IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-13899-E

CHRISTOPHER SECKINGTON,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

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

ORDER:

Christopher Seckington, a Florida prisoner serving a 25-year sentence for amphetamine trafficking and possession of cannabis, seeks a certificate of appealability ("COA") and *in forma pauperis* ("IFP") status in order to appeal the district court's denial of his *pro se* 28 U.S.C § 2254 petition.[1] In order to obtain a COA, Mr. Seckington must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). He satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the

[1] Although Mr. Seckington raised 12 claims in his § 2254 petition, his motion for COA argues only 5 claims. Because he failed to mention the remaining claims, he abandoned them. *See Jones v. Sec'y, Dep't of Corr.*, 607 F.3d 1346, 1353-54 (11th Cir. 2010) (this Court "will not entertain the possibility of granting a certificate of appealability" where the petitioner "does not provide facts, legal arguments, or citations of authority that explain why he is entitled to a certificate . . .").

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constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks omitted).

In Claim 1, Mr. Seckington argued that counsel failed to withdraw upon his reappointment, despite having stated in his motion to withdraw that he had an ethical conflict, and the attorney/client relationship was irretrievably broken. Reasonable jurists would not debate the district court's denial of this claim because Mr. Seckington failed to show that counsel labored under an actual conflict of interest or had conflicting interests that adversely affected his performance. *See Mickens v. Taylor*, 535 U.S. 162, 170-71 (2002). To the extent that Mr. Seckington raised a claim under *United States v. Cronic,* 466 U.S. 648, 659 (1984), it fails because the record reveals that counsel subjected the state's case to adversarial testing.

In Claims 5 and 6, Mr. Seckington argued that counsel failed to challenge the quantity of methamphetamine attributed to him and argue for the application of the rule of lenity related to the quantity of methamphetamine. Reasonable jurists would not debate the denial of this claim, as counsel had no basis to challenge the quantity of methamphetamine attributed to Mr. Seckington, or the methodology by which the forensic chemist weighed the liquids, under the language of Fla. Stat. § 893.135(1)(f). *See Wilder v. State*, 194 So. 3d 1050, 1053 (Fla. Dist. Ct. App. 2016) (concluding that the statute "clearly contemplates the punishment for trafficking of 'any' mixture of methamphetamine and does not set a minimum threshold amount of methamphetamine that must be part of the mixture."). Accordingly, counsel had no basis to ask for the rule of lenity to be applied in this case.

In Claim 7, Mr. Seckington argued that his 25-year sentence was cruel and unusual. Reasonable jurists would not debate the denial of this claim. Mr. Seckington was convicted of a first-degree felony for amphetamine trafficking, for which there is a maximum sentence of 30

years in prison and a mandatory minimum term of 15 years in prison. *See* Fla. Stat. §§ 775.082(3)(b)1 and 893.135(1)(f)1.c. This Court previously has stated that "a sentence within the limits imposed by statute is neither excessive nor cruel and unusual under the Eighth Amendment." *United States v. Johnson*, 451 F.3d 1239, 1243 (11th Cir. 2006).

Finally, in Claim 9, Mr. Seckington argued that counsel failed to argue that he did not violate the "legislative intent" of the trafficking statute, which was to punish those who deal in large quantities of dangerous illegal drugs. The record reveals that Mr. Seckington did not raise this claim in his state post-conviction proceedings, and he has neither alleged nor shown either cause and prejudice or a fundamental miscarriage of justice to excuse his procedural default. *See Coleman v. Thompson*, 501 U.S. 722, 749-50 (11th Cir. 1991).

Accordingly, Mr. Seckington's COA motion is DENIED, and his IFP motion is DENIED as moot.

/s/ Jill Pryor
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CHRISTOPHER M. SECKINGTON,

Petitioner,

v. CASE NO. 6:19-cv-713-Orl-31EJK

SECRETARY, DEPARTMENT OF CORRECTIONS, et al.,

Respondents.
_____/

ORDER

This cause is before the Court on a Petition for Writ of Habeas Corpus ("Petition," Doc. 1) filed pursuant to 28 U.S.C. § 2254. Respondents filed a Response to the Petition ("Response," Doc. 19) in compliance with this Court's instructions and with the *Rules Governing Section 2254 Cases for the United States District Courts*. Petitioner filed a Reply (Doc. 22). Petitioner alleges twelve claims for relief in the Petition. For the following reasons, the Petition is denied.

I. PROCEDURAL HISTORY

Petitioner was charged in the Eighteenth Judicial Circuit Court in and for Seminole County, Florida, with trafficking in 200 grams or more of methamphetamine (Count One) and possession of cannabis (Count Two). (Doc. 21-2 at 7). After a jury trial, Petitioner was convicted as charged. (Doc. 21-3 at 15). The trial court sentenced Petitioner to a twenty-five-year term of imprisonment with a fifteen-year mandatory minimum term for Count

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One and to time served for Count Two. (*Id.* at 16). Petitioner appealed, and the Fifth District Court of Appeal ("Fifth DCA") affirmed *per curiam* (*Id.* at 52).

Petitioner filed a motion to correct an illegal sentence pursuant to Rule 3.800(a) of the Florida Rules of Criminal Procedure. (*Id.* at 56-83). The trial court denied the motion, noting that Petitioner's claim was not cognizable in a Rule 3.800(a) motion. (*Id.* at 85-86). Petitioner appealed, and the Fifth DCA affirmed *per curiam.* (*Id.* at 111).

Petitioner subsequently filed a petition for writ of habeas corpus with the Fifth DCA in which he alleged four claims of ineffective assistance of appellate counsel. (*Id.* at 124-69). The Fifth DCA denied the petition without discussion. (Doc. 21-4 at 22).

Petitioner then filed a motion for post-conviction relief pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure. (*Id.* at 29-80). After filing two amended motions (Doc. 21-5 at 5-53 and Doc. 21-6 at 4-52), the trial court summarily denied relief. (Doc. 21-7 at 2-10). The Fifth DCA affirmed *per curiam. See Seckington v. State,* 241 So. 3d 853 (Fla. 5th DCA 2017) (table).

Petitioner filed several motions to disqualify the trial court judge, which were denied. (Doc. 21-8 at 79-122). Petitioner then filed a petition for writ of prohibition in the Fifth DCA seeking disqualification of the trial court judge. (*Id.* at 123-28). The Fifth DCA denied the petition. (*Id.* at 133). Petitioner subsequently filed approximately six additional petitions for writ of prohibition, which were denied. (Doc. Nos. 21-8 at 141-46; Doc. 21-9 at 2-34, 77-84). Petitioner also filed two petitions for writ of mandamus seeking similar relief, which were denied. (Doc. 21-9 at 41-76). Finally, the Fifth DCA entered an order pursuant

to *State v. Spencer*, 751 So. 2d 47 (Fla. 1999), finding Petitioner had abused the judicial process and should be barred from further *pro se* filings. (*Id.* at 97). The Supreme Court of Florida declined to accept discretionary review of that order. (*Id.* at 125).

II. LEGAL STANDARDS

A. Standard of Review Under the Antiterrorism Effective Death Penalty Act ("AEDPA")

Pursuant to the Antiterrorism Effective Death Penalty Act ("AEDPA"), a federal court may not grant federal habeas relief with respect to a claim adjudicated on the merits in state court unless the adjudication of the claim:

> (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). The phrase "clearly established Federal law," encompasses only the holdings of the United States Supreme Court "as of the time of the relevant state-court decision." *Williams v. Taylor*, 529 U.S. 362, 412 (2000).

"[S]ection 2254(d)(1) provides two separate bases for reviewing state court decisions; the 'contrary to' and 'unreasonable application' clauses articulate independent considerations a federal court must consider." *Maharaj v. Sec'y for Dep't of Corr.*, 432 F.3d

1292, 1308 (11th Cir. 2005). The meaning of the clauses was discussed by the Eleventh Circuit Court of Appeals in *Parker v. Head*, 244 F.3d 831, 835 (11th Cir. 2001):

> Under the "contrary to" clause, a federal court may grant the writ if the state court arrives at a conclusion opposite to that reached by [the United States Supreme Court] on a question of law or if the state court decides a case differently than [the United States Supreme Court] has on a set of materially indistinguishable facts. Under the "unreasonable application" clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from [the United States Supreme Court's] decisions but unreasonably applies that principle to the facts of the prisoner's case. *Id.* (quoting *Williams*, 529 U.S. at 412–13). Even if the federal court concludes that the state court applied federal law incorrectly, habeas relief is appropriate only if that application was "objectively unreasonable."1 *Id.* (quotation omitted).

Finally, under § 2254(d)(2), a federal court may grant a writ of habeas corpus if the state court's decision "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." However, the state court's "determination of a factual issue . . . shall be presumed correct," and the habeas petitioner "shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1); *see also Parker*, 244 F.3d at 835–36.

B. Standard for Ineffective Assistance of Counsel

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[1] In considering the "unreasonable application inquiry," the Court must determine "whether the state court's application of clearly established federal law was objectively unreasonable." *Williams*, 529 U.S. at 409. Whether a state court's decision was an unreasonable application of law must be assessed in light of the record before the state court. *Holland v. Jackson*, 542 U.S. 649, 652 (2004) (per curiam); *see also Bell v. Cone*, 535 U.S. 685, 697 n.4 (2002) (declining to consider evidence not presented to state court in determining whether the state court's decision was contrary to federal law).

In *Strickland v. Washington*, 466 U.S. 668 (1984), the United States Supreme Court established a two-part test for determining whether a convicted person is entitled to relief on the ground that his counsel rendered ineffective assistance: (1) whether counsel's performance was deficient and "fell below an objective standard of reasonableness"; and (2) whether the deficient performance prejudiced the defense. *Id.* at 687–88. A court must adhere to a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689–90. "Thus, a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Id.* at 690; *see also Gates v. Zant*, 863 F.2d 1492, 1497 (11th Cir. 1989) ("*Strickland* teaches that courts must judge the reasonableness of the challenged conduct on the facts of the particular case, viewed as of the time of the conduct.").

III. ANALYSIS

A. Claim One

Petitioner alleges that the trial court erred by reappointing an attorney to represent him despite the fact that counsel had a conflict of interest. (Doc. 1 at 6). Petitioner raised this claim in his Rule 3.850 proceedings, and the trial court denied relief, finding that Petitioner had failed to allege any specific facts demonstrating that he was entitled to relief on this claim. (Doc. 21-7 at 8-9). The Fifth DCA affirmed *per curiam*. *See Seckington*, 241 So. 3d at 853.

Prior to trial, Petitioner moved to represent himself. (Doc. 21-2 at 20). Additionally,

defense counsel Justin Hausler ("Hausler") moved to withdraw from representation, citing Petitioner's dissatisfaction with his representation and noting that the attorney-client relationship was irrevocably broken. (*Id.* at 22). The trial court granted the motions and allowed Petitioner to represent himself. (*Id.* at 25). However, the Court also directed Hausler to remain as standby counsel. (*Id.*). Hausler was reappointed to represent Petitioner and acted as defense counsel at trial. (Doc. 21-2 at 35, 41).[2]

The Sixth Amendment requires the State to not only appoint counsel for indigent defendants, but also gives defendants the right to counsel "unburdened by a conflict of interest that impedes zealous representation." *Dallas v. Warden*, 964 F.3d 1285, 1302 (11th Cir. 2020) (citing *Cuyler v. Sullivan*, 446 U.S. 335, 344 (1980)). However, to prevail on a conflict of interest claim, a petitioner must show that a defense attorney actively represented conflicting interests in such a way that adversely affected counsels' performance. *Mickens v. Taylor*, 535 U.S. 162 (2002). "An 'actual conflict' of interest occurs when a lawyer has inconsistent interests." *Freund v. Butterworth*, 165 F.3d 839, 859 (11th Cir. 1999) (citing Smith v. White, 815 F.2d 1401, 1405 (11th Cir. 1987)). A mere possible or speculative conflict is insufficient. *See Cuyler*, 446 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, (b) that this alternative strategy was reasonable, and (c)

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Seemingly worthy of belief

[2] Neither party provided the Court with the trial court's order reappointing Hausler to represent Petitioner. The Court conducted a review of the online docket in the Eighteenth Judicial Circuit Court in and for Seminole County, and it appears that a written order was not entered.

that the alternative strategy was not followed because it conflicted with the attorney's external loyalties." *Reynolds v. Chapman*, 253 F.3d 1337, 1343 (11th Cir. 2001).

Petitioner fails to meet his burden because he has not presented any evidence that counsel labored under an actual conflict of interest or had conflicting interests that impeded his ability to zealously represent Petitioner. Petitioner states that counsel could or should have followed an alternative strategy at trial. However, on the morning of trial, Petitioner made no objection to Hausler's representation. A review of the trial transcript reveals that Petitioner told the trial court that he was satisfied with Hausler's representation and that there were no other witnesses or evidence that he wished to be presented. (Doc. 21-2 at 198-99). There is no indication that counsel's failure to pursue an alternate defense strategy was due to conflicting interests or loyalties. Therefore, Petitioner is not entitled to relief on this claim.

To the extent Petitioner also contends that counsel's representation amounted to a *Cronic* violation, his claim is also unsuccessful. In *United States v. Cronic*, 466 U.S. 648 (1984), the Supreme Court stated "if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that make the adversary process itself unreliable." 466 U.S. at 659. Furthermore, in such situations where counsel fails to subject the State's case to adversarial testing no showing of prejudice is required because prejudice is presumed. *Id.* The Court notes that trial counsel properly subjected the case to adversarial testing by presenting opening arguments at trial, thoroughly cross-examining the State's witnesses, arguing a motion

for judgment of acquittal, and making closing arguments. (Doc. 21-2 at 35-281).

The state court's denial of this claim was neither contrary to, nor an unreasonable application of, clearly established federal law. Accordingly, Claim One is denied pursuant to § 2254(d).

B. Claim Two

Petitioner contends that trial counsel was ineffective for failing to make specific arguments when moving for a judgment of acquittal. (Doc. 1 at 12). In particular, Petitioner asserts that counsel should have argued that Petitioner was not the exclusive occupant of the premises and therefore, no independent proof was presented that he possessed the methamphetamine and cannabis. (*Id.*). Petitioner raised a similar claim in his Rule 3.850 proceedings, and the trial court summarily denied relief stating the following:

> The Defendant acknowledges in the claim that he is asserting that the trial court erred in denying his JOA. Issues of ordinary trial error, reviewable on appeal, are not cognizable under rule 3.850. *Bruno v. State*, 807 So. 2d 55, 63 (Fla. 2001); *Straight v. State*, 488 So. 2d 530 (Fla. 1986); *Childers v. State*, 782 So. 2d 946 (Fla. 4th DCA 2001); *State v. Johnson*, 651 So. 2d 145 (Fla. 2d DCA 1995). The Defendant cannot "counter [this] procedural bar" by "couch[ing] his claim . . . in terms of ineffective assistance of counsel in failing to preserve or raise those claims." *Cherry*, 659 So. 2d at 1072. Therefore, the Defendant has failed to demonstrate an entitlement to relief . . . .

(Doc. 21-7 at 8). The Fifth DCA affirmed *per curiam*. *See Seckington*, 241 So. 3d at 853.

A *per curiam* affirmance of a trial court's finding of procedural default is a sufficiently clear and express statement of reliance on an independent and adequate state

ground to bar consideration by the federal courts. *Harmon v. Barton*, 894 F.2d 1268, 1273 (11th Cir. 1990); *see also Ferguson v. Sec'y Dep't of Corr.*, 580 F.3d 1183, 1218 (11th Cir. 2009). Therefore, this Court will apply the state procedural bar.

Procedural default may be excused only in two narrow circumstances: if a petitioner can show (1) cause and prejudice or (2) actual innocence. *Murray v. Carrier*, 477 U.S. 478, 496 (1986); *Wright v. Hopper*, 169 F.3d 695, 703 (11th Cir. 1999). Petitioner has not demonstrated cause or prejudice, nor has he shown the applicability of the actual innocence exception. Accordingly, Claim Two is procedurally barred.[3]

C. Claim Three

Petitioner alleges that trial counsel was ineffective for failing to advance the defense theory that he lacked knowledge regarding the illicit nature of the substances

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[3] Alternatively, if this claim is not procedurally barred it is without merit. Petitioner has not shown that counsel's failure to argue that there was no independent proof that he possessed the methamphetamine amounts to deficient performance or that prejudice resulted. The State presented evidence that although Petitioner shared a home with his brother, Petitioner's bedroom was locked, and his brother did not have a key. (Doc. 21-2 at 63-64 and 74). Law enforcement found numerous items in Petitioner's locked bedroom and bathroom that could be used to manufacture methamphetamine, including coffee filters, plastic and glass jars, salt, plastic tubing, hydrogen peroxide, alcohol, propane fuel, a mask with air purifying respirators, and two five-gallon buckets in the shower containing two plastic bottles holding a clear liquid, a powdery substance, and lithium strips. (*Id.* at 94-99 and 116-22). The liquid tested positive for methamphetamine (*Id.* at 113 and 188). While law enforcement did not know to whom these items belonged, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that Petitioner exclusively possessed these items and therefore was guilty of trafficking in methamphetamine. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Counsel's failure to make an argument regarding joint occupancy and constructive possession did not result in prejudice. Accordingly, this claim is denied.

found in his residence. (Doc. 1 at 15). In support of this claim, Petitioner states that counsel should have questioned investigators and the laboratory technician about whether a lay person would know that the clear liquid found in two bottles in his bathroom contained methamphetamine. (*Id.*). Petition contends that had counsel properly questioned these witnesses, they would have testified that there was no way for a lay person to know what was contained in the bottles, and therefore, he would have been entitled to a jury instruction on lack of knowledge. (*Id.*).

Petitioner raised this claim in his Rule 3.850 proceedings, and the trial court summarily denied relief, concluding that because Petitioner told the court during trial that counsel had not failed to present any evidence or call witnesses, he could not demonstrate deficient performance. (Doc. 21-7 at 5). The Fifth DCA affirmed *per curiam*. *See Seckington*, 241 So. 3d at 853.

Petitioner is not entitled to relief on this claim. The Court noted *supra* that Petitioner told the trial court that he was satisfied with Hausler's representation and that there were no other witnesses or evidence that he wished to be presented. (Doc. 21-2 at 198-99). When Petitioner made these statements, he was aware that counsel had not questioned the witnesses regarding whether a lay person would know that the liquid found was methamphetamine. Therefore, Petitioner waived his claim that counsel acted deficiently in this regard.

Alternatively, Petitioner has not shown that but for counsel's actions that the result of the proceeding would have been different. In Florida, lack of knowledge regarding the

illicit nature of a substance is an affirmative defense to a drug trafficking charge. *See McMillion v. State*, 813 So. 2d 56 (Fla. 2002). However, even if counsel had questioned the witnesses about whether a lay person would know of the illicit nature of the liquid and requested a jury instruction on lack of knowledge, Petitioner cannot show that he was prejudiced.

Lawrence Seckington ("Seckington"), Petitioner's brother, testified that they lived together in a three-bedroom home. (Doc. 21-2 at 63-64). Petitioner lived in the master bedroom, the door to the room had a lock, and Seckington did not have a key to that door. (*Id.* at 74). On cross-examination, Seckington testified that Petitioner had friends come over at all hours of the day and night and sometimes a friend would stay overnight. (*Id.* at 78 and 81). Additionally, a friend of Petitioner's had stayed at their house for two days during his cancer treatment. (*Id.* at 79).

Charles Locher ("Officer Locher"), an officer with the Sanford Police Department who was assigned to the Drug Enforcement Administration ("DEA") task force investigating the matter, testified that when he searched Petitioner's locked bedroom, he observed materials that could be used to make methamphetamine, including coffee filters, containers, glass jars, and two five-gallon buckets in the shower of the master bathroom containing two plastic bottles holding a clear liquid, a powdery substance, and lithium strips. (*Id.* at 94 and 99). Officer Locher identified that buckets and bottles as a "one-pot" in which ammonium nitrate, fuel, fertilizer, pseudoephedrine, lithium strips, and water are used to make methamphetamine. (*Id.* at 94-97). The liquids tested positive

for methamphetamine. (*Id.* at 113).

Officer Locher also identified objects found in Petitioner's bedroom that could be associated with manufacturing methamphetamine, such as salt, plastic tubing, plastic jars, hydrogen peroxide, alcohol, propane fuel, a mask with air purifying respirators, and a gas treatment. (*Id.* at 116-22). On cross-examination Officer Locher stated that he did not know to whom any of the items belonged. (*Id.* at 137). On redirect examination, Officer Locher noted that all of the items collected for evidence were found in Petitioner's bedroom as opposed to other areas of the home. (*Id.* at 144).

In light of the evidence presented at trial, the Court concludes Petitioner has not met his burden of demonstrating that but for counsel's actions, he would not have been convicted. The standard Florida jury instruction on lack of knowledge also includes the following language: "You may but are not required to infer that defendant was aware of the illicit nature of the controlled substance if you find that he possessed the controlled substance." Fla. Std Jury Instr. (Crim) 25.7(a). The State presented evidence that the methamphetamine and numerous items employed in the manufacturing of such were found in Petitioner's locked bedroom and bathroom. Even though other people entered and exited the bedroom, the jury would have been permitted to infer that Petitioner was aware of the nature of the substance due to its location in the bedroom over which he had exclusive control.

The state court's denial of this claim was not contrary to, or an unreasonable application of, clearly established federal law. Accordingly, Claim Three is denied

pursuant to § 2254(d).

D. Claim Four

Petitioner argues that trial counsel was ineffective for failing to hire a fingerprint expert and forensic chemist to test the items seized in connection with manufacturing methamphetamine. (Doc. 1 at 17-18). Petitioner asserts that had the jury heard testimony that his fingerprints were not found on any of the seized items, he would have been acquitted. (*Id.* at 18). Furthermore, Petitioner states that a forensic chemist would have testified that the liquid did not contain a "usable" amount of methamphetamine but instead was merely urine from a methamphetamine user combined with household cleaning solutions. (*Id.*). Petitioner raised this claim in his Rule 3.850 proceedings, and the trial court denied relief, noting that because Petitioner told the court that counsel had not failed to present evidence or call witnesses, he could not demonstrate deficient performance. (Doc. 21-7 at 7). The Fifth DCA affirmed *per curiam*. *See Seckington*, 241 So. 3d at 853.

The record reflects that Petitioner told the trial court that he was satisfied with Hausler's representation and there were no other witnesses or evidence that he wished to present. (Doc. 21-2 at 198-99). When Petitioner made these statements, he was aware that counsel had not called any expert witnesses on his behalf. Therefore, Petitioner waived his claim that counsel acted deficiently in this regard.

Additionally, "evidence about the testimony of a putative witness must generally be presented in the form of actual testimony by the witness or an affidavit. A defendant

cannot simply state that the testimony would have been favorable; self-serving speculation will not sustain an ineffective assistance claim." *United States v. Ashimi*, 932 F.2d 643, 650 (7th Cir. 1991) (footnotes omitted); *Wright v. Sec'y, Dep't of Corr.*, No. 6:08-cv-618-Orl-35DAB, 2009 WL 5176558, at *3 (M.D. Fla. Dec. 23, 2009). Petitioner has not made the requisite factual showing with regard to these witnesses, and his self-serving speculation will not sustain a claim of ineffective assistance of counsel.

The state court's denial of this claim was not contrary to, or an unreasonable application of, *Strickland*. Accordingly, Claim Four is denied pursuant to § 2254(d).

E. Claims Five and Six

Petitioner alleges that trial counsel was ineffective for failing to challenge the quantity of methamphetamine attributed to him. (Doc. 1 at 21-22). In Claim Six, Petitioner alleges trial counsel should have argued for the application of the rule of lenity with regard to how the State measured the quantity or weight of the methamphetamine. (*Id.* at 26). Petitioner raised these claims in his Rule 3.850 proceedings, and the trial court summarily denied relief, stating that pursuant to Florida law, the quantity of methamphetamine was properly calculated. (Doc. 21-7 at 4). The Fifth DCA affirmed *per curiam*. *See Seckington*, 241 So. 3d at 853.

Section 893.135(1)(f), Florida Statutes, provides that a person who knowingly sells, purchases, manufactures, delivers, brings into the state, or who is knowingly in actual or constructive possession of methamphetamine, "or any mixture containing amphetamine or methamphetamine . . . commits a felony of the first degree. . . ." The statute also states

that "[f]or the purpose of clarifying legislature intent regarding the weighing of a mixture containing a controlled substance[,] . . . the weight of the controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture." § 893.135(6), Fla. Stat. Furthermore, "if there is more than one mixture containing the same controlled substance, the weight of the controlled substance is calculated by aggregating the total weight of each mixture." (*Id.*).

Maria Andreu ("Andreu"), a senior forensic chemist working for the DEA Southeast Laboratory, testified that the two containers of liquids received from law enforcement tested positive for methamphetamine and weighed 131.4 grams and 132 grams, respectively, for a total of 263.4 grams. (Doc. 21-2 at 189-91). On cross-examination, defense counsel Hausler questioned Andreu regarding whether it was possible to calculate how much methamphetamine was contained in the liquid. (*Id.* at 191). Andreu testified that she only tests for controlled substances and does not test for common household substances. (*Id.*).

Pursuant to the unambiguous language of § 893.135(6), Florida Statutes, counsel had no basis to challenge the quantity of the methamphetamine attributed to Petitioner or the methodology by which Andreu tested and weighed the liquids. *See Wilder v. State*, 194 So. 3d 1050, 1053 (Fla. 5th DCA 2016) (stating that there is "no ambiguity" in section 893.135, Florida Statutes and concluding the statute "clearly contemplates the punishment for trafficking of 'any' mixture of methamphetamine and does not set a minimum threshold amount of methamphetamine that must be part of the mixture. . . ,").

Nor did counsel have a reason to ask for the rule of lenity to be applied to this matter. *See* 118 S.Ct. 469
Salinas v. United States, 522 U.S. 52, 66 (1997) (stating the rule of lenity does not apply "when a statute is unambiguous or when invoked to engraft an illogical requirement to 115 S.Ct 382
its text.") (citing *United States v. Shabani*, 513 U.S. 10, 17 (1994)).

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. Consequently, the total weight of the liquid found in Petitioner's bathroom, 263.4 grams, was properly attributed to him. Counsel did not act deficiently with regard to these claims, nor did counsel's actions result in prejudice. The state court's denial of this claim was not contrary to, or an unreasonable application of, *Strickland*. Accordingly, Claim Six is denied pursuant to § 2254(d).

F. Claim Seven

Petitioner contends that his twenty-five-year sentence amounts to cruel and unusual punishment. (Doc. 1 at 28). Petitioner arguably raised this claim in his Rule 3.800(a) motion, and the trial court denied relief. (Doc. 21-3 at 77-78 and 85-86). The Fifth DCA affirmed *per curiam*. (*Id.* at 111).

Petitioner was convicted of a first-degree felony for drug trafficking, for which there is a maximum sentence of thirty years in prison and a mandatory minimum term of fifteen years in prison. *See* §§ 893.135(1)(f)(1)(c) and 775.082(b)(1), Fla. Stat. Moreover, Florida and federal courts have rejected similar Eighth Amendment challenges. *See Paey v. State*, 943 So. 2d 919, 925-26 (Fla. 2d DCA 2006) (holding that a twenty-five-year

mandatory minimum term for trafficking in a controlled substance does not violate the Eighth Amendment); *United States v. Johnson*, 451 F.3d 1239, 1243 (11th Cir. 2006) (stating generally, "a sentence within the limits imposed by statute is neither excessive nor cruel and unusual under the Eighth Amendment.") (citation omitted). Petitioner was sentenced below the maximum term permitted by statute; therefore, he cannot show that his sentence amounts to cruel or unusual punishment or that it was imposed in violation of the Eighth Amendment. Accordingly, Claim Seven is denied pursuant to § 2254(d).

G. Claim Eight

Petitioner alleges that counsel was ineffective for failing to advise him that he could preserve for appeal the issue of whether the State properly calculated the weight of methamphetamine attributed to him after the entry of a plea. (Doc. 1 at 32). In support of this claim, Petitioner contends that he was offered a negotiated plea for the instant case and lower court case number 13-2708-CFA, whereby he would receive seven years in prison for the trafficking charge and six months in jail for the charges in his other case. (*Id.*). Petitioner contends that had he known he could preserve the issue regarding the weight of methamphetamine for appellate review, he would have entered the plea. (*Id.*). Petitioner raised this claim in his Rule 3.850 proceedings, and the trial court summarily denied relief, stating that the issue of the weight of the methamphetamine could not have been raised on appeal, and therefore, counsel was not deficient for failing to advise Petitioner in this manner. (Doc. 21-7 at 9-10). The Fifth DCA affirmed *per curiam*. *See Seckington*, 241 So. 3d at 853.

Pursuant to Florida law, a defendant may appeal from a guilty or nolo contendere plea if he "expressly reserve[s] the right to appeal a prior dispositive order of the lower tribunal . . . ." Fla. R. App. P. 9.140(b)(2)(A)(i). Alternatively, a defendant may appeal (1) the lower tribunal's lack of subject matter jurisdiction; (2) a violation of the plea agreement, if preserved by a motion to withdraw plea; (3) an involuntary plea, if preserved by a motion to withdraw plea; (4) a sentencing error, if preserved, or (5) as otherwise provided by law. Fla. R. App. P. 9.140(b)(2)(A)(ii).

In order for Petitioner to preserve the issue of the weight of methamphetamine for appellate review, he had to file a dispositive motion on the subject. No such dispositive motion was filed in the state court. Therefore, counsel did not incorrectly advise Petitioner on the matter because the issue was not expressly reserved for appeal. Petitioner has not demonstrated that counsel acted deficiently, and the state court's denial of this claim was not contrary to or an unreasonable application of *Strickland*. Accordingly, Claim Eight is denied pursuant to § 2254(d).

H. Claim Nine

Petitioner asserts that trial counsel was ineffective for failing to argue that he did not violate the "legislative intent" of the trafficking statute, which is to punish those who deal in large quantities of dangerous illegal drugs. (Doc. 1 at 34). Respondents assert that this claim is unexhausted.

Federal courts are precluded, absent exceptional circumstances, from granting habeas relief unless the petitioner has exhausted all means of available relief under state

law. 28 U.S.C. § 2254(b); *O'Sullivan v. Boerckel*, 526 U.S. 838, 842-44 (1999). In order to satisfy the exhaustion requirement a "petitioner must 'fairly present[ ]' every issue raised in his federal petition to the state's highest court, either on direct appeal or on collateral review." *Isaac v. Augusta SMP Warden*, 470 F. App'x 816, 818 (11th Cir. 2012) (quoting *Castille v. Peoples*, 489 U.S. 346, 351 (1989)).

A review of the record reveals that Petitioner did not raise this claim in his Rule 3.850 proceedings. (Doc. 21-7 at 5-51). Although Petitioner alleges that he raised the issue of "legislative intent" below, it was in the context arguing that the methodology used to determine whether the weight of methamphetamine was improper. (*Id.* at 12-23). Therefore, because Petitioner did not raise the same claim in the state, this claim is unexhausted. *See Ogle v. Johnson*, 488 F.3d 1364 (11th Cir. 2007). Moreover, the Court is precluded from considering this claim because it would be procedurally defaulted upon return to state court. *See Snowden v. Singletary*, 135 F.3d 732, 735 (11th Cir. 1998).

Petitioner has neither alleged nor shown either cause or prejudice that would excuse the procedural default. *Wright*, 169 F.3d at 703. Likewise, he has not demonstrated the applicability of the actual innocence exception. *Murray*, 477 U.S. at 496. A review of the record reveals that Petitioner is unable to satisfy the exceptions to the procedural default bar. Accordingly, Claim Nine is denied.[4]

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[4] Alternatively, the Court concludes that Petitioner is not entitled to relief on this claim. As discussed *supra*, it is clear that the Florida Legislature intended to punish those who knowingly traffic in controlled substances or mixtures containing those substances. The Legislature also clearly stated that the weight of the controlled substance to be used

numerous times. (*Id.* at 7-8). In submitting these documents, State was attempting to demonstrate that Petitioner's manufacture of methamphetamine was not a one-time occurrence. (*Id.*).

In *Williams v. State*, 193 So. 3d 1017, 1018 (Fla. 1st DCA 2016), the First DCA stated that while it was not improper to consider prior arrests not resulting in convictions at sentencing, it is improper for a court to base a defendant's sentence in whole or in part on uncharged or unsubstantiated allegations of wrongdoing. The record reflects that the State was not asking the trial court to sentence Petitioner based on prior arrests or uncharged acts. Instead, the State argued that Petitioner had been manufacturing methamphetamine for some time. Petitioner's sentence was below the maximum allowed by law, and there is no indication that the trial court based his sentence on uncharged or unsubstantiated wrongdoings. Therefore, appellate counsel did not act deficiently, nor did appellate counsel's failure to raise this claim on appeal result in prejudice. The state court's denial of this claim was not contrary to or an unreasonable application of clearly established federal law. Accordingly, this portion of Claim Ten is denied pursuant to § 2254(d).

J. Claim Eleven

Petitioner contends that the trial court and Fifth DCA erred by failing to grant his motions to disqualify and petitions for writ of prohibition. (Doc. 1 at 38). Petitioner filed numerous petitions and motions to disqualify the trial court judge in the state trial and appellate court. (Doc. Nos. 21-8 at 79-16; 21-9 at 2-34, 77-84). These motions and petitions

were all denied. (*Id.*).

Petitioner sought disqualification of Judge Nelson, the judge who presided over his trial, because he did not believe that he would receive fair rulings on his post-conviction motions. (Doc. 21-8 at 80-81). Petitioner also cited the Judge's denial of post-conviction motions as a basis for her disqualification. (*Id.*).

"The test a trial court must use in determining 'whether a motion to disqualify is legally sufficient is whether the facts alleged would place a reasonably prudent person in fear of not receiving a fair and impartial trial.'" *Chamberlain v. State*, 881 So. 2d 1087, 1097 (Fla. 2004) (quoting *Barnhill v. State*, 834 So. 2d 836, 843 (Fla. 2002)). A motion to disqualify "must be well-founded and contain facts germane to the judge's undue bias, prejudice, or sympathy." *Id.* (quotation omitted). However, a trial judge's adverse rulings against one party do not constitute a sufficient basis for disqualification. *Gilliam v. State*, 582 So. 2d 610, 611 (Fla. 1991).

The state courts did not err by denying Petitioner's motion to disqualify or his petitions for writ of prohibition. The record does not demonstrate that the trial judge was biased against Petitioner, and the facts alleged by Petitioner were not such that a reasonable person would be convinced that bias existed. Instead, it appears that Petitioner merely takes issue with the adverse rulings against him, which alone do support a basis for disqualification. Consequently, the state court's rejection of this claim was not contrary to or an unreasonable application of clearly established federal law. Accordingly, the Court will deny Claim Eleven pursuant to § 2254(d).

K. Claim Twelve

Petitioner alleges that the Fifth DCA erred by barring him from filing any *pro se* documents pursuant to *State v. Spencer*, 751 So. 2d 47 (Fla. 1999). (Doc. 1 at 40). At most, Petitioner alleges an error or defect in the state post-conviction process. *See Quince v. Crosby*, 360 F.3d 1259, 1261-62 (11th Cir. 2004) (concluding that "[w]hile habeas relief is available to address defects in a criminal defendant's conviction and sentence, an alleged defect in a collateral proceeding does not state a basis for habeas relief"); *Carroll v. Sec'y Dep't of Corr.*, 574 F.3d 1354 (11th Cir. 2009). Petitioner's claim is unrelated to the cause of his detention, and thus habeas relief is not available to address this claim. *Id.*

Furthermore, there is no constitutional right to file frivolous court cases or abuse the judicial process. *Williams v. Sec'y, Dep't of Corr.*, No. 507-CV-97-OC-10GRJ, 2009 WL 1513412, at *3 (M.D. Fla. May 27, 2009). The state court's findings that Petitioner abused the state court judicial process are determinations that are entitled to deference in this Court; it is not the province of this Court to "reexamine state-court determinations on state-law questions." *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991). Accordingly, Claim Twelve is denied.

Any of Petitioner's allegations not specifically addressed herein have been found to be without merit.[6]

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[6] To the extent that Petitioner has raised new claims that counsel was ineffective for failing to file a motion to suppress and for failing to file a motion pursuant to Rule 3.190(c) of the Florida Rules of Criminal Procedure (Doc. 22 at 7 and 16), the Court notes that they are untimely and do no relate back to the Petition. Fed. R. Civ. P. 15(c); *Mayle v.*

IV. CERTIFICATE OF APPEALABILITY

This Court should grant an application for certificate of appealability only if the Petitioner "makes a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). To make such a showing "the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also Lamarca v. Sec'y Dep't of Corr.*, 568 F.3d 929, 934 (11th Cir. 2009). When a district court dismisses a federal habeas petition on procedural grounds without reaching the underlying constitutional claim, a certificate of appealability should issue only when a Petitioner shows "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.*; *Lamarca*, 568 F.3d at 934. However, a prisoner need not show that the appeal will succeed. *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003).

The Court concludes that Petitioner has not made the requisite showing in these circumstances. Petitioner is not entitled to a certificate of appealability.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

Felix, 545 U.S. 644 (2005). Therefore, the Court will not address those claims.

Alternatively, these claims are unexhausted because they were not raised in the Rule 3.850 proceedings. Petitioner fails to demonstrate any cause or prejudice for the procedural default. *Wright*, 169 F.3d at 703. Furthermore, he has not shown that he is actually innocent of the charges. *Murray*, 477 U.S. at 478. Consequently, these claims are procedurally barred.

1. The Petition for Writ of Habeas Corpus filed by Christopher Seckington (Doc. 1) is **DENIED**, and this case is **DISMISSED WITH PREJUDICE**.

2. Petitioner is **DENIED** a certificate of appealability.

3. The Clerk of the Court is directed to enter judgment and close the case.

DONE AND ORDERED in Orlando, Florida, on September 10, 2020.

GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

Copies to:
OrlP-3 9/8
Counsel of Record
Unrepresented Party

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-13899-E

CHRISTOPHER SECKINGTON,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeals from the United States District Court
for the Middle District of Florida

Before: JILL PRYOR and BRASHER, Circuit Judges.

BY THE COURT:

Christopher Seckington has filed a motion for reconsideration of this Court's April 2, 2021, order denying a certificate of appealability and leave to proceed *in forma pauperis*, in order to appeal from the denial of his underlying habeas petition, pursuant to 28 U.S.C. § 2254. Upon review, Seckington's motion for reconsideration is DENIED because he has offered no new evidence or arguments of merit to warrant relief.

APPENDI C

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

CASE NO. 13-2709CFA

vs.

CHRISTOPHER MICHAEL SECKINGTON,
Defendant.
_____/

ORDER DENYING DEFENDANT'S SECOND AMENDED MOTION FOR POSTCONVICTION RELIEF

THIS CAUSE comes before the Court on the Defendant's pro se "Second Amended Motion for Postconviction Relief," filed pursuant to Fla. R. Crim. P. 3.850 on May 19, 2017. Having reviewed the motion, the case file and the applicable law, and upon due consideration, the Court finds as follows:

The record reflects that the Defendant was convicted after a jury trial of trafficking in methamphetamine (Count 1) and possession of not more than 20 grams of cannabis (Count 2). On Count 1, the jury made the further finding that the quantity of the mixture containing methamphetamine was 200 grams or more. The Defendant was sentenced on Count 1 to twenty-five years imprisonment with a fifteen minimum mandatory pursuant to Fla. Stat. § 893.135(1)(f)1.c. and time served on Count 2. The Defendant appealed and the Fifth District Court of Appeal per curiam affirmed. Seckington v. State, 5D14-4245, 2015 WL 6438153 (Fla. 5th DCA Oct. 20, 2015).

In his motion, the Defendant raises several claims of ineffective assistance of counsel. In order to prevail on a claim of ineffective assistance of counsel, the Defendant has the burden of demonstrating that (1) counsel's performance was deficient, and (2) there is a substantial likelihood that the outcome of the proceedings would have been different. Strickland v.

APPENDI D

Washington, 466 U.S. 668 (1984); Williamson v. Dugger, 651 So. 2d 84 (Fla. 1994); Knight v. State, 394 So. 2d 997 (Fla. 1981). The Court notes that in reviewing claims of ineffective assistance of counsel, it must apply a strong presumption that counsel's conduct falls within the range of reasonable professional assistance and must avoid the distorting effects of hindsight. The standard is reasonably effective counsel, not perfect or error-free counsel. Coleman v. State, 718 So. 2d 827 (Fla. 4th DCA 1998); Schofield v. State, 681 So. 2d 736 (Fla. 2d DCA 1996).

In **Ground 1**, the Defendant asserts that trial counsel was ineffective for failing to revisit his judgment of acquittal (JOA) argument regarding the weight of the mixture at the Defendant's sentencing hearing. At the close of the evidence, trial counsel argued for a JOA based, in part, upon the fact that any unusable ~~waste product~~ mixture should not be included in the weight of the controlled substance. (T. 160-67). Relevant portions of the trial transcript are attached hereto as Exhibit A. The trial court denied the motion but indicated that defense counsel could do additional research and revisit the issue at sentencing. The Defendant asserts that trial counsel was ineffective for failing to do additional research and revisit the issue at the Defendant's sentencing hearing. In support of this claim, the Defendant cites to numerous federal cases premises upon the United States Supreme Court case Chapman v. United States, 111 S. Ct. 1919 (1991), which held that Congress adopted a market-oriented approach for punishing drug traffickers determining the weight of controlled substances for ~~purposes of the sentencing~~ guidelines. 111 S. Ct. at 1925. FN 2 Essentially, the Defendant is asserting that the trial court erred in denying his motion for JOA. Trial counsel moved for a JOA based upon the legal argument the Defendant is asserting in his claim; therefore, this is an issue that could have been raised on appeal. FN 1 The Defendant cannot "counter the procedural bar" to raising issues that could or should have been raised on direct

FN 2

to lay in ambush to hide

appeal by "couch[ing] his claim . . . in terms of ineffective assistance of counsel in failing to preserve or raise those claims." Cherry v. State, 659 So. 2d 1069, 1072 (Fla. 1995).

Furthermore, contrary to the Defendant's assertion, Florida courts are not bound by United State Supreme Court cases when interpreting the meaning of state statutes. Florida Ins. Guar. Ass'n, Inc. v. Olympus Ass'n, Inc., 34 So. 3d 791, 795 (Fla. 4th DCA 2010) ("state courts that are construing and interpreting state law are not bound by the decisions of federal courts."); Int'l Ass'n of Bridge, Structural & Ornamental Ironworkers, AFL-CIO v. Blount Intern., Ltd., 519 So. 2d 1009, 1012 (Fla. 2d DCA 1987) ("State courts . . . are not bound by any federal court regarding the interpretation of state law and only by the United State Supreme Court in regard to interpretations of the United States Constitution and Acts of Congress."). As recently noted by the First District Court of Appeal, the federal statutes interpreted in Chapman differ significantly from the Florida statutes regarding calculating the weight of controlled substances. Wilder v. State, 194 So. 3d 1050, 1054 n.5 (Fla. 1st DCA 2016). In Wilder, the Court held that "based on the plain language of sections 893.135(1)(f) 1. and 893.135(6), the jury was properly instructed on and allowed to consider the liquid by-product in determining" whether the defendant possessed a trafficking amount of methamphetamine. 194 So. 3d at 1054. In so doing, the Court rejected the use of the market-oriented approach adopted in Chapman. Wilder, 194 So. 3d at 1054 n.5. Similarly, while not specifically addressing liquid by-product in conjunction with the amount of methamphetamine, the Fifth District Court of Appeals recognized that when the Legislature amended sections 893.03(3) and 893.135 in 2001, "it added a definition to provide that the weight of a controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture." Nottebaum v. State, 898 So. 2d 1073, 1074 (Fla. 5th DCA 2005). Therefore, the Defendant has failed to demonstrate that

are bound only to apply the provisions of the Const. of US & Lawful Acts of Congress and

890 So. 2d 539 (- 05) - And we are of course not bound by the 11th Cir.'s decisions on vestions of Fl. Law.

Applies to usable pills (Hydrocodone) and Hayes v. State which F.S. not included in leg. intent.

presenting additional federal case law would have changed the results. Consequently, the Defendant has failed to demonstrate an entitlement to relief as to **Ground 1**.

In **Ground 2**, the Defendant asserts that trial counsel was ineffective for abandoning a defense based upon the Defendant's lack of knowledge of the illicit nature of the substance. The Defendant asserts that trial counsel could have established this defense by asking the investigators and lab technicians if they could be certain the mixture contained methamphetamine by just looking at it without testing the substance. The Defendant asserts that they would have answered that one would not be able to tell the substance contained methamphetamine without testing it, thereby entitling him to an instruction on the defense. The Defendant also asserts that he did not consent to counsel's failure to present evident in support of this defense.

At the close of the State's case, the trial court inquired of the Defendant regarding whether he intended to testify in his own defense, to which he stated that he would not. The trial court then inquired if there were any witnesses or evidence that Defendant wanted trial counsel to present that trial counsel had failed to present. The Defendant indicated that there was not, but that there was additional case law that he wanted presented regarding his motion for a JOA, which was subsequently addressed. (T. 163-65). The Defendant cannot now complain about this decision, which he made at the time of trial. Therefore, trial counsel was not ineffective in this regard. See Gamble v. State, 877 So. 2d 706, 714 (Fla. 2004) ("[I]f the defendant consents to counsel's strategy, there is no merit to a claim of ineffective assistance of counsel."). As such, the Defendant has failed to demonstrate an entitlement to relief on **Ground 2**.

In **Ground 3**, the Defendant asserts that trial counsel was ineffective for failing to move for a JOA because there was no jury finding that the Defendant possessed the mixture of

methamphetamines in conjunction with other chemicals and equipment for the manufacture of methamphetamines. The Defendant asserts that the information charged him with possession in conjunction with other chemicals and equipment but that the jury was neither instructed on this element nor made any specific finding in that regard. This claim appears to be based upon a mistaken understanding of the trafficking statute and the Defendant's charge in this case. Pursuant to Fla. Stat. § 893.135(1)(f)1, trafficking in methamphetamine can be committed by possessing 14 grams or more of: (X) methamphetamine; (X) any mixture containing methamphetamine; or (X) phenylacetone, phenylacetic acid, pseudophedrine or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture of amphetamine or methamphetamine. It is only possession of phenylacetone, phenylacetic acid, pseudophedrine or ephedrine that must be possessed in conjunction with other chemicals and equipment to constitute trafficking, not a mixture containing methamphetamine. "The general rule is where an offense may be committed in various ways, the evidence must establish it to have been committed in the manner charged in the indictment." Long v. State, 92 So. 2d 259, 260 (Fla. 1957). When a statute criminalizes acts in the disjunctive, the information can allege those acts in the disjunctive and proof of any one of the acts is sufficient to sustain a conviction. See Id.

The State charged the Defendant with three different ways to commit the offense of trafficking in methamphetamines. A copy of the amended information is attached to the Defendant's motion as Exhibit A. As stated in the Defendant's statement of the case and facts, there was no evidence presented that the Defendant possessed phenylacetone, phenylacetic acid, pseudophedrine or ephedrine; therefore, there was no reason to instruct the jury on that method of committing the offense. See Defense Motion pg. 6. Furthermore, as the information charged the Defendant with multiple ways of committing trafficking, proof of possession of any mixture

of methamphetamine was sufficient to sustain a conviction without the jury being instructed on possession in conjunction with other chemicals and equipment. The Defendant acknowledged in his statement of the case and facts that there was evidence presented that the jugs contained methamphetamine and their total weight was over 14 grams. See Defense Motion pg. 5-6. Therefore, any motion for a JOA or objection to the jury instructions would have been futile. Trial counsel "cannot be deemed deficient for failing to raise a nonmeritorious legal theory." See Bradley v. State, 33 So. 3d 664, 682 (Fla. 2010), as revised on denial of reh'g (Apr. 22, 2010) (quoting Thompson v. State, 759 So.2d 650, 665 (Fla.2000)). Consequently, the Defendant has failed to demonstrate an entitlement to relief as to **Ground 3**.

In **Ground 4**, the Defendant asserts that trial counsel was ineffective for failing to retain and call at trial a fingerprint expert and a forensic chemist. As discussed above, at the close of the State's case, the trial court inquired of the Defendant if there were any witnesses or evidence that Defendant wanted trial counsel to present that trial counsel had failed to present. The Defendant indicated that there was not, but that there was additional case law that he wanted presented regarding his motion for a JOA, which was subsequently addressed. (T. 163-65). The Defendant cannot now complain about this decision, which he made at the time of trial. Therefore, trial counsel was not ineffective in this regard. See Gamble, 877 So. 2d at 714 ("[I]f the defendant consents to counsel's strategy, there is no merit to a claim of ineffective assistance of counsel."). As such, the Defendant has failed to demonstrate an entitlement to relief on **Ground 4**.

In **Ground 5**, the Defendant asserts that trial counsel was ineffective for failing to argue that the trial court erred in denying his motion for JOA regarding the Defendant being the sole occupant of the premises where the drugs were located. While initially phrasing this as a claim

of ineffective assistance of counsel, the Defendant acknowledges in the claim that he is asserting that the trial court erred in denying his JOA. Issues of ordinary trial error, reviewable on appeal, are not cognizable under rule 3.850. Bruno v. State, 807 So. 2d 55, 63 (Fla. 2001); Straight v. State, 488 So. 2d 530 (Fla. 1986); Childers v. State, 782 So. 2d 946 (Fla. 4th DCA 2001); State v. Johnson, 651 So. 2d 145 (Fla. 2d DCA 1995). The Defendant cannot "counter [this] procedural bar" by "couch[ing] his claim . . . in terms of ineffective assistance of counsel in failing to preserve or raise those claims." Cherry, 659 So. 2d at 1072. Therefore, the Defendant has failed to demonstrate an entitlement to relief as to **Ground 5**.

In **Ground 6**, the Defendant asserts that trial counsel was ineffective for failing to object to the trial court instructing the jury on the lesser included offense of manufacturing methamphetamine because it is not a lesser included offense of trafficking in methamphetamine. Given that the Defendant was convicted as charged of trafficking, the Defendant cannot demonstrate that he was prejudiced by the inclusion of the instruction on the lesser included offense of manufacturing. Therefore, the Defendant has failed to demonstrate an entitlement to relief as to **Ground 6**.

In **Ground 7**, the Defendant asserts that trial counsel was ineffective for failing to withdraw from representing the Defendant based upon a conflict of interest. This claim was previously dismissed twice for failure to allege any specific facts, which demonstrate an entitlement to relief, and the Defendant was given leave to file an amended motion pursuant to Spera v. State, 971 So. 2d 754, 761-62 (Fla. 2007). A copy of the original motion without attachments is attached hereto as Exhibit B. A copy of the Court's February 28, 2017 order is attached hereto as Exhibit C. A copy of the amended motion without attachments is attached hereto as Exhibit D. A copy of this Court's April 20, 2017 order is attached hereto as Exhibit E.

The Defendant was unable to "cure the deficiency," and this Court is not required to give him another opportunity to amend. Nelson v. State, 977 So. 2d 710, 711 (Fla. 1st DCA 2008). Therefore, the Defendant has failed to demonstrate an entitlement to relief as to **Ground 7**.

In **Ground 8**, the Defendant asserts that trial counsel was ineffective for failing to advise the Defendant that he could appeal the issue regarding the calculation of the weight of the mixture containing methamphetamine if the Defendant had accepted the State's plea offer. The Defendant's claim is premised on the assertion that he would have accepted the plea offer if he had known that he could appeal the issue of how the weight of the mixture should be calculated; however, Fla. R. App. P. 9.140(b)(2)(A)(i) provides that a defendant cannot appeal from a guilty or no contest plea except when the defendant "expressly reserve[s] the right to appeal a prior dispositive order of the lower tribunal, identifying with particularity the point of law being reserved." (emphasis added). At the time of the plea offer, August 12, 2014, there had been no ruling by the trial court on the issue of the proper calculation of the weight of the mixture containing methamphetamine. [In fact, there had been no motion filed by the defense raising said issue.] The only potentially dispositive motion filed was a motion to dismiss based upon entrapment filed on May 28, 2014. A copy of the clerk's docket screen is attached hereto as Exhibit F. A copy of the motion to dismiss is attached hereto as Exhibit G. The record does reflect that the issue was raised in a pro se motion to dismiss filed by the Defendant after he was permitted to represent himself. A copy of the motion is attached hereto as Exhibit H. However, the Defendant withdrew the motion without the trial court ever ruling on it at the trial scheduling conference held on October 2, 2014. A copy of the court minutes is attached hereto as Exhibit I. Therefore, there was no prior dispositive order for the Defendant to appeal if he had entered a plea, and any advice by trial counsel to the Defendant that he could appeal the issue if he entered

Defense counsel should have asked for time to file a (c)(4) motion before state withdrew offer.

the plea would have been incorrect. As a result, the Defendant has failed to demonstrate that trial counsel was ineffective. Consequently, the Defendant has failed to demonstrate an entitlement to relief as to **Ground 8**.

In **Ground 9**, the Defendant claims that the cumulative errors by his counsel constitute ineffective assistance of counsel. As the Court has found the individual claims of error to be without merit, the Defendant has failed to demonstrate that he is entitled to relief based on the cumulative errors of his counsel. If tr. ct. found 8 grounds had merit then ground 9 does to. See Ferrell v. State, 29 So. 3d 959, 976 (Fla. 2010), reh'g denied (Mar. 1, 2010). Therefore, the Defendant has failed to demonstrate an entitlement to relief as to **Ground 9**.

Accordingly, it is

ORDERED AND ADJUDGED that Defendant's motion is DENIED.

Defendant may file a notice of appeal within thirty days of the date this order is rendered.

DONE AND ORDERED in chambers at Sanford, Seminole County, Florida, this 17 day of July, 2017.

Debra S. Nelson

DEBRA S. NELSON, Circuit Judge

I hereby certify that copies of the foregoing have been furnished by mail this 18TH day of July 2017 to:

Christopher Seckington, # 081034
Hamilton Correctional Institution - Annex
11419 SE County Rd. 249
Jasper, FL 32052

Office of the State Attorney
101 Eslinger Way
Sanford, FL 32773

GRANT MALOY, Clerk of Courts

By: _____
DEPUTY CLERK

7-17-14

Chris Seckington
Jail # 13-10380
7-17-14
RE: Case # 13-2709-CFA

A

EXHIBIT A

TO: Judge Nelson,

I have a conflic of interest with my Attorney Mr. Hausler.

I hereby respectfully Demand a Nelson Hearing Forthwith.

Chris Seckington

Chris Seckington
Jail # 13-10380
Seminole County Jail
Defendant

APPENDIX E

8-20-14

B.

Chris Seckington
Jail # 13-10380
8-20-14
RE: CASE # 13-2709-CFA

EXHIBIT B

TO: Judge Nelson,

My name is Chris Seckington, I have a conflict of Interest with my Attorney, Mr Hausler.

Mr Hausler has not done the things that I told him were critical ~~na~~ in this case and need to be done before I got Trial.

I hereby request to have a Nelson Hearing Forthwith

Chris Seckington
Chris Seckington
13-10380
211 Bush Blvd.
Sanford, FL 32773

C

EXHIBIT C

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR SEMINOLE COUNTY, FLORIDA

STATE OF FLORIDA

Plaintiff,

v.

CHRISTOPHER SECKINGTON,

Defendant.

_____/

CASE NO. 59-2013-CF-002709-A

MOTION TO WITHDRAW AS COUNSEL OF RECORD

COMES NOW, Justin G. Hausler, Esq., Counsel of Record for the Defendant, CHRISTOPHER SECKINGTON, and files this Motion to Withdraw as Counsel of Record and as grounds therefore states:

1. That the Undersigned Counsel was appointed to represent the Defendant on the above-referenced case numbers on June 18th, 2014 by the Judge Jessica Recksiedler. The Defendant was represented by the Public Defender, Office of Regional Conflict and private counsel. The Undersigned Attorney was appointed to the case after private counsel withdrew and without an order of conflict being entered on behalf of the Office of Regional Conflict.

2. That against the advice of the Undersigned Attorney, the Defendant, CHRISTOPHER SECKING, has decided to address the court personally and has written two letters to express his dissatisfaction with the Undersigned Attorney representing him.

3. That due to continued issues that remain protected by confidentiality the Undersigned Attorney must request to withdraw from the Defendant's case due to ethical conflict.

4. That the Defendant has requested the ability to represent himself in the last letter he wrote to this Court.

5. That pursuant to the Defendant's voiced dissatisfaction and additional exchanges between the Defendant and the Undersigned Attorney, the Attorney/Client Relationship is irrevocably broken.

6. That the Undersigned Attorney would move to withdraw from representation of the Defendant and believes that any further representation will cause additional delay and potential 3.850 issues on the Defendant's case.

WHEREFORE, the Undersigned Counsel respectfully requests that this Honorable Court enter an Order granting leave to withdraw as counsel for the Defendant and do all else in the interest of justice.

C

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by EService Delivery to the Office of the State Attorney, Seminole County FL and CHRISTOPHER SECKINGTON by US Mail at the John E. Polk Correctional Facility, FL 32124 on this 12th day of August, 2014.

/S/ *Justin Hausler*

JUSTIN G. HAUSLER, ESQUIRE
The Law Offices of
Justin G. Hausler, P.A.
274 Wilshire Blvd., Ste. 245
Casselberry, FL 32707
Tel. (407) 617-1064
jghausler@gmail.com
Florida Bar #0031071
Attorney for the Defendant

EXHIBIT D

D

IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT, IN AND FOR SEMINOLE COUNTY, FLORIDA

08/27/2014 2:04 PM
Case # **2013CF002709A**
STATE OF FLORIDA vs **SECKINGTON, CHRISTOPHER MICHAEL**
OBTS # 5901133078

Agency: ASMU
DOCKET SOUNDING Opened At 01:33 PM on 08/27/2014 In Courtroom J1, With the Following:

Circuit Judge: DEBRA S NELSON
Deputy Clerk: PATRICIA TABOR
State Attorney: B. BYNUM/M. MCCARTHY/S
Defense Attorney: HAUSLER, JUSTIN GARY
Public Defender: S. BRYSON/D. MEGARO
Deputy Sheriff/Bailiff: T. DEMPS
Court Reporter: DIGITAL

Charge(s):

	Description	Citation	Bond	Bondsman
1	**TRAFFICKING IN AMPHETAMINE OR METHAMPHET**			
2	**MANUFACTURE METHAMPHETAMINE**			
3	**POSSESSION OF NOT MORE THAN 20 GRAMS OF**			
4	**USE OR POSSESSION OF DRUG PARAPHERNALIA**			

Defendant Was: Present for DOCKET SOUNDING, In Custody, Sworn
State Attorney B. BYNUM/M. MCCARTHY/S. STONE Was Present
Defense Attorney HAUSLER, JUSTIN GARY Was Present

For All Charges:
Defendant returned to custody
The Court granted defense motion to continue

Docket Sounding continued to 09/24/2014 at 09:00 AM in Courtroom 5D, at the Criminal Justice Building, 101 Bush Blvd, Sanford, FL 32773 before Judge DEBRA S NELSON

COURT INQUIRED OF DEFENDANT AS TO FERRETTA HEARING.
COURT FINDS DEFENDANT COMPETENT TO PROCEED ON HIS OWN BEHALF.
DEFENSE MOTION TO WITHDRAW WAS GRANTED. COURT ANNOUNCED JUSTIN HAUSLER WILL BE STAND BY COUNSEL.

Judge: Debra S. Nelson

RECEIPT OF DEFENDANT:
I hereby acknowledge receipt of the foregoing

X_____
Defendant's Signature Address (include City, State & Zip) Phone Number

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 the ADA Coordinator, Court Administration, 301 North Park Avenue, Sanford, FL 32771, telephone number (407) 665-4227 at least, 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

Chris Seckinger 1011
Jail No. 12 0380
Date September 8, 2014
RE: Case No. 2013-CF-2709-A

E

EXHIBIT E

FILED IN OFFICE
MARYANNE MORSE
CLERK CIRCUIT COURT
14 SEP -9 AM 8:04
BY SEMINOLE FL DC

TO: Judge Nelson,

I am requesting a Nelson Hearing and offer the following in support thereof:

1. On 8-18-14 I requested Mr. Hausler to set a hearing date for a Bond Reduction Hearing and he has not done so yet.

2. On 6-18-14 I requested Mr Hausler to locate CI 450 who had pancritits cancer and see if he is alive. If so, depose him. Mr Hausler has not done so yet.

3. On 6-18-14 I requested Mr. Hausler to get me a copy of Case State v. Finno, 643 So. 2d, 1166 (4th DCA 1994) which is the supporting case for Mr Blankner's motion to dismiss dated ~~May~~ may 28, 2014. Mr Hausler has not provided me a copy of State v. Finno yet.

4. I requested to hear or read the depositions in this case. Mr Hausler has not done so yet.

5. I requested Mr Hausler to provide me with pictures of the tangable evidence. He has not done so yet.

6. I requested Mr Hausler to provide me with a copy of the discovery information in this case. He has not done so yet.

7. Most importantly, Mr. Hausler has not obtained an expert witness that will testify that the amphetamine manufacturing process was complete and the liquid amphetamine was unusable ~~waste~~ was waaste.

E

8. Mr Hausler has done nothing to help me with this case no. 2013-CF-2709-A.

WHEREFORE, I request the next Registry Attorney to replace Mr Hausler as I need to update my replacement Attorney forthwith.

Respectfully Submitted this 8th day of September, 2014.

Chris Seckington
Chris Seckington
13-10380
211 Bush Blvd.
Sanford FL 32773

Hausler failed to obtain certified copies of Petitioner's occupational licenses to do 24 hour emergency repairs and remodeling for the past 23 years using his residence as a place of business.

Hausler failed to do items a-m on page 6 of Petitioner's § 2254 Motion (See Appendix G page 6).

Hausler failed to state sufficient facts to show that Defense Counsel may very well have prevailed on a more artfully presented motion for judgment of acquittal based upon the evidence he alleges was presented against Petitioner at trial. (See Appendix G page 10).

Hausler failed to advance the Lack of Knowledge of the Illicit Nature of the Controlled Substance" theory at trial. (See Appendix G page 13).

Hausler failed to hire an expert witness whose testimony would have been exculpatory at trial. (See Appendix G page 15).

Hausler failed to investigate and challenge the constitutionality of ANY MIXTURE (i.e. pool water, toilet water, liquid waste, or dog crap) in Florida Statute § 893.135 (1)(f) (See Appendix G page 24).

Hausler failed to file a motion to dismiss under Florida Statute § 3.190 (c)(4) where Petitioner would have taken the 7 year plea offer had the 3.190 (c)(4) motion been denied. (See Appendix G page 30).

Hausler failed to investigate the legislative intent in Florida Statute § 893.135 (7) (See Appendix G page 32).

Hausler did not prepare at all for the sentencing hearing. There were lots of mitigating evidence. (See Appendix G page 34).

Had Hausler discussed the case with Petitioner prior to the trial Defense Counsel would have been able to use the following valuable information at trial.

~~About 20 days prior to the execution of the search warrant, Robert Murry, who had terminal~~

pancreatic cancer, obtained permission to live with Petitioner from brother, tenant, Lawrence Seckington and owner Ruth Seckington until an opening became available at the hospice on or about August 28th, 2013. About August 29th, 2013, Robert arranged for the Hospice Nurse Practitioner to come to the house and through the Medical Doctor on the phone prescribed Robert Murry 15 doses of intravenous hydromorphone (pain medication) per day for 30 days, and they had a wheel chair delivered the next day. A search warrant was signed by a County Judge on or about September 7th, 2013. About September 8th, 2013, Robert Murry started to leave tablespoons with left over crusty white residue and used syringes from the cold process of preparing his intravenous injections of hydromorphone in plain view which was about once per hour. When Petitioner observed the spoons and syringes in plain view he collected them and put them in the cabinet where Robert's new syringes were in Petitioner's cabinet above one of the office's desks. Petitioner was using the premiss as his office and shop for his kitchen and bathroom remodeling business. On or about September 11th, 2013 Robert Murry began to pass out after every intravenous injection of hydromorphone. On September 17th, 2013 Robert Murry had his 7 year old son over for a possible last visit. Robert Murry's son was on Riddelin or Adderal, a child behavioral medication made of methamphetamine. Robert Murry passed out in the master bathroom with the door shut and locked. His son had to urinate so he did so in two 32 ounce plastic bottles with some household cleaner and waste already in them. Petitioner was unaware of this. When Robert Murry came to he placed the 32 ounce plastic bottles in the closed shower stall that contained a few 5 gallon paint buckets and other household cleaning supplies. Petitioner was unaware of the urine until January of 2015 when inmate John Williams, at Apalachicola Correctional Institution informed him of the story told to him by a prisoner in Citrus County explaining the events that occurred in Altamonte Springs where a Defendant was sentenced to in essence life for a couple of soda bottles of urine from a kid on Adderal or Riddelin.

At an unknown time in the afternoon of September 17th, 2013 Petitioner was pulled over on his way to his bank and arrested. In the late afternoon prior to the search of the premiss Robert Murry had

returned with two adults, one male one female. They had parked in the park behind the residence and used the keys petitioner had provided him with on August 28th, 2013, to gain entry. At an unknown time in the evening of September 17th, 2013, the search warrant of Petitioner's residence/office and shop was executed.

When the police called Lawrence Seckington and notified him to come and open the front door Lawrence informed Robert Murry and his two comrades and they hastily fled out of the back door. Petitioner was informed of this by letter from Lawrence in March of 2015. Lawrence Seckington was never deposed or questioned by Defense Counsel. During the search Law Enforcement recovered two 32 ounce plastic bottles and extracted samples of unknown liquid from each. The unknown liquid was sent to the DEA Lab, who five months later claimed that the unknown liquid tested positive for trace amounts of methamphetamine and weighted over 14 grams. Defense Counsel never had the unknown liquid retested to determine the amount of usable methamphetamine it contained as Petitioner had requested numerous times (See Appendix E Exhibit E). At trial the DEA Agent, Charles Locher testified that "to make methamphetamine in this instance with the one-pot, amonium nitrate...a fertilizer....Coleman Fuel...pseudoephedrine....starting fluid....lithium strips, you're adding water to all of this, so it just makes a very very explosive container." (TT 62-63). Locher testified that his "training and experience" led him to believe that they were one-pots but provided no scientific proof of this at trial. Agent Locher then testified (TT 82-115) "In these two pictures, were you able to see items that your training and experience tells you could be used towards the manufacture or ingestion of methamphetamine?" The State showed a picture of an empty 16.9 ounce mountain dew bottle. If Defense Counsel had asked an expert witness about the mountain dew bottle he would have discovered that a 16.9 ounce bottle was way to small to be used for the manufacturing of methamphetamine. Defense Counsel should have motioned for the exclusion of the mountain dew bottle as the State failed to prove relevance, finger print evidence, testing of the prior contents or collect the bottle itself as evidence. The State then presented a picture of a "Gatorade bottle has some kind of liquid in it. I wasn't

sure exactly what that was until we did testing on it." Defense Counsel never discussed the "Gatorade bottle" in question with the Petitioner. He never objected to the inclusion of the Gatorade bottle or tried to determine the results of the testing done on it yet it was allowed to be State's exhibit eleven when it was completely irrelevant. The State then presented the picture of an empty container of table salt and stated "which is used in the end stages of the manufacturing methamphetamine." Defense Counsel never discussed the picture of the empty table salt container with Petitioner or motioned for the exclusion of the empty table salt container as the State failed to prove the empty table salt container that was to be used in the final stage of the manufacturing process was going to be used. The State failed to prove relevance, produce fingerprint evidence, failed to test the prior contents or collect the container itself as evidence as such the Florida and Federal rules of evidence require the exclusion of prejudicial and irrelevant evidence. The DEA Agent Charles Locher then testified that "you have some plastic tubing there." inferring that plastic tubing is used in the one-pot manufacturing process. Had Defense Counsel done the appropriate research and consulted an expert in the one-pot manufacturing process he would have discovered that plastic tubing is not used in the one-pot manufacturing process therefore, the picture of the plastic tubing is irrelevant prejudicial and against the rules of evidence and Defense Counsel should have motioned for the exclusion of the picture of the plastic tubing. Had Defense Counsel discussed the picture with Petitioner he would have informed Defense Counsel that it was a picture of a broken computer cable that needed replacing. Next Locher testified "and then the rubbing alcohol can also be used." had Defense Counsel questioned an expert in the process of manufacturing by the one-pot method he would have discovered that rubbing alcohol contains a minimum of 9% water and would have caused an immediate explosion if combined with the required chemicals necessary to manufacture methamphetamine. Defense Counsel should have motioned for the exclusion of the picture of the empty bottle of rubbing alcohol. The State failed to prove relevance, produce fingerprint evidence, failed to test the prior contents or collect the container itself as evidence. Had Defense Counsel discussed the picture of the empty container of rubbing alcohol with Petitioner

he would have found out it was put there to remind him to buy more for his first aid kit. Locher then testified about State's exhibit Fourteen stating "You see the gas treatment behind, that's used in the process, the initial process of manufacturing methamphetamine, not the end process." Had Defense Counsel consulted an expert in the one-pot manufacturing process he would have discovered that the cost of gas treatment is prohibitive, costing three dollars or more for eight ounces while a more desirable and more commonly used charcoal lighter fluid costs less as most organic solvents cost fifty cents for eight ounces, the use of gas treatment is unheard of in the one-pot method of manufacturing methamphetamine. The State failed to prove that anyone was seen using the gas treatment to manufacture methamphetamine as such the State failed to prove relevance, produce fingerprint evidence, failed to test the prior contents or collect the empty container itself as evidence. This requires the exclusion of prejudicial and irrelevant evidence. Had Defense Counsel discussed the picture of the empty bottle of gas treatment with Petitioner he would have been informed that for Petitioner's company vans he fills the empty gas treatment bottles with transmission fluid and stores them in the engine compartment, as 8 fluid ounces is usually the perfect amount to add and the bottles neck is very narrow and fits nicely into the filler tube resulting in minimal spillage. Locher then testified about State's exhibit 12 stating "The propane fuel is used for initial manufacturing" had Defense Counsel discussed propane with an expert in the one-pot manufacturing process he would have discovered that propane is not used and cannot be used in the manufacturing process. Defense Counsel should have motioned for exclusion of the picture of propane fuel and in failing to do so provided ineffective assistance of counsel. Locher testified about exhibit 15 stating "the plastic jars" that's a "propane thing"... "But the plastic jars right here is another jar with liquid in it, unknown liquid." The State failed to prove any of the items in exhibit 15 were used or were going to be used in the manufacturing process. Had Defense Counsel discussed exhibit 15 with petitioner he would have informed him that State's exhibit 20 shows a bag of butterscotch candy which Petitioner intended to fill the plastic jar with and place it on the top shelf in exhibit 15 along with the 11 other jars of candy. Defense Counsel's

failure to try to have exhibit 15 excluded because Florida and Federal law requires irrelevant and prejudicial evidence to be excluded, resulted in ineffective assistance of counsel. I.A.C. Defense Counsel failed to object or motion for exclusion of exhibit 19 "that area where you were talking about the plastic jars?" Which was irrelevant and prejudicial to the charge of trafficking in amphetamine. Locher testified about State's exhibit 20 next stating "yes" to the question that the "propane thing" was a propane lighter and "that with various plastic bottles that are used to manufacture that one-pot method." Had Defense Counsel consulted Petitioner about the "propane thing" he would have informed Defense Counsel that it was a broken soldering torch on his construction desk for repair and the plastic bottles were empty spring water bottles used to combat thirst. Next Locher testified about the State's 16 which shows a picture of a medicine cabinet/first aid kit which contained among other medicine and first aid supplies "Hydrogen peroxide up front"..."rubbing alcohol"..."Cotton swabs" Had Defense Counsel consulted with a one-pot expert he would have found out that hydrogen peroxide, rubbing alcohol and cotton swabs are not used to make methamphetamine and should have motioned for exclusion of exhibit 16. Next Locher testified about State's 17 stating "you got the needles for one thing...cotton swabs...your spoons have a white substance in it...syringes...butane lighters" Had Defense Counsel consulted Petitioner on exhibit 17 Petitioner would have informed him that the white substance on the spoons was hydromorphone from Petitioner's room mate, Robert Murry, who was dying of pancreatic cancer and self administering intervinious injections of pain medication on an hourly basis using a new syringe each time. No lab report was ever done on the spoons; However Detective Weber testified he used 5 methamphetamine test kits on the 5 spoons which all showed positive results. Weber then testified that he used 5 methamphetamine test kits on the 5 cotton swabs which all showed positive results. Weber then testified he found 8 vials of suspected powder methamphetamine weighing 10 grams total and used one methamphetamine test kit on one vial, which showed positive results. (TT 134-135). Had Defense Counsel consulted with Petitioner about the 8 vials prior to the trial he would have been informed that the 8 vials were dietary salt substitute. No lab report was ever presented to the

Defense or to the Jury which was led to believe that all 8 vials field tested positive for a total of 10 grams of methamphetamine and was extremely damaging State's evidence against Petitioner. Competent counsel would have had the 8 vials lab tested and excluded as evidence at trial. State's exhibit 21 shows about 10 used carpet razorblades, a pill bottle and a pipe with "burning." Competent counsel would have pointed out there was no field test or lab report or finger print test on any of the items in exhibit 21 and moved for exclusion. State's 23 shows a picture of "green leafy substance, yeah possibly marijuana....little baggie...white powered in it possibly methamphetamine" No lab report or finger print test was ever presented to the Defense or Jury. However, Defense Counsel never objected to or motioned for State's 23 to be excluded. Competent counsel would have. Counsel provided ineffective assistance of counsel. State's 24 shows a picture of over $750.00 of small construction tools which contained a "mask...with the two air purifying respirators...used in the manufacturing of methamphetamine." No field test, no lab report or finger print test were presented to the Jury. Had Defense Counsel consulted Petitioner he would have been aware that the respirator was for painting in Petitioner's kitchen and bathroom construction company whose official shop was the residence or alleged scene of the crime. State's 26 and 27 are pictures of a tool box containing over $1,000.00 of specialty tools for plumbing. Locher testified that the calculator, a copper fitting and BB's "a lot of times...there for the cook." Had Defense Counsel consulted a one-pot expert he would have realized that Locher was no expert and entirely reaching beyond speculation and motioned for exclusion would have been recommended and required by Florida and Federal law. In State's 30 Locher testified that "And see all the colors and different colors here," when the picture plainly showed that on top was a layer of clear liquid and on the bottom appeared to be what looked like wet kitty litter or floor dry, there were "no colors". Locher testified "That's your ammonia nitrate" when in fact if ammonia nitrate was used it would have been mixed in the sludge on the bottom. Locher then stated "your pseudo there, here. They could have used white pseudo also." When in fact if pseudoephedrine was used in the mixture it would have dissolved right away and been suspended in the clear liquid. Locher then state's,

"And then you see your lithium strips, the little black spots is lithium strips," when in fact lithium strips are not used, the lithium must be small clumps and dissolve in the sludge. Locher then state's; "and then see the copper? That could be some copper from what he had in there earlier." Had Defense Counsel consulted a one-pot expert he would have been aware that copper is never used in the one-pot process and moved for exclusion of the conclusion that these pictures were scientifically proof of "one-pots". State's PP is a syringe with a "little bit of liquid like its possibly been used or set to be used...would that be relevant to the manufacture or possession of methamphetamine?..The use." Defense Counsel provided ineffective assistance of counsel. By not objecting to the fact that there was no lab report on the contents of the syringe as Petitioner claims it would have been likely hydromorphone and should have been excluded. Defense Counsel should have discussed the syringe evidence with Petitioner and had a lab test done on the syringe prior to trial. State QQ was 3 pipes that were never field tested or lab tested. Allowing the State's testimony that "one is definitely methamphetamine and one is marijuana." go unchallenged shows how trial preparation is non-existent which is I.A.C. State's RR was 2 butane lighters (Bic brand), Allowing 2 common lighters to be used as evidence without challenging their admissibility was ineffective assistance of counsel. State's SS testimony was "its the spoons containing the white powdery substance." This testimony alone was all it took for the State to have admitted into evidence 5 spoons that detective Weber testified he field tested all the spoons for methamphetamine when in fact Petitioner knows they were used for preparing hydromorphone. State's VV were "several funnels" Defense Counsel was I.A.C. Because it is not unusual for a construction company to have funnels in the storage closet in there office. State's XX were "Coffee Filters" no evidence was presented that the coffee filters were used by Petitioner or anyone else to manufacture methamphetamine. It it not unusual for a construction company to have coffee filters in the office pantry full of coffee, cream and sugar. Defense Counsel provided ineffective assistance of counsel by not objecting and motioning for the coffee filters exclusion. Had Defense Counsel discussed State's UU with Petitioner and an expert in the one-pot method he would have

discovered that the "notes or recipes" were not for manufacturing methamphetamine by the one-pot method and had them excluded. State's OO or exhibit 40 was 2 grams of suspected cannabis which was never field tested or lab tested. Had Defense Counsel discussed the suspected cannabis with Petitioner he would have discovered there was a high probability that it was not cannabis but a form of legal smoke and Petitioner would have insisted on it being lab tested. Defense Counsel's allowing it to be put into evidence without objection, scientific proof, or a motion to sever amounted to ineffective assistance of counsel, and severely prejudiced Petitioner at trial. State's NN or exhibit 41 were the 8 vials of white powdery substance of which only one was field tested and Detective Weber stated had a positive for methamphetamine result. Had Hausler discussed the contents of the 8 vials prior to trial he would have been informed that they contained Petitioner's dietary salt and should have been lab tested and excluded instead, it was allowed in as State's evidence as proven 10 grams of methamphetamine.

All this questionable evidence that could have and should have been excluded by objection or motion or both was a deciding factor in the jury verdict. By Defense Counsel not objecting to and motioning for exclusion of the questionable evidence was a classic case of I.A.C. By Hausler never objecting to any of the State's exhibits, by not properly investigating them, having them tested by an independent lab, by not calling upon an expert in the field he had no knowledge of, all proved he was operating under the "Ethical Conflict" and did not have Mr. Seckington's view or interest in his innocence.

Hausler did not operate at a level that other attorney's would have.

GROUND ONE:

The Trial Judge reversibly erred by knowingly reappointing counsel that was not conflict – free and Defense Counsel was ineffective for failure to withdraw from representing the Petitioner after filing a "Motion to withdraw as Counsel of Record" that cited an "ethical conflict of interest" and an "irrevocable broken attorney/client relationship" that was granted by the Trial Judge, thus violating Petitioner's 14th and 6th Amendment rights to the U.S. Constitution.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. This ground was presented to the Trial Court and to the 5th DCA as ground seven of Petitioner's 3.850 (See Appendix E page 43-46), Ground Seven of his 2nd Amended 3.850 (See Appendix D page 41-42a) and Ground Seven of his Initial Brief on appeal of his 3.850 (See Appendix F page 40-44).
2. Defense Counsel, Justin Hausler was appointed counsel of record in June of 2014 and Petitioner immediately instructed Hausler to:
   (a) Investigate and become familiar with the relevant law on "unusable/unmarketable" mixtures and challenge the quantity of methamphetamine attributed to Petitioner for Count One trafficking in over 200 grams of a mixture containing methamphetamine.
   (b) Have the approximately 10 grams of white powdery substance in eight unmarked vials suspected of being methamphetamine tested by an independent laboratory because it was "my" (Petitioner's) "No Salt" or "Dietary Salt" which is gravamen to defending the constructive possession aspect of Count One.
   (c) Have the unknown clear liquid mixture analyzed by an independent laboratory to verify Petitioner's rational assumption that no usable methamphetamine can be extracted from the unknown clear liquid mixture and determine it had no "Street value" and/or "Street weight" which is gravamen to the lack of knowledge of the illicit nature of the contraband claim that Petitioner will be pursuing at trial.
   (d) Obtain a fingerprint expert to testify that Petitioner's fingerprints were not on the two 32 ounce plastic bottles that contained the unknown clear liquid mixture with more than zero

grams of invisible methamphetamine because I (Petitioner) suspect that the State is withholding the negative results of the fingerprint analysis.

(e) Locate and depose Confidential Informant Robert Murry, to establish that he was living with Petitioner on his side of the residence to prove joint occupancy which requires the State to prove by independent or direct evidence constructive possession.

(f) Obtain certified copies of jail records to prove Petitioner was already in jail when the search warrant was executed which will make it more difficult for the State to prove constructive possession with only property ownership as evidence of possession.

(g) Locate and depose Mike Fortune, Shawn Duffy and his girlfriend Balinda to establish their presence the day of the search warrant's execution.

(h) Have an expert certify that the suspected recipe for manufacturing methamphetamine by the one-pot method was for something else and file a motion to suppress the recipe.

(i) Try to negotiate a plea bargain with the State to drop the trafficking charge because they have no usable drug as required by Florida Statute § 893.135(7) and sentence Petitioner to six month in jail, the standard sentence for manufacturing by the one-pot method in Seminole County since Petitioner already has served nine months.

(j) File a motion for bond reduction since the State has no evidence to support the charge of trafficking according to legislative intent as stated by Florida Statute § 893.135(7) quoting State v. Hayes, Chapman and Rolande-Gabriel. see for case cites

(k) Bring the depositions to this case to jail for Petitioner to hear or read.

(l) Bring Petitioner pictures of the tangible evidence.

(m) Deliver a copy of the discovery information to the Petitioner to keep.

Prior to trial Counsel never performed any of the instructions in items a-m above.

3. On August 12, 2014, Counsel filed a "Motion to withdraw as Counsel of Record" that cited an ethical conflict of interest and an irrevocable broken attorney/client relationship (R-97) (See Appendix D Exhibit F).

4. On August 27, 2014, the Trial Judge granted Counsel's Motion to withdraw as Counsel of Record (R-102) (See Appendix D Exhibit I).
5. On August 27, 2014, Petitioner requested conflict-free counsel to assist him in preparing for trial by doing the things requested in supporting facts paragraph number two a-m above.
6. On August 27, 2014, instead of the trial judge appointing conflict-free counsel to assist Petitioner in preparing for trial she made Petitioner represent himself and appointed Hausler who was moments ago granted his "Motion to Withdraw as counsel of record" because of an ethical conflict of interest reappointing Hausler as stand-by counsel against Petitioner's multiple objections.
7. On September 8, 2014, Petitioner filed a motion for a "Nelson Hearing" because Hausler was refusing to cooperate in Petitioner's case (R 112-14) (see Appendix G).
8. On October 9, 2014, Petitioner requested, in court, for a continuance to prepare for trial and for the trial judge to appoint conflict-free counsel to assist him in obtaining subpoenas for witness, obtain expert witnesses and getting lab reports done. The trial Judge denied the request for a continuance to prepare for trial and reappointed Hausler who still had done nothing to prepare for trial and still had the unresolved ethical conflict of interest back to represent Petitioner at trial which she ordered to start the very next day.
9. Jury selection was the next day and Hausler still had done nothing to prepare for trial.
10. Petitioner proceeded to trial the following day with Hausler or in essence with no lawyer after objecting to Hausler's representing him multiple times, where Hausler committed the serious and fatal errors Petitioner alleges in his 3.850 and 9.141(d) motions. Thus, Petitioner was denied his 14th and 6th Amendment rights as the drafter's of the U.S. Constitution had envisioned.
11. Deficient performance was the trial court and defense counsel failed to ensure Petitioner had conflict-free counsel to put the States evidence through adversarial testing.
12. Prejudice is had Petitioner had conflict-free counsel he would have been acquitted or received a lesser sentence.

(b) If you did not exhaust your state remedies on Ground One, explain why: N/A

Basically Petitioner was trying to communicate to the Trial Judge and Defense Counsel that the DEA Chemist did not scientifically identify what the unknown liquid consisted of and the State was alleging it was toxic chemicals and a small amount of pseudoephedrine combined to manufacture methamphetamine. So the mixture in the light most favorable to the State would be unusable, unmarketable, unconsumable and undistributable. According to subsection § 893.135(7) of the Trafficking Statute, "For the purpose of further clarifying legislative intent... The legislature finds that the opinions in State v. Hayes, 720 So.2d 1095 (Fla. 4th DCA 1998)... correctly construe legislative intent." The Opinion in State v. Hayes is plain language, clear and unambiguous which Petitioner now quotes from State v. Hayes at 1097 "Id. Conversely, the [U.S. Supreme] court held that the weights of containers or packaging materials, which clearly do not mix with the drug and are not consumable along with the drug, could not logically be included for sentencing purposes [punishment]. Id.; compare U.S. v. Rolande-Gabriel, 938 F.2d 1231 (11th Cir 1991)(held that where cocaine was mixed with liquid waste, the gross weight of the unconsumable or unusable mixtures should not be equated with the weight of the controlled substance for sentencing purposes [punishment]."

The [U.S. Supreme] Court concluded that this interpretation was compatible with Congress' "'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 the sentence." Chapman v. U.S., 111 S.Ct. 1919 (1991)." Although the issue has not been thoroughly addressed in Florida, the U.S. Supreme Court, interpeting the Federal Sentencing Guidlines in relation to title 21, resolved the

issue in Chapman. "State v Hayes at 1096, "the U.S. Supreme Court's interpretation of the federal law on which our State statutes is based,... Florida's trafficking statute was then amended to parallel the federal controlled substance law."

So, almost six years after Petitioner's arrest and based on the "plain and unambiguous language" of Florida's Statute §893.135(7) that there never was a violation of Florida or Federal Trafficking laws and Petitioner was denied his 6th Amendment Right to effective counsel to present the truth that there was never any "usable" methamphetamine, the alleged contraband was not in "plain view" or "plain sight," Petitioner was not at the residense when the search was conducted and other people were. The premiss was jointly occupied and the Petitioner never had knowledge of the alleged "voodo drug" violated his Constitutional Right to the 14th Amendment, "due process." This renders the opinion in Wilder v. State, 194 So.3d 1050 (Fla. 1st DCA 2016) unconvincing, unreasonable and results in illogical and absurd punishment.

Petitioner continues to stand before this Court an inocent man until he is appointed Defense Counsel competent enough to challenge the adversarial process of the State's malicious prosecution of the trafficking in amphetamine charge with absolutly no scientific proof of ANY "Usable Drug."

Chapman and Rolande-Gabriel hold that "the rule of lenity does apply to "unusable mixture" cases.

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/A

GROUND TWO:

Defense Counsel, Justin Hausler provided ineffective assistance for failing to argue during the J.O.A. hearing that the trial court erred when it ruled that the Petitioner was the exclusive occupant of the premises where the contraband was found when the evidence at trial overwhelmingly proved the premises was jointly occupied whereby the State failed to present independent proof or direct evidence of constructive possession of the invisible methamphetamine or the suspected two grams of cannabis, thus violating Petitioner's 14th and 6th Amendment Rights to the U.S. Constitution.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. This ground two was presented to the 5th DCA as Ground Two of Petitioner's 9.141(d) Motion and to the Trial court and 5th DCA as Ground Five of Petitioner's 3.850 Motion and as Ground Five of his Initial Brief on appeal (See Appendix C, page 31B-39B and Appendix D page 32-37 and Appendix F page 29).
2. State's first witness, Petitioner's brother, Lawrence Seckington testified that he has suffered from schizophrenia for 25 years and has accessed Petitioner's construction office using a butter knife, which caused permanent damage to the wood surrounding the door knob's locking mechanism allowing easy access to the Petitioner's side of the residence by anyone desiring to enter them. (TT. 43) Lawrence also testified that Robert Murry was staying on Petitioner's side of the premises while he was suffering from terminal pancreatic cancer, and that the hospice nurse practitioner visited Robert Murry at the premises and had the hospice doctor prescribe him 15 intravenous injections of hydromorphone per day for 30 days (TT. 45-46) which was the source of the five spoons with white crusty residue, the syringes and Q-tips that were tested by the F.D.L.E. and the results withheld from the defense while the jury was told they field tested positive for methamphetamine. (See Appendix I page 43-47)
3. Prior to the search of Petitioner's construction office and residence he was already arrested at his bank and was in the county jail when the search was executed. Police confiscated from Petitioner

a smart phone, keys to his office and $ 275 in cash none of which was illegal yet none of these items were ever returned to Petitioner or his family.

4. Lawrence testified that Petitioner had employees and visitors over to the house everyday and at all hours of the day and night (TT. 44-45). Lawrence did not know what items the Petitioner's employees and visitors brought to the house or took with them when they left (TT. 47). Approximately one out of three days, Petitioner's employees and visitors would stay overnight (TT. 47). Many people had access to Petitioner's construction office prior to the police search (See Appendix I). It should be further noted that on the day of the search, Detective Weber's surveillance was not ongoing all day nor was he watching the sides or rear entrances to the home, just the front. Other individuals other than the three individuals that police specifically witnessed entering and leaving the home may indeed have existed.
5. None of the "contraband" was in plain sight or plain view.
6. No independent proof or direct evidence was ever presented by the State at trial to disprove the Petitioner's defense theory that the two 32 oz. plastic bottles that contained the unknown clear liquid mixture that contained more than zero grams of invisible methamphetamine, the four plastic containers that contained two grams of suspected cannabis, eight unmarked vials that police suspected contained 10 grams of methamphetamine and other suspected contraband belonged to joint occupant Robert Murry or Lawrence Seckington or one of the many employees or visitors. The State inferred through the Petitioners ownership of the construction office on his side of the residence that the contraband was owned and possessed by the Petitioner.
7. Had Defense Counsel presented the supporting facts listed above to the trial Judge during the J.O.A. hearing, the trial court would have granted the judgment of acquittal on each of the two drug charges.
8. The deficient performance was counsel failed to argue that the premises was jointly occupied.
9. The prejudice was the J.O.A. was denied without it.

(b) If you did not exhaust your state remedies on Ground Two, explain why: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two : Raised as Ground two in Petitioner's 9.141(d) which was summarily denied by the Fla. 5th DCA (See Appendix C, p. 31B-39B)

GROUND THREE:

Defense counsel was ineffective for failure to advance the Petitioner's affirmative defense theory at trial concerning his "lack of knowledge of the illicit nature of the controlled substance" violating his 14th and 6th Amendment right under the U.S. Constitution

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. This ground was presented to the trial court and 5th DCA as Ground Two of Petitioner's 3.850 (See Appendix D, page 19-24 and his Initial Brief on Appeal Appendix F, p. 18)
2. Petitioner claims that the unknown clear liquid mixture that contained more than zero grams of invisible methamphetamine was produced and/or hidden by someone else in a pile of cleaning buckets in the closed shower stall.
3. Petitioner advised Defense Counsel that his employees and visitors would often pile cleaning supplies and construction materials in the empty shower stall and it was reasonable for Petitioner or any lay person to not know that the buckets contained enough controlled substance of an illicit nature (over 400 grams) to be charged with capital importation or manufacture of methamphetamine which carries a mandatory minimum life sentence and $250,000 fine.
4. Counsel agreed to present this defense theory to the jury then failed to present either the theory itself or any evidence to support the theory at trial. Evidence was readily available that no reasonable person would have know that the unknown clear liquid mixture inside the two 32 oz plastic bottles contained detectable amounts of invisible contraband just by looking at it. Hausler merely had to ask the investigators and the laboratory technician at trial if they could have been certain that the mixture contained detectable trace amounts of invisible methamphetamine by simply looking at the mixture without testing it later. The answer would obviously ~~had be~~ have been "no".

With this evidence, Petitioner would have been entitled to the jury instruction on his defense theory "Lack of knowledge of the illicit nature of the controlled substance" That includes:

> "If you have a reasonable doubt on the question of whether Christopher Seckington knew of the illicit nature of the controlled substance you should find him not guilty."

5. When the judge asked counsel if he agreed with the deletion of this crucial jury instruction, Hausler stated " Not applicable, Your Honor" and allowed the court to strike it. (T-175, L 1-6; See Appendix D, Exhibit B)
6. The Trial court gave Hausler a final chance to argue for inclusion of this crucial jury instruction by reminding the parties that the "Lack of knowledge" paragraph had been deleted. When asked if he had any final objection to this deletion, Defense Counsel stated " No, Your Honor".
7. The deficient performance was Hausler failed to present any evidence to support the theory of "Lack of knowledge of the illicit nature of the controlled substance" and agreed to delete the jury instruction on "Lack of knowledge of the illicit nature of the controlled substance".
8. The prejudice was that but for Hausler's error the outcome of Petitioner's trial would have been different, an acquittal would have resulted.

(b) If you did not exhaust your state remedies on Ground Three, explain why: N/A

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☑ No

(2) If you did not raise this issue in your direct appeal, explain why: It is an ICA claim which is more appropriate for a 3.850 motion.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? ☑ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 3.850

Name and location of the court where the motion or petition was filed:

18th Judicial Circuit Court, Seminole County Florida

Docket or case number (if you know): 13-2709 CFA

Date of the court's decision: July 18, 2017

Result (attach a copy of the court's opinion or order, if available):

(See Appendix H) Order Ground Two Order Denying Defendant's Second Amended 3.850 Motion

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☑ No

(4) Did you appeal from the denial of your motion or petition? ☑ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☑ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

5th DCA Florida, 300 South Beach St., Daytona Beach, Florida

Docket or case number (if you know): 5D17-2623

Date of the court's decision: March 19, 2018

Result (attach a copy of the court's opinion or order, if available):

Per Curiam Affirmed (See Appendix D p. 2nd to last page)

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three : N/A

GROUND FOUR:

Defense Counsel was ineffective for failure to hire expert witnesses whose testimony would have been exculpatory at trial resulting in acquittals for the Petitioner which is a violation of Petitioner's 14th and 6th Amendment rights under the U.S. Constitution.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. This Ground Four was presented to the Trial Court and 5th DCA as Ground Four of Petitioner's 3.850 and his Initial Brief on appeal of his 3.850 (See Appendix D, page 28 and Appendix F page 26).
2. Defense Counsel failed to hire a fingerprint expert to gather and test fingerprint evidence taken from the two 32 oz plastic bottles of unknown clear liquid mixture that contained more than zero grams of invisible methamphetamine as well as the 27 items suspected to contain controlled substance residue which were sent to the FDLE yet the results from the FDLE testing were withheld from the defense leading Petitioner to conclude the FDLE test results where exculpatory and definitely not incriminating or the state would have used them.
3. Petitioner argues that such fingerprint experts were readily available for trial, had Counsel requested same.
4. At a minimum, a jury hearing that fingerprints found on the buckets, bottles and other suspected illegal items did not match the Petitioner, or they matched other individual would have produced a different trial outcome. (i.e., acquittal).
5. Defense Counsel failed to hire a forensic chemist to re-test the unknown clear liquid mixture that contained more than zero grams of invisible methamphetamine, as well as the 27 items sent to the FDLE for drug testing.
6. Petitioner argues that the independent forensic expert would have confirmed Petitioner's rational belief that the unknown clear mixture was not a volatile "active cook" in progress, but urine from a methamphetamine user mixed with household cleaning supplies that contained a detectable amount of invisible methamphetamine so minute that no usable amount of methamphetamine could be extracted from the unknown mixture.
7. Whether or not the unknown liquid mixture contained a usable amount of invisible methamphetamine was an important distinction for the jury to understand.

8. The independent forensic chemist should have also testified if the suspected cannabis was illegal or just one of the many thousands of legal green leafy substances available at local smoke shops that will get a person high, relieve anxiety or was for other purposes.

9. The independent expert should have also testified if the five spoons, three pipes, one syringe and eight vials contained methamphetamine, hydromorphone or anything else illegal since Robert Murry was an avid user of intravenous injections of hydromorphone for his terminal pancreatic cancer.

10. If the independent expert chemist would have established what kind of substance the suspected illegal items contained it would have raised reasonable doubt with the jury that the Petitioner was responsible for it. Esspecially since the 10 grams of table salt was presented to the jury as field testing positive for amphetamine.

11. The deficient performance was Hausler failed to hire fingerprint and forensic chemist expert witnesses that would have provided exculpatory evidence at trial.

12. The prejudice was the exculpatory evidence would have produced a different trial outcome. (i.e., acquittal).

(b) If you did not exhaust your state remedies on Ground Four, explain why: N/A

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☑ No

(2) If you did not raise this issue in your direct appeal, explain why:

It is an ICA claim which is more appropriate for a 3.850 motion.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? ☑ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 3.850

Name and location of the court where the motion or petition was filed:

18th Judicial Circuit Court, Seminole County, Florida

Docket or case number (if you know): 13-2709 CFA

Date of the court's decision: July 18, 2017

Result (attach a copy of the court's opinion or order, if available):

(See Appendix, H p 6) Order Denying Defendant's Second Amended 3.850 Motion

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☑ No

(4) Did you appeal from the denial of your motion or petition? ☑ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☑ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

5th DCA Florida, 300 South Beach St., Daytona Beach, Florida

Docket or case number (if you know): 5D17-2623

Date of the court's decision: March 19, 2018

Result (attach a copy of the court's opinion or order, if available):

Per Curiam Affirmed (See Appendix D, p. 2nd to last page)

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four : N/A

GROUND FIVE:

Defense counsel, Hausler, provided ineffective assistance by failing to challenge the quantity of methamphetamine attributed to Petitioner for a 15 year mandatory minimum and a 30 year maximum sentence for trafficking in amphetamine during trial and at sentencing by failing to argue the trial judge used an unconstitutional interpretation and/or statutory construction and application of Florida's "trafficking in amphetamine" statute. in violation of Petitioner's 14th and 6th Amendments to the U. S. Constitution, Rights

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. This ground was raised to the Trial Court and the 5th DCA in Petitioner's 3.800(b), 3.800(a), direct appeal and as ground one of his 9.141(d) and 3.850 Motions and in his Initial Brief on appeal of his 3.850 (See Appendixes J, B, A, D and F.)
2. Petitioner claims that the unknown clear liquid mixture that contained more than zero grams of invisible methamphetamine used to convict him is urine from a methamphetamine user mixed with household cleaning supplies.
3. The DEA chemist in the instant case claims she has no idea what the unknown clear liquid mixture consists of because she was only told to weigh it and test it to see if the unknown mixture contained more than zero grams of invisible methamphetamine or any other controlled substance. Her conclusion is that the gross weight is 263.4 grams of unknown liquid and the net weight is more than zero grams of methamphetamine. (T 158, see Appendix K)\
4. Over 100 inmates that have manufactured methamphetamine which Petitioner surveyed during his ~~five~~ 5 1/2 years of incarceration on this trafficking case who read the transcripts and saw the pictures of the evidence all claim that the unknown mixture is unusable waste by-product left over from the methamphetamine manufacturing process and no usable methamphetamine could be extracted from the by-product.
5. The DEA Agent that seized the unknown clear liquid mixture claims that it looked like an "active cook" or methamphetamine in the process of being made but has no scientific proof of that, however it field tested to be flammable, highly acidic and tested positive for methamphetamine.
6. The State claims the unknown clear liquid mixture is "a mixture that weighs more than 200 grams and tests positive for methamphetamine" and even though it may only be urine, pool water, toilet water or waste materials since it tested positive for methamphetamine it is a "mixture containing methamphetamine" and that is all that the trafficking statute requires to convict.
7. The Trial Judge during the J.O.A. hearing at trial claimed the evidence at trial was the unknown clear liquid mixture was usable liquid methamphetamine and was sent to the DEA for testing, "none of the waste was sent". (See Appendixes C, Exhibit A p. 167)

8. Upon Denying the Petitioner's 3.850 the Trial Judge changed her mind and claimed the unknown clear liquid mixture was waste by-product of the manufacturing process in order to be able to deny Petitioner's Ground One of his 3.850 because the 1st DCA just made a "First Impression" ruling in 2016 in Wilder v. State, 194 So.3d 1050 (Fla. 1st DCA 2016), that liquid by-product can be used to determine the threshold weight for trafficking, and to hell with the Supreme Court of the United States' ruling in Chapman v. United States, 111 S.Ct. 1919 (1991) which held that congress adopted the "market oriented approach" to punishing drug trafficking, whereby the "street weight", of what is distributed, is to be used to determine the threshold weight for trafficking. (See Appendix H, p. 2, Trial Judge's order dismissing Defendant's 3.850).

9. There is no scientific proof the unknown clear liquid mixture is "liquid by-product" of the methamphetamine manufacturing process. Therefore, Wilder is not controlling, Chapman is.

10. The State never alleges or proves that the unknown clear liquid mixture does not contain unusable, toxic and unmarketable materials that must be removed before the invisible methamphetamine can be consumed as required by legislative intent of Fla. Stat.§ 893.135(7) quoting Chapman stated another way the State never proved the predicate 14 grams of a usable mixture containing methamphetamine required for "trafficking in methamphetamine" required by Fla. Stat. § 893.135(7), which is legislative intent.

11. By denying the Petitioner's motion for J.O.A., the State used an unconstitutional interpretation and/or Statutory construction and application of State Statute. State Court's have decided this case differently than the U.S. Supreme Court on a set of materially indistinguishable facts. This issue is thoroughly discussed in Petitioner's Ground One of his Second Amended Motion for Postconviction Relief, (See Appendix D, p. 11) 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." In Chapman v. United States, 111 S.Ct. 1919 (1991) the U.S. Supreme Court held "Congress' "market oriented" approach to punishing drug trafficking under which the total amount of what is distributed" is used. As such, the total weight of the alleged waste product should not have been

used to convict the Petitioner of "trafficking in amphetamine" because the conviction is not consistent with the "marketing approach" adopted by the U.S. Supreme Court in Chapman. ~~See~~ See Griffith v. U.S., 871 F.3d 1321 (11th Cir, 2017) (also see Appendix D, p. 11, Ground One of Petitioner's Second Amended Motion for Postconviction relief)

Also see Griffis v. State, ~~365~~ 356 So.2d 297 (Fla. 1978) So.2d 297 (Fla. 1978) "The express intent of the Legislature was that the Florida trafficking statute be in uniformity with its Federal counter part."

" We base our conclusion on the expressed intent of National Conference of Commissioners on Uniform State Laws in proposing the Uniform Controlled Substance Act, the act after which Ch. 73-331, § 12, Laws of Florida, was modeled. In their prefatory notes to the Uniform Controlled Substance Act, the Commissioners stated: "

> "This Uniform Act was drafted to achieve uniformity between the laws of the several States and those of the Federal government. It has been designed to complement the new Federal narcotic and dangerous drug legislation and provide an inter locking trellis of Federal and State law to enable government at all levels to control more effectively the drug abuse problem." Griffis at 301
>
> " We must also conclude that it was not the legislative intent in enacting laws of Florida to authorize trafficking as an instrument to punish citizens for mere possession of a controlled substance in a residence. "
>
> Although this construction may conflict with a literal reading of Fla. Stat. § 893.135 an interpretation allowing a conviction of trafficking and subsequent lengthy or life sentence for mere possession of an unknown or unusable liquid that test positive "does violence" to the expressed intent of the legislature.

12. During the J.O.A. at trial, Defense Counsel stated that there would have to be a determination made whether all the liquid in the two 32 oz plastic bottles was usable. The Trial Judge then Denied the J.O.A. motion and advised Defense Counsel to do more research and revisit the issue

at sentencing. Hausler did not do more research and revisit the issue at sentencing as the Trial Judge advised(T-167, see Appendix C, Exhibit A)

13. Defense Counsel's deficient performance was that since before the time of Petitioner's arrest the law of the United States Supreme Court and in particular the 11th Circuit even more importantly the Middle District of Florida in U.S. v. Long, 958 F. Supp. 2d 1334 (M.D. Fla. 2013) has been that it apply the "marketable" or "usable" approach to determine the weight of a "mixture or substance". Given that law and accepting as true the facts alleged by Seckington, his counsel's failure to challenge the weight calculations amounted to deficient performance, particularly because the drug quantities were the basis for Seckington's mandatory minimum 15 year sentence and State's ridiculous plea bargain of 15 years prison followed by 5 years probation that will actually be house arrest or community control and if violated even once even after 4 years and 364 days you will be given an additional 15 years in prison with no credit for time served for a total of 35 years incarceration. "An Attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform research on that point of law is a quintessential example of unreasonable performance under Strickland when there is no conceivable strategic basis for counsel's failure to object and pursue the issue." See Griffith v. U.S., 871 F.3d 1321 (11th Cir, 2017).

14. Petitioner was prejudiced by counsel's deficient performance because:

Seckington contends that had Hausler effectively argued that the liquids in his case were not a usable "mixture or substance", there is a reasonable probability that he would have received a conviction on a lower degree of a felony and a lesser sentence. And there is no indication in the record that the Trial Court would have sentenced Seckington the same if the drug weight had been lower. Petitioner argues there is a reasonable probability that the Trial Judge would have imposed a different sentence had it known that a lower mixture weight applied.

If Seckington proves the factual allegations he has made, he will have shown that Hausler's failure to render reasonable effective assistance not only resulted in an erroneously higher mixture weight but it also caused the Trial Judge to apply an inapplicable statutory mandatory minimum 15 years sentence for count one. There is nothing in the record to indicate that the

combined force of both those errors did not affect Seckington's sentence. As a result Petitioner has alleged facts that, if true show that his counsel's deficient performance prejudiced him. Had Defense counsel presented the Trial Court with "binding authority" about what constitutes a "mixture or substance", he would have received a lower level of felony and a lesser sentence.

(b) If you did not exhaust your state remedies on Ground Five, explain why: N/A

(c) **Direct Appeal of Ground Five:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☑ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? ☑ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 3.850

Name and location of the court where the motion or petition was filed:

18th Judicial Circuit Court, Seminole County Florida

Docket or case number (if you know): 13-2709 CFA

Date of the court's decision: July 18, 2017

Result (attach a copy of the court's opinion or order, if available):

(See Appendix H, p 2) Order Denying Defendant's Second Amended 3.850 Motion .

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☑ No

(4) Did you appeal from the denial of your motion or petition? ☑ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☑ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

5th DCA Florida, 300 South Beach St., Daytona Beach, Florida

Docket or case number (if you know): 5D17-2623

Date of the court's decision: March 19, 2018

Result (attach a copy of the court's opinion or order, if available):

Per Curiam Affirmed (See Appendix D, p. 2nd to last page)

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Five : Raised this ground in 9.141(d) as ground one which was summarily denied by the 5th DCA (See Appendix C , p 15-31)

GROUND SIX:

Defense counsel was ineffective for failing to argue that reasonable people could interpret the Fla. Stat. § 893.135(1)(f) in various ways thus forcing the Trial Judge to construe the statute most favorable to the Defendant rather than construing the "trafficking in amphetamine" statute most favorably to the State as the Trial Court did. This error was a violation of Petitioner's 14th and 6th Amendment rights to the U.S Constitution.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. This ground was raised to the Trial Court and the 5th DCA as Ground three of Petitioner's 3.850 and Initial Brief on the appeal of his 3.850 (See Appendix D, p. 24 and Appendix F, p. 23-26).
2. Petitioner proved in his 3.850 and Initial Brief on the appeal of his 3.850 that the "trafficking in amphetamine" statute is vague and can be interpreted differently by different people thus requiring it to be construed most favorable to the defendant.
3. Therefore, the term "any mixture" must be construed in accordance with Fla. Stat. § 893.135(7) which requires the "mixture" to be usable and the mixture in Seckington's case was deemed by the State to be made from Coleman Fuel, starter fluid and fertilizer thus the State has failed to prove the 14 grams for "trafficking in amphetamine" which must now go away.
4. The deficient performance was Defense counsel failed to argue that the "trafficking in amphetamine" statute is vague and reasonable people can interpret it in various ways; thus, under

"rules of construction" the statute must be construed most favorable to the defendant. In the instant case that would be that the term "any mixture" would mean any "usable mixture" not any "unusable mixture" such as urine, toilet water or liquid from the illicit manufacturing process as the State admitted doing.

5. The prejudice is had the "trafficking in amphetamine" statute been construed most favorable to the defendant Count One, trafficking in amphetamine would have been dismissed because the State failed to produce "scientific evidence" of any "usable" methamphetamine at trial.

(b) If you did not exhaust your state remedies on Ground Six, explain why: N/A

(c) **Direct Appeal of Ground Six:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☑ No

(2) If you did not raise this issue in your direct appeal, explain why:

It is an ICA claim which is more appropriate for a 3.850 motion.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? ☑ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 3.850

Name and location of the court where the motion or petition was filed:

18th Judicial Circuit Court, Seminole County, Florida

Docket or case number (if you know): 13-2709 CFA

Date of the court's decision: July 18, 2017

Result (attach a copy of the court's opinion or order, if available):

(See Appendix H, p 4) Order Denying Defendant's Second Amended 3.850 Motion

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☑ No

(4) Did you appeal from the denial of your motion or petition? ☑ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☑ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

5th DCA Florida, 300 South Beach St., Daytona Beach, Florida

Docket or case number (if you know): 5D17-2623

Date of the court's decision: March 19, 2018

Result (attach a copy of the court's opinion or order, if available): Per Curiam Affirmed (See Appendix D, p. 2nd to last page)

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Six : N/A

GROUND SEVEN:

Petitioner averres that the 25 year sentence he received for allegedly attempting to make a couple of grams of methamphetamine is cruel and unusual punishment which violates his 8th Amendment right to the U.S. Constitution.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. This ground was raised to the Trial Court and the 5th DCA in Petitioner's 3.800(a). (See Appendix B, page 22)
2. At Trial the State accused the Petitioner of attempting to make a couple of grams of methamphetamine by the one-pot method.
3. The State's charging information accuses the Petitioner of possessing or manufacturing a mixture containing 200 grams or more of methamphetamine simply because the unusable/unmarketable toxic manufacturing chemicals to make a couple of grams of methamphetamine typically weighs more than 400 grams when combined for manufacturing but not discarded prior to being seized by police. Basically the State could have charged the Petitioner with "Capital Importation or Manufacturing of amphetamine" which carries a mandatory minimum life sentence. But the State choose to only charge the lesser included trafficking in amphetamine charge because the required

experience of the court appointed counsel costs less and 30 years is in essence a life sentence for Petitioner and the community would more easily accept a sentence of years rather than life for merely Manufacturing a one day supply of methamphetamine for one person.

4. The Trial Court regularly sentences defendants to a six month term of incarceration for manufacturing methamphetamine by the one-pot method in Seminole County even if it is ~~there~~ their second conviction for the offense. Inmates in Seminole County typically do three months and one week on a six month sentence with gain time and good time.

5. Petitioner's 25 year sentence for allegedly attempting to manufacture a one day supply of methamphetamine 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. Since Petitioner is not qualified for early release he will do the equivalent of 98 three month and one week sentences before he is released from prison in 2040. That is grossly disproportionate to those accused of the same misconduct and constitutes Cruel and Unusual Punishment.

6. The "rule of lenity" described in Chapman and Rolande-Gabriel should apply. See Hart v. Coiner, 483 F.2d 136 (4th Cir. 1973) quoting Furman v. Georgia, 408 U.S. 238, 273, 33 L.Ed.2d 346, 92 S.Ct. 2726 (1972) "That punishment is not severe" in the abstract "is irrelevant, even one day in prison would be cruel and unusual punishment for the" crime "of having a common cold".

"The idea of disproportionality as old as the Magna Carta: A free man shall not be amerced for a trivial offence, and for a serious offence he shall be amerced according to its gravity."

"Life imprisonment is a "penultimate punishment" Tradition, custom, and common sense reserve it for those violent persons who are dangerous to others. It is not a practical solution to petty crimes in America."

None of these exacerbating circumstances which have led legislatures to allow very long sentences are present in this case.

See Thacker v. Garrison, 445 F. Supp. 376 (4th Cir. 1978) In examing the length of a sentence, it is not enough merely to look at how the crime is "usually committed" or to examine the elements of

the crime. The facts and circumstances of a particular case must be considered. It is especially important to consider the amount of violence or threat of danger to people. The reason for allowing an unusually long sentence for possession of and unknown liquid do not in Seckington's case apply.

"Also see Davis v. Zahradnick, 432 F. Supp. 444 (4th Cir. 1977) quoting Weems v. U.S., 217 U.S. at 368 "a term of imprisonment" might be so disproportional to the offense as to constitute a cruel and unusual punishment. Moreover, two Circuit Courts of appeal have accepted the same proposition. Erratic, freakish, and unusual infliction of punishment raises problems of the Eighth Amendment proportions. Courts should not shirk their responsibility to examine the propriety of applications of the law which work exceptional hardships on the sanctity and dignity of the individual. Moreover, when such examination reveals objective facts which establish the arbitary nature and total irrationality of the application as to particular individual, the courts must make the appropriate response."

After examining the nature of Seckington's offense, the legislative purpose behind the punishment, the punishment in Florida for other offenses, and the punishment actually imposed for the same or similar offenses in Florida, the Public concludes the sentence and fine is so grossly out of proportion to the severity of the crimes as to constitute cruel and unusual punishment in violation to the 8th Amendment to the U.S. Constitution.

7. Counsel's deficient performance was he failed to prove that the "trafficking in methamphetamine" statute is vague thus requiring the term "any mixture" to be construed in favor of the defendant, meaning the "mixture" must be usable.

8. The prejudice was had counsel obtained a favorable construction of the term "any mixture" the "trafficking in methamphetamine" Count One would have been dismissed or Petitioner would have been found innocent because the State failed to prove any usable methamphetamine, much less, the 200 grams of usable drug the legislators intended.

(b) If you did not exhaust your state remedies on Ground Seven, explain why: N/A

(c) Direct Appeal of Ground Seven:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Seven : N/A

GROUND EIGHT:

Defense counsel was ineffective for failing to advise Petitioner that the plea bargain in Judge Alva's Court included six months time served on all counts for a concurrent seven (7) year DOC sentence for the "trafficking in amphetamine" charge that would have included the right to appeal the "unusable mixture" issue, in violation to petitioner's 14th and 6th Amendment Rights to the U.S. Constitution.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. This ground was raised to the Trial Court and the 5th DCA in Petitioner's 3.850 and his Initial Brief on appeal as Ground Eight. (See Appendix D, p. 41-43 and Appendix F, p. 45-47).
2. Between July and August of 2014, in Judge Alva's Courtroom on case No. 13-2708-CFA, the State offered a plea bargain of 180 days time served on all counts in both cases except for a concurrent seven (7) year DOC sentence for the charge of "trafficking in amphetamine" Petitioner had 300 plus days time served at this point.
3. Had Defense Counsel asked Judge Alva if the issue of "unusable mixtures" could be reserved for appeal, Judge Alva would have agreed because she has never denied a defendant taking a plea bargain offer from the State the right to appeal an issue of first impression in the State of Florida before in her life.
4. The issue of "unusable mixtures" being used to establish the threshold weight for trafficking in the State of Florida was a case of first impression in August of 2014.
5. Defense Counsel's performance was deficient where he failed to inform Petitioner that the issue of "unusable mixtures" not being allowed to be used to calculate the threshold weight for trafficking was dispositive had counsel filed a Fla.R.Crim.P. § 3.190(c)(4) motion to dismiss. Which meant Defense Counsel's performance was deficient where he failed to prepare and file the § 3.190(c)(4) motion prior to advising Petitioner to reject the State's offer.
6. Petitioner would have accepted the offer had he been advised properly by conflict free counsel. The prosecutor would not have withdrawn the offer where it was the originator of the plea offer.

The Court would have accepted the offer because both the prosecutor and defense made the contract during the pre-trial conference in open court. The seven (7) years DOC sentence would have been less than the 25 years he received due to the "Trial Penalty" he received for exercising his right to Trial by Jury on the issue of unknown, unusable and unmarketable mixtures such as urine, toilet water or liquid from the illicit manufacturing process being used to calculate the threshold weight for trafficking.

7. The prejudiced was Petitioner would have accepted plea bargain offer had Counsel advised him correctly and filed the § 3.190 (c)(4) motion to dismiss and the Fifth District Court of Appeal would have issued a written opinion in early 2015 and Petitioner at worst would have one year left for allegedly manufacturing less than a one day supply for one person.

(b) If you did not exhaust your state remedies on Ground Eight, explain why: N/A

(c) **Direct Appeal of Ground Eight:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☑ No

(2) If you did not raise this issue in your direct appeal, explain why:

It is an ICA claim which is more appropriate for a 3.850 motion.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? ☑ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 3.850

Name and location of the court where the motion or petition was filed:

18th Judicial Circuit Court, Seminole County, Florida

Docket or case number (if you know): 13-2709 CFA

Date of the court's decision: July 18, 2017

Result (attach a copy of the court's opinion or order, if available):

~~(See Appendix H, p 8) Order Denying Defendant's Second Amended 3.850 Motion~~

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☑ No

(4) Did you appeal from the denial of your motion or petition? ☑ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☑ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

5th DCA Florida, 300 South Beach St., Daytona Beach, Florida

Docket or case number (if you know): 5D17-2623

Date of the court's decision: March 19, 2018

Result (attach a copy of the court's opinion or order, if available):

Per Curiam Affirmed (See Appendix D, p. 2nd to last page)

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Eight : N/A

GROUND NINE:

Defense counsel provided ineffective assistance by failing to argue that the State never alleged or proved that Petitioner violated the legislative intent of the trafficking statute which is to severely punish those who deal in "large quantities" of dangerous illegal drugs.. In violation of Petitioner's 14th and 6th Amendments Rights to the U.S. Constitution.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. This ground was raised to the Trial Court and the 5th DCA in Petitioner's 3.800(b), 3.800(a), direct appeal and as Ground One of Petitioner's 3.850 and 9.141(d). (See Appendixes J, B, A, D and C).
2. The State never alleged Petitioner possessed or manufactured 14 grams of usable methamphetamine, as required by §893.135(7).
3. The State never proved Petitioner possessed or manufactured 14 grams of usable methamphetamine, as required by §893.135(7).

4. Defense Counsel never investigated or became familiar with the legislative intent of the Florida trafficking Statute and argued that Petitioner is not even accused of violating the legislative intent of the trafficking Statute and Count One "trafficking in amphetamine" should be dismissed for lack of evidence.
5. Deficient performance was Counsel's failure to argue Petitioner never violated legislative intent of the trafficking Statute.
6. Prejudice was had Counsel argued Petitioner did not violate legislative intent of the trafficking in amphetamine the sentence would have been less, and the degree of felony would have been less.

(b) If you did not exhaust your state remedies on Ground Nine, explain why: N/A

(c) **Direct Appeal of Ground Nine:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☑ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? ☑ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 3.850

Name and location of the court where the motion or petition was filed:

18th Judicial Circuit Court, Seminole County, Florida

Docket or case number (if you know): 13-2709 CFA

Date of the court's decision: July 18, 2017

Result (attach a copy of the court's opinion or order, if available):

(See Appendix H) Order Denying Defendant's Second Amended 3.850Motion.

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☑ No

~~(4) Did you appeal from the denial of your motion or petition? ☑ Yes ☐ No~~

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☑ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

5th DCA Florida, 300 South Beach St., Daytona Beach, Florida

Docket or case number (if you know): 5D17-2623

Date of the court's decision: March 19, 2018

Result (attach a copy of the court's opinion or order, if available):

Per Curiam Affirmed (See Appendix D, p. 2nd to last page)

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Nine :

In Petitioner's 3.800(a) (see Appendix B)

GROUND TEN:

Defense counsel and Appellate Counsel were ineffective for failing to argue the Trial Court fundamentally erred when it used improper sentencing factors when imposing a 25 year prison sentence with a 15 year mandatory minimum in violation of Petitioner's 14th and 6th Amendment rights. to the U.S. Const.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. This ground was presented to the State court as Ground Three of Petitioner's 9.141(d) which was denied without opinion (See Appendix C Ground Three of Petitioner's 9.141(d).)
2. At sentencing the State introduced a document that was prepared by Detective Weber highlighting all of the instances where Law Enforcement officers had responded to Petitioner's residence and requested the sentencing Judge to take judicial notice of the document "within the Court file" and recommended a 25 year sentence and the sentencing Judge complied

3. By the sentencing Judge taking judicial notice of the document prepared by Weber which highlighted police responses to Petitioner's residence that only included unsubstantiated allegations of misconduct and prior charges that did not result in convictions at the request of the State which was the only "outside evidence" at sentencing while the State does not deny it failed to produce even one dollar of usable Methamphetamine at trial constituted reversible error warranting a new sentencing in front of a different Judge.
4. The deficient performance was Defense counsel and Appellate Counsel failed to argue that the sentencing court fundamentally erred by using improper sentencing factors to enhance Petitioner's sentence by 10 years beyond the mandatory minimum sentence required by statute.
5. The prejudice is had counsels pointed out the sentencing court had used improper sentencing factors submitted by the State the Trial Court would have imposed a lesser sentence.

(b) If you did not exhaust your state remedies on Ground Ten, explain why: N/A

(c) **Direct Appeal of Ground Ten:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☑ No

(2) If you did not raise this issue in your direct appeal, explain why:

Appellate Attorney did not raise it.

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? ☑ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 9.141(d)

Name and location of the court where the motion or petition was filed:

5th DCA Florida, 300 South Beach St., Daytona Beach, Florida

Docket or case number (if you know): 5D16-3987

Date of the court's decision: January 25, 2017

~~Result (attach a copy of the court's opinion or order, if available):~~

Motion was denied without opinion (See Appendix C, 2nd to last page)