

Mr. Justice Brennan has observed "if there is a significantly less severe punishment to achieve the purposes for which punishment is inflicted, the punishment inflicted is unnecessary and therefore excessive."

Hart v. Coiner, 483 F.2d 136 (4th Cir. 1973) held "although the standard applicable under the 8th Amendment is one not susceptible to precise definition, there are several objective factors which are useful in determining whether the sentence in this case is constitutionally disproportionate. The test to be used is a cumulative one focusing on an analysis of the combined factors. The initial element to be analyzed in determining whether the punishment is constitutionally disproportionate is the repeatedly emphasized the element of violence and danger to the person. Another factor to be examined is the legislative purpose behind the punishment. A third objective factor is comparison of the accused's punishment with how he would have been punished in other jurisdictions. A comparison of punishment available in the same jurisdiction for other offenses is likewise a factor."

Petitioner could have been sentenced for manufacturing, 6 months.

In Petitioner's case the offense does not involve violence or danger towards other persons or property.

The legislative purpose for trafficking is "to punish severely those who deal in large quantities of dangerous illegal drugs." In Petitioner's case the State never proved there was ANY quantity of dangerous illegal drugs.

Comparing Petitioner's life sentence to those similarly charged in other jurisdictions, such as the Federal Court's in the Middle District of Florida in U.S v. Long, 958 F. Supp. 2d 1334 (M.D. Fla. 2013). Where Long manufactured about 2 grams of usable amphetamine and got caught with over the threshold amount of unusable liquid for trafficking. The District Court ruled the unusable liquid does not count towards trafficking and ordered re-sentencing for the manufacturing of 2 grams of

amphetamine.

The Seminole County, Florida Trial Court regularly sentences defendants to six months for manufacturing by the one-pot method. The in essence life sentence Petitioner received for allegedly attempting to manufacture a one day supply of amphetamine for one person simply because he was allegedly caught in the process is grossly disproportionate to those who committed the same crime but were able to discard the manufacturing chemicals prior to being caught. This is grossly disproportionate to those accused of the same misconduct and constitutes Cruel and Unusual Punishment.

United States v. Rosenberg,195 F.2d 583 (2nd Cir. 1952) held; "the test of 'Cruel and Unusual Punishment' that it shocks the conscience and sense of justice of the people of the United States, invites the criticism that it shifts the moral responsibility for a sentence from the conscience of the Judges to the 'common conscience'. The Reviewing Court before it reduces a sentence as 'Cruel and Unusual' must have reasonably good assurances that the sentence offends the 'common conscience'." Petitioner's sentence offends the common conscience.

Rogers v. United States, 304 F.2d 520 (5th Cir. 1962) held; "Punishment is not 'Cruel and Unusual' unless it is so greatly disproportionate to the offense committed as to be completely arbitrary and shocking to the sense of justice." Petitioner's case is just that, arbitrary and shocking to the sense of justice.

Petitioner is attacking the valitity of the words Any Mixture in the Florida trafficking statute §893.135(f)(1) which makes the statute unconstitutional because the punishment is not proportional to the offense allegedly committed.

Hart, the sentence was extremely harsh when compared with similar statutes in other jurisdictions and with punishment available in the same jurisdiction for other offenses.

The 11th Circuit states in Rolande-Gabriel, 938 F.2d 1231 (11th Cir. 1991) "We think that the rule of lenity should be applied to the present case in order to prevent an "absurd and glaringly unjust result" as referred to by the Court in Chapman...Although it is logical to base sentences upon the gross

weight of usable mixtures, it is fundamentally absurd to give an individual a more severe sentence for a mixture which is unusable and not ready for retail or wholesale distribution while persons with usable mixtures would receive far less severe sentences,...this is manifestly unjust and defeats the sentencing guidelines stated policy of sentencing uniformity and proportionality."

Question 2:- Because of the Petitioner's deteriorating mental and medical health, the in essence life sentence he received for allegedly possessing or manufacturing more than one half of a shot glass of urine or liquid waste will cost the tax payers in excess of an estimated $950,000 to house and provide incarceration. Petitioner has met over 110 inmates who have plea bargained for lengthy sentences for possession of trafficking amounts of unusable liquid, who were merely drug users, (junkies). Florida State's practice of sentencing the accused to mandatory life sentences for possession of 400 grams (a pint) or more of liquid waste that test positive for amphetamine and up to 30 years for 14 grams (½ a shot glass) and are merely users is a great waste of the public's limited funds.

The Seminole County Circuit Court in Florida, the Florida 5th DCA, the United States Middle District Court of Florida and the 11th Circuit Court of Appeals have all decided that unusable mixtures such as urine, pool water, toilet water, liquid waste and dog crap can be used to establish the threshold weight for trafficking in the State of Florida, but not in Federal cases.

Whether or not unusable mixtures such as urine, should be allowed to be used to convict for trafficking and label someone as a "King Pin" drug trafficker for the rest of his life and sentence them to extremely long or life sentences is an important question of Federal law that has not been, but should be, settled by this United States Supreme Court.

By the 11th Circuit agreeing with the Fla. 1st DCA in Wilder it has decided this important Federal question in a way that conflicts with relevant decisions of this United States Supreme Court in Chapman, the 11th Circuit Court in Griffith, Newsome, Rolande-Gabriel, and the Middle District of Florida in U.S. v. Long, 958 F. Supp. 2D 1334 (M. D. Fla. 2013).

Common sense will tell you that UNUSABLE MIXTURES such as urine or liquid waste should

not be used to sentence a mere user to extremely long sentences or life. That is absurd and illogical (See Rolande-Gabriel).

State Court's have decided this case differently than the U.S. Supreme Court on a set of materially indistinguishable facts. See Tracey v. State, 152 So.3d 504, 505 (Fla. 2014) "Any United States Supreme Court pronouncement factually and legally on point with the present case will automatically modify the State's law to the extent of any inconsistency." Petitioner's conviction is not consistent with the "marketing approach" adopted by the U.S. Supreme Court in Chapman.

In Chapman v. United States, 111 S. Ct. 1919, 1925 (1991) held; "congress adopted a 'market-oriented' approach to punishing drug trafficking under which the total quantity of what is distributed rather than the amount of pure drug involved is used to determine the length of sentence."

Where cocaine was mixed with liquid waste the Court in U.S. v. Rolande-Gabriel, 938 F.2d 1231(11th Cir. 1991) used the holding in Chapman to form the opinion that "the rule of lenity should be applied to the present case in order to prevent an "absurd and glaringly unjust result" as referred to by the Court in Chapman." The Rolande-Gabriel court went on to explain "athough it is logical to base sentences upon the gross weight of usable mixtures, it is fundamentally absurd to give an individual a more sever sentence for a mixture which is unusable and not ready for retail or wholesale distribution while persons with usable mixtures would receive far less sever sentences... We therefore hold that the term 'mixture' in U.S.S.G. §2D1.1 does not include unusable mixtures. This distinction is logical and rational, given the aforementioned differences between mixtures which are usable and ones which are unusable."

More recently in Griffith v. U.S, 871 F.3d 1321, 1333 (11th Cir 2017) the 11th Circuit held that in United States v. Newsome, 998 F.2d 1571, 1574 (11th Cir. 1993) "that the district court did not error in using the projected yield instead of the actual weight of the oil."... "We held, however that the district court had erred in including in the quantity determination the weight of the methamphetamine sludge because it was not a "good [ ] in progress that would have eventually became some amount of

marketable methamphetamine." Id. Instead it was "unusable" and "toxic" substance that contained less than 1% methamphetamine. Id. We reasoned that it would make no sense to sentence the defendants based on the weights of materials that would never find their way to methamphetamine consumers" Id. "we cited our Rolande-Gabriel decision in support of our conclusion in Newsome." Giffith at 1334 "mixture or substance does not include materials that must be separated from the controlled substance before the controlled substance can be used."

This ground was raised to the Trial Court and the Fifth District Court in defendant's 3.800 (b), 3.800 (a), direct appeal, ground one of his 9.141 (d), and in his 3.850 motion and the appeal as to the 3.850 thus giving the courts plenty of opportunities to correct said violation.

Here even if we take the State's case for fact they have failed to prove the trafficking charge. All the evidence presented still has not done anything but show the common household items found could have been used to manufacture methamphetamine but there is nothing to show this ever produced any marketable product which is a requirement to convict for trafficking.

This claim should be reversed based on the laws cited and lack of evidence that was presented and the fact that Defense Counsel had an "Ethical Conflict" of interest which has been proven throughout the trail.

Question 3:- This Untied States Supreme Court should exercise its discretionary jurisdiction and grant a Writ of Certiorari for the following reasons:

The 11th Circuit Court of Appeals has entered a decision in conflict with and decided an important Federal question in a way that conflicts with relevant decisions of the Supreme Court of the United States. See Holloway.

The Judge in Petitioner's case has so far departed from the accepted and usual course of judicial proceedings, and the Appellate Court's have sanctioned such a departure by the Lower Courts, as to call for an exercise of this Supreme Court's supervisory power.

As the Court said in Com. V. O'Keefe, 298 Pa. 169, 173, 148 Atl. 73: "It is vain to give the

accused a day in court, with no opportunity to prepare for it, or guarantee him counsel without giving the latter any opportunity to acquaint himself with the facts or the law of the case."

The denial of this claim was contrary to Holloway v. Arkansas, 98 S. Ct. 1173 (1978) which states; "Deferred to the judgment of counsel regarding the existence of a disabling conflict recognizing that defense attorney is in the best position to determine when a conflict exist, that he has an ethical obligation to advise the court of any problem and that his declarations to the court are "virtually made under oath." Also, Holloway presumed moreover, that the conflict, "Which [the defendant] and his counsel tried to avoid by timely objections...undermined the adversarial process."

Defense Counsel filed a Motion to Withdraw due to "Ethical Conflict" 61 days before trial, which was granted (See Appendix E, Exhibit C and D).

"Holloway thus creates an 'automatic reversal rule' whenever a trial court improperly requires joint representation [of conflicting interest] over timely objection, reversal is automatic."

This Supreme Court should grant this petition because Petitioner's case is like Powell v. Alabama, 53 S. Ct. 55 (1932) where reappointment was 19 hours before trial and Defense Counsel had done nothing to prepare for trial, there was a substantial dispute over the tangible evidence and the questionable admissibility of over 256 pieces of possible circumstantial evidence. No attempt was made by Defense Counsel to investigate. Extremely late reappointment on the eve of trial provided no opportunity to do so. The Petitioner was hurried to trial within 19 hours and under the circumstances disclosed Petitioner was not accorded the right of counsel in any substantial sense just like in Powell, to decide otherwise, would simply be to ignore actualities. Because of Defense Counsel's apparent "Ethical Conflict" and extremely late appointment his failure to subject the prosecution's case to adversarial testing amounted to "Constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it." See Powell at [8] "Circumstances of that magnitude may be present on some occasions when although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small

that a presumption of prejudice is appropriate without inquiry into the actual conduct at trial."

This Supreme Court should grant this petition because Petitioner's case relies on Cronic v. United States, 104 S. Ct. 2039 (1984), which held; "the Presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial." The Petitioner is claiming that pretrial investigation and preparation for trial is a critical stage of trial and he was denied counsel during that stage of trial by the Trial Judge appointing Defense Counsel 19 hours before trial when the Petitioner's unrebutted claim on page 7 of his 2254 motion claims "Counsel never performed any of the [pretrial] instructions in items a-m above." (See Appendix G). Which could have taken 5 months to complete the logically necessary lab analysis of all 56 tangible items of suspected drug evidence as well as motions to suppress over 200 pictures many of which show typical household items and construction related tools and supplies for Petitioner's bathroom and kitchen remodeling company that the State claims could have been used to make amphetamine. Cronic held; "if counsel entirely fails to subject the prosecutions case to MEANINGFUL adversarial testing, then there has been a denial of the Sixth Amendment rights that makes the adversarial process itself presumptively unreliable. No specific showing of prejudice is required."

Petitioner is claiming that Defense Counsel failed to put the prosecutions evidence to MEANINGFUL adversarial testing because he never did anything to prepare for trial and had no idea of what constitutes the definition of a usable mixture or unusable mixture, he failed to try to have the over 200 pictures and 56 pieces of tangible evidence excluded prior to trial (See Reply to Response to Petition page 6).

In Cuyler v. Sullivan, 446 US 335, 64 L. Ed 2d 333, 100 S. Ct. 1708 (1980) the Supreme Court held at 446 US 348 "[13] In order to establish a violation of the Sixth Amendment a defendant who raised no objection at trial must demonstrate that an actual conflict of interest affected his lawyers performance." This varies from the Holloway rule, where Holloway states that an objection to conflicted representation must be timely as in Petitioner's case where Defense Counsel notified the trial

court 61 days prior to trial of Defense Counsel's "Ethical Conflict" of interest. Additionally Petitioner notified the trial court 82 days before trial via a demand for Nelson Hearing prior to trial and Petitioner filed 2 more request for a Nelson hearing and Petitioner objected 3 times to Defense Counsel representation at the pretrial conferences. Petitioner is claiming that Defense Counsel and Petitioner made timely notification to the trial court prior to trial and Holloway controls not Cuyler v. Sullivan. (See Appendix "E" Exhibits A, B, C, D, E).

However, the Federal District Court doesn't see it that way and wrote in the denial of 2254 order at (Appendix B page 7), "on the morning of trial petitioner made no objection to [defense counsel's] Hausler's representation." Therefore Petitioner must demonstrate "that an actual conflict of interest affected his lawyers performance." Petitioner can prove that Defense Counsel was operating under conflicting interests by showing this Court the August 12, 2014, Motion to Withdraw which states Defense Counsel has an "Ethical Conflict" and is basically telling the trial court he is not going to do anything to help Petitioner because the "Attorney/Client Relationship is Irrevocably Broken." There was 256 pieces of questionably admissible evidence and Defense Counsel did not do anything in preparation for trial. Do to the large amount of evidence, Petitioner's case required a lot of pretrial work and Defense Counsel did none. That means the "Ethical Conflict" of interest adversely affected Defense Counsels performance. (See Appedix F)

Conflict is insufficient. See Cuyler, 466 U.S. at 350 "to prove adverse effect, a defendant needs to demonstrate: (a) that the defense attorney could have pursued a plausible alternative strategy, here Petitioner not only showed joint occupancy of home, and lack of dominion and control showed that unmarketable, unconsumable or indigestible product could NOT be used in weighing mixture and no crime of trafficking was ever committed. Yet, Hausler failed to investigate this strategy; (b) that this alternative strategy was reasonable, here petitioner relied on U.S. Supreme Court case law and the actual lack of evidence to prove this strategy was reasonable; and (c) that the alternative strategy was not followed because it conflicted with the attorneys external loyalties, here, petitioner made a clear

showing as "Hausler" withdrew due to "Ethical Conflict", never researched "mixture and weight" never filed for or hired any expert to corroborate that constructive possession was not proven, that urine or liquid waste is not marketable and the evidence or lack of was contrary to U.S. Supreme Court case law and facts presented during trial both warranting relief on this claim.

Petitioner was forced to trial with Hausler who never filed any pretrial motion to suppress any evidence, allowed numerous State exhibits to be presented throughout the trial with no objections to the pictures which showed typical household items, and had no relevancy to the charge for which the defendant was on trial for. Petitioner has more than shown Hausler's performance was not what a normal Attorney would have done and for Hausler to take Petitioner through trial, operating under the "Ethical Conflict" proved in of itself that Hausler never put the prosecutions case through a MEANINGFUL adversarial process that is required. He failed to research the law on "Unusable Product" versus "Usable [redacted] Product" when suggested at the JOA hearing for which his failure prejudiced Petitioner. A properly argued JOA could have been painted.

This claim should be reversed based on the laws cited, the lack of evidence that was presented and the fact that Defense Counsel had an "Ethical Conflict" which has been proven throughout the trial.

CONCLUSION

The evidence presented at trial shows that the crime of trafficking in amphetamine never occurred at all.

Therefore this United States Supreme Court should exercise its discretionary jurisdiction and grant the Petition for a Writ of Certiorari.

Respectfully Submitted,

/s./ Chris Seckington

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