No. 21-6588

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

petitioner, Amy Bishop Anderson

v

respondent, Warden Wright

ON PETITION FOR WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Pro se Petitioner:

Amy Bishop Anderson

AIS# 285694 Dorm I

Tutwiler Prison for Women

8966 US Highway 231N

Wetumpka, AL 36092

11th circuit court appeal number 21-10593-H

district court docket # 5:18-cv-00971-MHH-SGC

QUESTIONS PRESENTED

Charged and convicted of capital murder, sentenced to Life Without Parole

Question 1: Whether the 11th Circuit Court used a merits determination to deny my certificate of appealabilty in violation of federal court holdings.

Question 2: Whether the 11th Circuit Court was in error, when it stated that in my *11thCirc CoA denial* that none of my claims have been exhausted.

Question 3: Whether the 11th Circuit Court was in error, when used a 'new evidence' standard, and then a merits determination and to deny my *11th Circ reconsCoA* in violation of federal court holdings.

Question 4: Whether reasonable jurists could debate the District Court's/11th Circuit Court's decision that Anderson received effective assistance of counsel.

Question 5: Whether reasonable jurists could debate the District Court's/11th Circuit Court's decision that Anderson's plea was voluntary.

Question 6: Whether reasonable jurists could debate that Anderson had a defense at trial.

Question 7: Whether the reasonable jurists could debate the District Court's holding that Anderson suffered no cumulative error.

LIST OF PARTIES

Warden Deidre Wright

Tutwiler Prison for Women

8966 US Highway 231N

Wetumpka, AL 36092

Respondent for Warden Deidre Wright

Kristi O. Wilkerson, Lead Attorney

Office of the Attorney General

501 Washington Ave.

Montgomery, AL 36130

RELATED CASES

Anderson v Wright, 2021 U.S. Dist. LEXIS 22347-decision of District Court (app.E) in regards to my R32. Only published decision related to my collateral process in our LEXIS NEXIS, which is updated once a year.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATUTES AND RULES

PETITION FOR WRIT OF CERTIORARI TO THE 11TH CIRCUIT COURT

This petitioner, Amy Bishop Anderson, humbly prays that a Writ of Certiorari issue to review the judgment and opinion of the Eleventh Circuit Court of Appeals on my Reconsideration for Issuance of Certificate Appealability rendered on 10/4/21 and Request for Issuance of CoA rendered on 8/4/21.

OPINION BELOW

The District Court Memorandum (doc 32-1) denied my claims as non meritorious, on 2/5/21 in published opinion (Anderson v Wright, 2021 U.S. Dist. LEXIS 22347-appendixE). The District Court denied 59e/CoA (doc 45-1-appD). The Eleventh Circuit Court of Appeals, on 8/4/21, affirmed District Court's denial of CoA (appC) and reaffirmed with the denial of my reconsideration of CoA (appB) on 10/4/21. Rehearing en banc was considered successive (appA) on 11/1/21. All other opinions unpublished. For clarity, I used District Court docketing #s where docketing #s were provided.

JURISDICTION

The original Eleventh Circuit Court of Appeals denial of request for CoA was entered on 8/4/21, and the denial of my reconsideration for CoA was entered on 10/4/21, and my rehearing en banc was denied as successive on 11/1/21. I have submitted this Writ in a timely manner (actually early) from the date of the denial of my reconsideration for CoA, entered on 10/4/21, as my rehearing was adjudicated as successive. The jurisdiction of this Court is invoked under 28 U.S.C.§1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMEND. V-

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when the actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

U.S. CONST. AMEND. VI-

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

U.S. CONST. AMEND. XIV-Section 1.

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

28 USC§2253 (c)(2): A petitioner is entitled to a certificate of appealability if he makes a "substantial showing of the denial of a constitutional right."

28 USC§2253 (c)(3)(2006): To satisfy the 'substantial showing' standard you must specify issues involved in the violation of your federal constitutional rights.

28USC§2254 (d)(2):Can established that claims are ripe for habeas review by elucidating that the highest court with an opinion adjudication of claims as non meritorious, was 1.) contrary to, or an unreasonable application of Federal law OR 2.) was based on an unreasonable determination of the facts in light of the evidence presented in state court. .

Ward v Hall 592 F 3d, 1144, 1156 (11th Circ 2010) This fulfills the requirement for exhaustion, where on must fairly present claims on up through the state courts to the Al. S.Ct., either on direct appeal OR collateral appeal.

STATEMENT OF THE CASE

I have had lifelong allergies and mental health problems. During the stress of the University of Alabama at Huntsville (UAH) tenure process and my increased lab work that entailed, my allergies flared (I was allergic to latex and formaldehyde-both instrumental in my work) causing blackouts and

hallucinations. After one such blackout, I was informed of my crime of February 2010 and charged with capital murder. In September 2012, I was sentenced to Life Without Parole.

After an unsuccessful direct appeal to the Alabama Supreme Court, I filed a pro se Rule 32 with the trial court, and presented my claims on up to the Al.S.Ct. I filed a pro se 2254 habeas corpus to the District Court (Alabama). The District Court Memorandum (doc 32-1-published-app.E) on 2/5/21, affirmed the doc 8-41 Al.Ct.Crim.App.(ACCA-highest state court with opinion) adjudication as non meritorious-the merits determination had errors and unfounded deference to the ACCA's decision. I submitted *Dist. Ct. 59(e)/CoA*. After the merits determination used to deny my 59(e), the District Court denied my application for CoA (doc 45-1) on 4/7/21 (app.D). I sought *CoA* (app G) with *11th Circuit Court*, which on 8/4/21, after a merits determination, denied CoA on all my claims (app.C) in error-the same errors as in the ACCA (doc 8-41) denial and District Court (doc 32-1)denial. I submitted the *11thCirc reconsideration of CoA* (appF) which was denied on 10/4/21 (app.B), using a merits determination and new evidence standard, instead of the standard for reconsideration: overlooking points of fact and law. My rehearing en banc was denied as successive on 11/1/21 (app.A).

REASONS FOR GRANTING THE WRIT

Question 1: Whether the 11th Circuit Court used a merits determination to deny my certificate of appealibilty in violation of federal court holdings.

Standard of review for issuance of CoA A petitioner is entitled to a certificate of appealability if he makes a "substantial showing of the denial of a constitutional right." 28 USC§2253 (c)(2). To satisfy the 'substantial showing' standard you must specify issues involved in the violation of your federal constitutional rights. §2253 (c)(3)(2006). I specified my claims are constitutional in nature, as in each of my claims I discussed Constitutional violations (*11th Circuit CoA* pp 6, 9, 11, 17, 22, 23, 29, 31, 35, 40, 49, 57, 60, 61 arguments of which were presented in my *doc 8-33 R32* onward to *doc 8-41 ACCA & Writ to Al.S.Ct. & doc 1-1 habeas* (see *11thCircCoA* -app.G and Questions 4-7 below). And so the 11th

Circ. CoA denial p3 is in error in stating that I failed to make a substantial showing of the denial of my Constitutional right.

In my pro se petition I give facts and law that demonstrate my doc 1-1 habeas claims were meritorious and well beyond a borderline case and as such, the following quote applies: **"...due to pro se petitioner's general lack of expertise, court should review habeas petitions with lenient eye, allowing borderline cases to proceed.** *Williams v Kullman*, 722 F 2d 1048 (2nd Cir. 1983)." USCSRULES. In *Barefoot v Estelle*, 463 US 880, 893 (1983) the US Supreme Court held that the appellant need not show that he would prevail on the merits, but must "demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issue [in a different manner]; or that the questions are 'adequate to deserve encouragement to proceed further.' [citations omitted]." *Fleiger v Delo*, 16 F.3d 878,883 (8th Circ 1994) see also *Miller-El v Cockrell*, 537 US 322,327, 123 S.Ct. 1029, 1034, 154 L.Ed. 931,944 (2003). In regards to a decision to issue a CoA, "This threshold of inquiry does not require full consideration of the factual or legal issues adduced in support of the claims. In fact, the statute forbids it." *Miller-El v Cockrell, 537 US 322,336,, 123 S.Ct. 1029, 1039, 154 L.Ed. 931,950 (2003)*-the above argued in pp2,3 *11th Circ CoA*-app.G. Therefore,'doubts as to whether to issue a CoA should be resolved in favor of the appellant. *Fuller v Johnson*, 114 F.3d 491, 495 (5th Cir 1997);see *Buxton v Collins*, 925 F 2d 816, 819 (5th Circ 1991); *Buie v McAdory* 322 F 3d 980 (7th Circ 2003) and the *11thCircCoA denial* merits determination is in conflict with other circuits .

The Supreme Court has had to admonish Circuit Courts for unduly restricting the CoA pathway, and using CoA denial as a rubber stamp for pro se litigants-discussed in *McGee v McFadden*, 139 S.Ct. 2608; 204 L.Ed. 2d 1160 (2019) with references to *Tharpe v Sellers*, 583 U.S.__,138 S.Ct. 545, 199 L.Ed. 2d 424 (2018); *Buck*, 580 U.S.__,137 S.Ct. 759, 197, L. Ed 2d 1; *Tennard v Dretke*, 542 U.S. 274, 124 S.Ct. 2562, 159 L.Ed. 2d 384 (2004).

11thCircCoA denial quote illustrating the 11th Circuit used a merits determination to deny CoA.

From *11CircCoAdenial pp2,3* (app. G):

> " The Antiterrorism and Effective Death Penalty Act ("AEDPA") provides that, after a state court has adjudicated a claim on the merits, a federal court may grant habeas relief only if the state court's decision was: (1) contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States; or (2) based on an unreasonable determination of the facts in light of the evidence presented to the state court. 28 U.S.C. § 2254(d). To succeed on an ineffective assistance of counsel claim, a movant must show that: (1) his attorney's conduct was deficient; and (2) the deficient conduct prejudiced his defense. *Strickland v Washington*, 466 U.S. 668,687 (1984). [quoted in *CoAdenial*-I used single quotes] 'Where the highly deferential standards mandated by *Strickland* and AEDPA both apply, they combine to produce a doubly deferential form of review that asks whether there is any reasonable argument that counsel satisfied *Strickland*['s] deferential standard.' *Downs v Sec'y, Fla Dep't of Corr.*, 738 F.3d 240, 258 (11th Cir. 2013).....
>
> As to ground A(1), Anderson indicated that she was incompetent at the time of her criminal proceedings and not guilty of the charged offenses because her actions were unintentional. Upon entering a guilty plea, however, she stipulated that an expert believed her to be mentally competent, she understood the wrongfulness of her actions during the shooting, and her conviction was the only rational verdict. As to Ground A(2), Anderson appeared to indicate that her counsel should have filed a motion to withdraw her guilty pleas on the ground that she was incompetent at the time. As noted above, however, an expert believed her to mentally competent, and her attorneys agreed with that assessment. She also testified that her pleas were not the result of coercion. She therefore, could not establish that counsel were ineffective for not filing a motion to withdraw her guilty pleas, or not conducting meaningful adversarial testing. *See Strickland* 466 U.S. at 687.
>
> As to Ground B, any error of the trial court in explaining the sentencing range for Anderson's attempted murder charges was harmless because her murder conviction resulted in a mandatory life sentence..."

Clearly, the above, with the discussion of AEFPA and Strickland standards, with the discussion of a few (but not all) of my grounds as not fulfilling Strickland, and the erroneous statements made in response to my claims, along with the above harmless error analysis, is a merits determination with a "jurists of reason" statement tacked on the end.

In summary of issuance of CoA I am an incarcerated, pro se litigant who has been (for years) pursuing my appellate rights with due diligence in good faith. My claims warrant relief, were verified with detailed evidence, with discussion of prejudice, Constitutional violation and supporting caselaw, and as such, are meritorious (see Questions 4-7 below, & *11thCirc.CoA*-appG) all of which draw directly from my arguments in my *doc 8-33 R32* and *doc 1-1 habeas*. However, the decision to issue a CoA

should not have been subjected to the rigors of a merits determination, as it apparently was by the *District Court (doc 45-1)* and the *11thCirc CoAdenial*. The adjudication of my claims by the *ACCA (doc 8-41)*, its affirmation by the *District Court (doc 32-1)* have many errors of fact and law addressed in my arguments (*CoA*-appG, Q 4-7)); I also address items of fact and law overlooked by the *11thCirc CoAdenial*, so jurists of reason would find the Courts' conclusions debatable, and for this reason a CoA should issue.

Question 2: Whether the 11th Circuit Court was in error, when it stated in my *11thCirc CoA denial* that none of my claims have been exhausted.

Claims not Procedurally Defaulted The *11Circ CoAdenial p3* states that claims **A**(IAC), **B**(involuntary plea), **D** (lack of defense) are procedurally defaulted (non exhausted) "because she did not raise them in state court." This is error of fact. My claims were presented in my R32, as indicated by citations of R32 pp at the head of each claim, as well as quotes from my R32 within each claim (see Questions 4-7, *11thCircCoA*-appG). These claims were subsequently brought up through the state courts (to Al.S.Ct.-denial/no opinion) in an abuse of discretion review, where the ACCA (doc 8-41) denied my claims as without merit. This fulfills the requirement for exhaustion, where on must fairly present claims on up through the state courts to the Al. S.Ct., either on direct appeal OR collateral appeal. *Ward v Hall* 592 F 3d, 1144, 1156 (11th Circ 2010). The Magistrates Report and Recommendation (*MJRR doc 19-1*) p22 asserted that *only* my claims **A3** IAC due to personal issues, **B2** pretrial conditions coerced plea, **D** lack of defense, were not exhausted (which also was in error, as all my claims have been exhausted). However, this is not *every one of my claims*-as alleged in the *11CirCoAdenial* p3-appC.

In light of the fact that the *ACCA (doc 8-41)*, the *District Court (doc 32-1)* and the *11th CircCoA denial, after a merits determination*, denied my claims as without merit, we have "Thus, a procedural default will not bar consideration of a federal claim on habeas review unless the state court rendering a judgment in the case clearly and expressly state that its judgment rests on a state procedural bar."*Harris*

v Reed 489 US 255, 103 LEd 2d 308, 109 S.Ct. 1038 (1989). And, the state courts' reliance on procedural bar was not sufficiently explicit to bar review because reference to procedural bar was immediately followed by a consideration on the merits of the ground of relief. *Sanders v Cotton* 398 F.3d 572, 579-580 (7th Circ 2005). Thus, my claims were exhausted and ripe for issuance of CoA.

Question 3: Whether the 11th Circuit Court was in error, when used a 'new evidence' standard, and then a merits determination and to deny my *11th Circ reconsCoA* in violation of federal court holdings.

The denial of my Reconsideration of Issuance of CoA was a one page document (app.B) that stated as its reason for denial, the following: "Upon review, Anderson's motion for reconsideration is DENIED because she has offered no new evidence or arguments of merit to warrant relief." The "new evidence" standard is not the exclusive reason for reconsideration. There is caselaw that states that an adjudication *overlooking points of fact and law* is the standard of review for reconsideration. *Halle v Nicholson* 20 Vet. App. 237, 2006 (LEXIS 696) [other caselaw omitted]. Questions 4-7 below, drawn from *11thCircreconsCoA*-appF, demonstrate I argued that the 11th CircCourt overlooked points of fact and law-see *11thCirc reconsCoA* pp1, 6, 7, 13, 14, 17, 22, 29, 30, 32-36, 39, 40, 44, 47, 54,55, 57, 58.

The second part of the quote (above) from the denial of my Reconsideration of Issuance of CoA:"...or arguments of merit that warrant relief." indicates that an adjudication on the merits was used for denial of my reconsideration. This is error, as stated in the following caselaw: "Issuance of a CoA does not require a showing that the appeal will succeed, but that reasonable jurors could debate whether the petition should have been resolved differently.." *Miller-El v Cockrell*, 537 US 322,327, 123 S.Ct. 1029, 1034, 154 L.Ed. 931,944 (2003). And especially: " When a court of appeals sidesteps [the CoA] process by first deciding the merits of an appeal, and then justifying its denial of a CoA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction." *Miller-El v Cockrell*, 537 US 336-337, 123 S.Ct. 1029, 154 L.Ed. 931(2003) quoted in *Buck v Davis* 137 S.Ct. 759 US S.Ct. (2017). Thus, my reconsideration for CoA should have been granted.

Introduction to questions 4-7: These claims have been presented up through state courts, to District Court, then in my request for CoA and reconsideration of CoA submitted to the 11th Circuit Court. See *11thCirc.CoA*-appG & *11thCirc.reconsCoA*-appF for *full* arguments (portions of which are presented below). For each of my claims I provided supporting evidence and projected change in outcome of criminal proceedings-prejudice. I demonstrated that the trial court lacked jurisdiction to accept plea or convict. I cited federal caselaw and other circuits. (Circuit Court caselaw:Our Lexis Nexis has only 5th & 11th Circuits, other Circuits garnered from 11th Circuit caselaw). I assert an innocence claim-of intent-and thus of particular charges, which was not mentioned (overlooked) in the *11thCirc CoAdenial.*

Within these claims is ample evidence of fact and law that claims are founded on Constitutional Violations as required for issuance of CoA:28 USC§2253 (c)(2)-see Question 1,p3. I established that my claims are ripe for habeas review by elucidating that the highest court with an opinion, ACCA (doc 8-41), adjudication of my claims as non meritorious, was 1.) contrary to, or an unreasonable application of Federal law OR 2.) was based on an unreasonable determination of the facts in light of the evidence presented in state court. 28USC§2254 (d)(2). As such, I *exceed* the standard required for issuance of CoA where my claims are meritorious, or at least, my claims are debatable by jurists of reason. Finally, in each claim of *11th Circ. reconsCoA* I discussed where the *11thCirc CoA denial* overlooked points of law and fact (see p7 Question 3 for pp#s) *Halle v Nicholson* (above) thus CoA should issue.

Question 4: Whether reasonable jurists could debate the District Court's/11th Circuit Court's decision that Anderson received effective assistance of counsel.

A. Ineffective Assistance of Counsel (*doc 1-1 habeas* pp# 5,6,12,14-16,18-27& *doc 8-33 R32* pp 21-26, 41-43). To achieve IAC under federal law the petitioner must show the two prongs of Strickland: (1) "counsel's representation fell below an objective standard of reasonableness," and (2) "there is a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceedings would have been different." *Strickland v Washington*, 466 US 668(1984) at 688,684 cited in doc 1-1

habeas p4 & doc 8-33 R32. And, (3) "in order to satisfy the 'prejudice' requirement the defendant must show that there is a reasonable chance that, but for the counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v Lockhart*, 474 US 52,59 (1985). However,should a court determine counsel's performance was constitutionally deficient (6th am) it need not address prejudice. *Walker v Jones*, 10 F.3d 1569,1573 (11th Cir. 1994). The Federal Supreme Court has stated, that to warrant *federal* review of IAC the petitioner should show that the state court "applied *Strickland* to the facts of his case in an objectively unreasonable manner" *Bell v Cone*, 535 US, 685, 699 (2002). The *Court Mem(doc 32-1) pp 9,11, & doc 8-41 ACCA p7,8* discusses IAC in a conclusionary manner with no fact finding, with proforma application of Strickland-*in error*-as elucidated in IAC claim below.

In *District Court Memorandum (doc 32-1) p6* Court states that I cited *Cronic v US*, 466 US, 654 (1984) to claim that I asked the Court to presume attny error and resulting prejudice without my having to assert either-this is error. I used Cronic to assert that the pervasive publicity guaranteeing a tainted jury, the court motions in regards to allowing publicity that would be used against me if I did not plea, and the initial denial of funds for steroid expert, all synergistically hampered my attny and rendered *him* ineffective, thereby prejudicing my case. In *Cronic* OPINION [466 US 659-660] the Powell case is discussed, where rampant publicity (as I had), the fact that Powell was led into court with chains and a phalanx of guards (as I was), hampered his attorney's ability to mount a defense and thus:

> "Circumstances of that magnitude may be present...when although counsel is available ...the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial. *Powell v Alabama* 287 US 45,77 LEd 158, S.Ct. 55,84 ALR 527 (1932)."

My charges have specific intent as essential element. Discussed in p 17, 18 *doc1-1 habeas*: Michie's Al Crim Code : section 13A Criminal Code/ Chapter 5/ Punishments and Sentences/ Article 2/ Death Penalty & LWOP and or Capital Offense enumerated states: " 13A-5-40 (a) (10) Murder where two or more persons are *murdered* by the defendant by one act or pursuant to one scheme or course of

conduct." [my capital charge]

Michie's Al Crim Code defines *murder* in the definition of Section 13A-5-40 (a)(10) as:

> "the terms 'murder' and 'murder by the defendant' as used in the section to define capital offenses means *murder* as defined in Section 13A-6-2(a)(1), but *not* as defined in Section 13A-6-2(a)(2) and (3)." Thus, murder, as defined for the above code (my charge) *IS* "a.) A person commits the crime of murder if he or she does any of the following: 1.) with *intent* to cause the death of another person, he or she causes the death of that person or another person." and is *NOT* "2.) Under circumstances manifesting extreme indifference to human life, he or she recklessly engages in conduct which creates a grave risk of death to a person other than himself or herself and thereby causes the death of another person." (and hence is *Not* inferred intent) and is *Not* "3.) He or she commits or attempts to commit arson in the first degree, burglary in the first or second degree..." Killing someone in the course of burglary etc.

According to Michie's (state's own statutory law) again, my capital charge is specific intent crime and *Not* an inferred intent crime and so, the following state caselaw applies:

> " ...the trial court erred in charging the jury that his specific intent to kill had to be inferred if the act was done deliberately and death was reasonably to be expected as a natural and probable consequence of the act, as this instruction created a mandatory presumption that alleviated the State's burden of proof, in violation of the defendants right under the Fourteenth Amendment's Due Process Clause. *Townes v State*, 2014 Ala. Crim. App. LEXIS 37..." And further in this same citation: "the trial court's improper instruction, that his specific intent to kill had to be inferred if the act was done deliberately and death was reasonably to be expected as a natural and probable consequence of the act, constituted plain error..." from Section 13A-5-40 Capital Offenses enumerated/ Annotations/ Elements.

Discussed in *doc 1-1 habeas* p18 Attempted murder, of which I was also charged, is also a specific intent crime as indicated by the caselaw:: " Under Alabama Law attempted murder is a specific intent crime." *Warren v Mosley* LEXIS 19765 US Dist. Ct. (1991) OPINION from Michie's Al Code under Section 13A-6-2 Attempted Murder.

My capital charge above was disposed of by conviction, not by plea, as indicated in my Case Action Summary. Thus my trial, where conviction was a possible result, would necessarily be an adversarial process.

> doc 1-1 habeas p13, 14 : " CASE ACTION SUMMARY CC2011-001131-00"
> "9/24/2012 Charge 01: Murder Capital-Two/ # CNTS 001 (AR10) TAC"
> "9/24/2012 Charge 01 Disposed by : Conviction on 9/24/2012 (AR10) TAC"

The *ACCA (doc 8-41)*, the *Court Memorandum (doc 32-1)* and the *11thCir CoAdenial p2* asked if the trial errors can actually be harmful due to the fact that I accepted a guilty plea. This is error-overlooking law that states that in capital proceedings, even *after* accepting a plea, a trial is held to assure that all of the essential elements of the crime are proven beyond a reasonable doubt. R32 p11: "Even after a defendant has plead guilty to a capital offense, the state still must 'prove the defendant's guilt of the capital offense to a jury beyond a reasonable doubt to a jury.' section 13A-5-42 Michie's Al Crim Code." In the *District Court's 59(e)/CoA denial (doc 45-1) p5 footnote 3* stated that Michies section 13A-5-42 Guilty Plea, as amended on 2013, states that after a guilty plea "...the state, *only* in cases where the death penalty is to be imposed, must prove the defendant's guilt of the capital offense beyond reasonable doubt to a jury..." This is *error*, because if one looks *under* the 2013 amendment-HISTORY/2013 Amendments, it states (in the *pre* 2013 amendment language) " In cases where *either* the death penalty *or* life without the possibility of parole is to be imposed..." My trial was held in 2012, so the pre 2013 amendment language applies. Thus, the holding of the *11thCirc CoAdenial p2* that plea absolves my attnys of responsibility to subject my case to adversarial testing, overlooks the pre 2013 amendment language in Michie's.

A.1. Failure to Provide Meaningful Adversarial Testing (*doc 1-1 habeas* pp 12, 14-16, 18-27 & 9/24/12 TT in habeas pp26-28). **A1** subclaim **1,** my attny *failed to subject* the state's case to adversarial testing. After first, incorrectly agreeing with the DA that the trial was *not* an adversarial process, my trial attny **A1(2)** *failed to object* to the Courts & DA.'s incorrect advice in regards to specific intent as an essential element of my particular capital charge and attempted murder charges. Although the incorrect jury instruction *were interspersed* with correct advice, a confused layperson-jury member has a 50/50 shot at choosing the correct jury instruction on whether the trial was adversarial, or just a meeting, and whether specific intent is essential element of crime. Consistent and correct jury instructions are required, otherwise it is error. With my trial being an adversarial process, that error is not harmless,

despite the assertion of the *District Court in its 59(e)/CoA denial (doc 45-1).*

Initially, the Trial Court and DA agree that the trial (like any other trial) is an adversarial proceeding. (All quotes immediately below are from the 9/24/12 Trial Transcript (TT), cited in my *doc 1-1 habeas* p15 and *doc 8-33 R32*). However, the DA sets the *incorrect* tone early in the trial, and alleges that because of a plea only some evidence is required of specific intent (essential element of crime) and that the jury's role is only confirmatory rather than fact finding.

> 9/24/12 Trial Transcript (TT) p29,ln1 DA: "Know this-this is an adversarial proceeding when you get to court and impanel a jury...Because the Defendant has pled Guilty to the charge of capital murder, it is still required under Alabama law that we still present some evidence to the Jury so the Jury confirms that fact."

How much is *some* evidence-10% of the evidence? Then the Court is back on track with the following.

> p53 ln2 COURT: "In a criminal case the State bears the burden of proof..."
> p135 ln5 DA: "Procedurally it is like a trial-I mean it is a trial."
> p142 ln 21 DA: "... we have to present our case beyond a reasonable doubt."
> p150 ln12 COURT: "A conviction can be had ...so long as the evidence is so strong and convincing as to prove the guilt of the Defendant beyond a reasonable doubt."

Then, my attnys, not only did not object, but actually joined the DA in incorrect jury instructions, stating that the trial was *not* an adversarial proceeding (in R32 p30 onward, also in *doc 1-1 habeas*).

> In 9/24/12 TT p118 ln 7 attny Miller: "This is not an adversarial proceeding."
> In 9/24/12 TT p138 ln15 the DA states that *my attny* agrees with the DA's case, "It's rare that we are going to agree on all of these things and it's not adversarial."
> In 9/24/12 TT p142 ln 5 *my attny* Abston *(during Closing Arguments)* agrees with the DA: "It's unusual in that there is no factual dispute. You are not required to make a determination between two competing versions of the story. There is no factual dispute in this case."

Here from *doc 1-1 habeas* p 19, the DA, in Closing Arguments, state, incorrectly, that conviction did not need specific intent (an essential element of capital), and my attny did not object:

> 9/24/12 TT p143 ln1"The elements that we had to prove-the killing of two or more people in one course or scheme of conduct -we know that to be fact."
> 9/24/12 TT p155 ln 4: the Trial Court,His Honor's Oral Charge/jury instruction (to which my attny did not object) "...the State is only required to convince you beyond a reasonable doubt that two-or at least two-people were killed pursuant to one course of scheme of conduct."
> And, 9/24/12 TT p150 ln3 Trial Court, His Honor's Oral Charge/ jury instruction "...A conviction can be had upon evidence which is partially or *wholly circumstantial...*"

Wholly circumstantial evidence is not allowed in a capital case. These incorrect jury instructions by the DA, the Court, and *my attnys* are particularly egregious in light of the caselaw and Michie's that cite that both my particular attempted murder and capital murder charges both have, as an essential element, specific intent (and specifically *excludes* inferred intent -discussed in *doc 1-1 habeas* pp 17-19 part 6) which mandates a *consistent* jury instruction of intent. These errors are cumulative, and are not harmless when one considers what was possible if intent had not been proven beyond a reasonable doubt-acquittal as correctly stated in 9/24/12 TT p153 ln 14 COURT "A reasonable doubt in the mind of any juror as to any element of the offense charged entitles the Defendant to an acquittal." However, no jury instruction on lesser-included offenses (in my trial) left the jury trapped between acquittal of the capital charge (unlikely due to severity of charge) or conviction, and served to enforce conviction without proof of all elements beyond reasonable doubt-a Beck Violation [*Beck v Alabama* 477 US 625, 100 S.Ct. 2382, 65 L Ed, 2d 392 (1980)]. Beck Violations often lead to unwarranted capital convictions. *Schad v Arizona* 501 US 624, 645, 111 S.Ct. 2491, 115 Led 2d 555 (1991).

Although there were no incorrect jury instructions suggesting inferred intent, there were jury instructions with *no* specific intent mentioned at all, and so: **"**a person intends the ordinary consequences of his voluntary acts**"** (this is an inferred intent instruction) was **"**held violative of the Fourteenth Amendment Due Process.**"** and the case was reversed and remanded. *Sandstrom v Montana* 442 US 510, 61 LEd 2d 39, 99 S.Ct. 2450 (1979). And also, **"**the court concluded that the unconstitutional 'conclusive presumption' language in the general instructions *was not cured* by the specific instructions on attempted murder and robbery.**"** *Connecticut v Johnson*, 460 US 73, 74 L Ed 2d 823, 103 S.Ct. 969 (1982). In other words, incorrect jury instructions are *not* cured by correct jury instructions. So yes, *District Court Memorandum (doc 32-1) pp7,8 & District Court 59(e)/CoA denial (doc 45-1) p4* cited correct jury instruction. However, many were incorrect in regards to intent and in regards to the trial

being an adversarial process. So, the Trial Court violated state law and federal law, and this error was affirmed by the *ACCA(doc 8-41)* and the *District Court Memorandum (doc 32-1)* denials as non meritorious. Therefore, *11thCirc CoAdenial* was in error-overlooking fact and law, in determining that the plea absolves my attnys from all responsibility to subject the case to adversarial testing and that sporadic correct jury instructions on intent/trial as adversarial cure incorrect jury instructions.

A IAC; 1 Failure to provide meaningful adv testing, (2) failure to obj-imbuing husband and precrime activities with intent The *Court in its Memorandum (doc 32-1) p5* stated that the list of activities precrime and postcrime, demonstrated intent. The precrime activities discussed below, were my normal daily routines, and the activities postcrime did not show intent, as much as it shows postcrime What have I done? Panic.(I don't remember any of the crime) However, imbuing normal precrime activities with intent is purely circumstantial and specious "proof" of specific intent for a capital charge. Discussed in *doc 8-33 R32* pp26-28 & *doc 1-1 habeas* pp 15, 16,19-22, my own attny *did not object* **A1(2)** to the DA's imbuing intent on non-intent pre-crime activities, and actually participated in imbuing intent on many of my precrime activities. First example, Attny Miller informed me of DA's plans to indict my husband as a co-conspirator (he was at BizTech during the crime, was not involved). At trial, the subject of my husband had not been raised at all, as his indictment had been dropped, upon my plea. And yet, from 9/24/12 TT p127 ln 8 onward:

> Attny Miller: "Have you had occasion, also, I guess, to interview her husband, Jim Anderson?"
> Police Inspector Gray: "I did."
> Attny Miller: "Did he indicate to you that he had any knowledge..."
> Inspector Gray: "He *says* he didn't."
> Attny Miller: "Did he indicate to you that he had any knowledge that this was going to happen, or anything of that nature?"
> Inspector Gray: "He *says* he didn't."
> Attny Miller: "He *says* he didn't." [italics mine to indicate emphasis in attny's tone of voice]

My attny wafted innuendo that I had a co-conspirator (my husband), imbuing my act with intent, before the lay-person jury.

Another example, below, the actual entirety of the "cross examination" of Inspector Gray, where *my attny,* rather than objecting, actually participated in transforming my mandatory faculty meeting attendance from a contractual obligation into a premeditated choice, is wafting innuendo of intent- quoted in my *doc 8-33 R32*p21 *& doc 1-1 habeas* p20.

> attny Miller: "as a matter of fact, she really didn't *need* to be there that day, did she?"
> Insp Gray: "I don't believe so."
> attny Miller: "and she went of her own volition, is that correct?"
> Insp Gray: "That's correct." [italics mine to indicate emphasis of voice]

In fact, my colleague, Dr. Deb Moriarity stated that I was required to attend faculty meetings etc. in quote in R32, and in *doc 1-1 habeas* p20. 9/24/12 TT p82, ln14 Deb: "Well you have to because you are under contract with us."

Third example, much was made about my *choosing* the chair by the door for the faculty meeting. Dr. Deb Moriarity, indicated that the Court diagram of the conference room was more commodious than the room is in reality, and that by the time I had arrived, the *only* chair readily accessible was the one by the door, as, in her words, you would have to climb over the credenza to get to the other two remaining vacant chairs (Dr. Deb Moriarity, Dept of Biology, UAH). My attny had the correct measurements of the almost office-sized conference room and did not object to the diagram's misrepresentation.

Finally, was made about my allegedly going to Larry's Pistol and Pawn *one* time, Feb 5th, 2010, allegedly, to prepare for a seige: TT p109 ln 13. On that evening of Feb5th was the bi-monthly Biotech faculty meeting (not the fatal Biology meeting) which the new Provost Vistaph Khabari attended-he did not attend Biology faculty meetings. Since he was the final decision maker, and had blocked the old Provost Dr. Lew Radonovich from participating in my tenure decision, if tenure was the motive, why did I not "strike" at the Feb 5th Biotech meeting with Khabari in attendance? Dr. Deb Moriarity testified that Vistaph Khabari (not the Biology Dept.) was the final decision maker:

> 9/24/12 TT p75 ln 1: DA "Because in the end the provost makes the final decision?"
> p75 ln 2 : Deb "Right."

Dr. Deb Moriarity recommended Larry's as stress relief. I went with grad students, colleagues, for the preceding year. Larry's Pistol & Pawn sign in diaries showed my sporadic but longterm attendance-which my attny had, yet my attny did not correct or object to the DA's false implications that I had attended once, in alleged preparation for my crime.

My colleagues were friends,I did not have intent to hurt them. Deb and I had plans to continue collaboration in the event I got my allergies under control and continued in science: 9/24/12/TT p78 ln 11; p83 ln7; p99 ln 18 (here Deb stated that she had been trying to remind me of our friendship-but I was gone-in a blackout). Dr. Adriel Johnson, one of the victims, was my friend. He'd voted yes for tenure, he'd told me. My attnys knew of the above facts, yet did not object to the DA's manipulations of those facts, nor did my attnys present the truthful facts, thereby participating in *wafting the innuendo of intent* with tenure denial as alleged motive. The DA and my attnys: "used the questions to 'waft and unwarranted innuendo into the jury box'" *Gross v United States*,394, F.2d., 216, 221 (8th Circ. 1968). This next case law is in regards to the DA, not my attny, but applies, as my attny *also* carries jury-presumed authority in the courtroom.: "[T]he prosecutor's opinion carries with it the imprimature of the Government and may induce the jury to trust the Government's judgment rather than its own view of the evidence." *United States v Young* ,470 US 1,18-19 (1985). Also, in *Berger v United States* (1935) 295 US 78, 79 Led 1314, 55 S.Ct. 628 held that the DA's insinuations, improper statements, prejudiced the trial, were unfair, and that each instance added and synergized and was cumulative. The *District Court Memorandum(doc32-1)* in its denial and/or non-opinion in regards to the many instances of my attnys failure to subject, failure to object, and participation in falsely imbuing acts with intent-violating the 6th am Effective Counsel clause, is unreasonable in light of the evidence presented above. Thus, the *11thCirc CoAdenial p2, District Court Memorandum(doc 32-1)* and the *ACCA (doc 8-41)* proforma application of Strickland was unreasonable.

The above IAC also violated the 5th & 14th US Const. am. Due Process Clause-a Brady Violation [*Brady v United States* 397 US 742,748 25LEd 2d 747, 90 S.Ct.1463 (1970)] as my attnys knew of the above exculpatory evidence in regards to lack of intent of precrime activities, did not present this evidence, and did not correct the DA's erroneous statements (in the *doc 8-33 R32* under exculpatory evidence; in *doc 1-1 habeas*, p 19 -wholly circumstantial evidence falsely manipulated to secure a conviction-prejudice). Intent was not proven despite the DA's and *my attny's* best efforts to imbue non-intent precrime activities with intent. It is an egregious constitutional error of Due Process, 5th and 14th am, when the defendant is left to prove he lacked intent, rather than the state fulfilling its duty to prove beyond reasonable doubt every element of the crime-particularly intent. *Mullaney v Wilbur* 421 US 684, 44 Led 2d 508, 95 S.Ct. 1881 (1975); *Reed v Ross* 468 US1, 82 Led2d1, 104 S.Ct. 2901 (1984). Thus, I do exhibit a substantial showing of Constitutional Violations: a requirement for issuance of CoA as stated in 28 USC § 2253 (c)(2) cited in *11thCirc CoAdenial p2.*

A IAC; **1** Adversarial Testing; **(3)** failure to investigate-steroid psychosis: As discussed in doc 1-1 habeas pp 23,24 my attnys were aware and possessed evidence of the following: I had lifelong allergies (asthma, eczema, anaphylaxis) that necessitated steroids (lifesaving, enabled me to lead a normal life) and this combination of extreme allergies and steroids lead to mental symptoms and occasional blackouts. [South Shore Hospital Emergency, Weymouth, MA; Drs Joshua Boyce & Richard Horan, Brookline Allergy Associates, Brookline, MA; UNUM Disability Insurance; Harvard Disability attny Curtin, Harvard University; Drs Laura Dyer & Zaheer Khan(now in Aging Center, Memorial Drive, Huntsville AL); Dr. Rebecca Raby, allergist, Huntsville, AL] My attnys Miller & Abston had these records before and during trial. Around 2009/2010 the tenure process (necessitating increased time in the lab) and other sources of pressure, exacerbated my allergies, necessitating tremendous steroids and leading to the worst mental symptoms/blackouts in my life thus far (incidents when visiting my parents-Cable Emergency, Ipswich MA; Beverly Emergency, Beverly, MA; and when in Huntsville-Drs Laura

Dyer & Zaheer Khan, HSV,AL; Dr. Rebecca Raby, allergist, Huntsville, AL). Around end of 2009 (right before crime) I went to Dr. Raby for testing and she discovered that I was allergic to latex and formaldehyde-both of which are integral to my labwork. I switched to latex free gloves immediately-but was far too late. My attnys Miller & Abston had these records. On the day of my crime I "woke up" in a police station not knowing where I was and denying (for 3 hrs) that the crime happened at all (Inspectors Kathy Pierce & Gray; police car video & police interview video -attny Miller showed me both and thus was aware of both videos). The doc 8-33 R32 pp39,40 quote discussing interview of Inspector Gray in 9/24/12 TT p107 ln20 onward:

> "State's witness investigator Gray testified that;(A) when he asked her directly about the shooting, ' she said, It didn't happen, I wasn't there, it wasn't me. That's pretty much the theme of the interview.' For three hours that was the sum of the interview." [(') is what Insp Gray stated-(") R32 quote].

In my *doc 1-1 habeas* pp23,24 I discussed that during my stay at Madison County Jail (MCJ) due to my behavior, and other symptoms (MCJ disciplinaries) I was diagnosed with schizophrenia (Dr. AlRafai, MD MCJ psychiatrist). Long after my crime (>1yr) the state's expert (Dr. Doug McKeown Ph.D. Clinical & Forensic Psychology, PO BOX 6216, Dotham AL 36302) diagnosed me with same (attny Miller told me this/was aware of this) after a cursory interview and test. Attny Miller informed me (was aware) that Dr. Marianne Rosensweig (Forensic Psychologist, PO BOX 2312, Tuscaloosa, AL 35403-inappropriate expert who saw me >1y 4 mo. after crime) also diagnosed me with schizophrenia. Yes, the resperidol at MCJ abrogated my symptoms, but I became allergic to it, so the parade of anti psychotics and valium began (MCJ Medical Records, Nursing & Psych Records). My attnys Miller & Abston had the above medical and psychiatric history, discussed in doc 1-1 habeas p26 & *doc 8-33 R32.*

Severe allergies *alone* can cause an altered mental state. Dr. Rick Horan of Brookline Allergies Associated, Brookline, MA, when he thought I was having mental crisis, discussed his eczema patient who suddenly became violent and suicidal and had to be committed. Extreme allergies can cause an

elevation of eosinophils to such a degree as to cause "eosinophilia syndrome" which leads to "Altered behavior or cognitive function, spasticity, peripheral neuropathy, focal cerebral lesions."(MERK Manual 16th ed. 1992). [I had MRI *without* the Gallodinium Imaging Solution, which renders the MRI useless]. In the 20 years from the date of publication of this edition of MERK, to the trial of my case in 2012, there had been substantially more research into allergy and steroid psychosis (as evidenced by the *Court's Memorandum p5 footnote 4* referencing an internet site detailing steroid psychosis) to which my attorneys had access at the click of a button.

My attnys initially sought an allergy/steriod psychosis expert, but abandoned the expert (and my defense) when expert wanted up front payment. Even without the appropriate expert my attnys could have at least presented, at trial, the records of my longstanding allergies/steroid use, to indicate that steroid psychosis was involved, as they had the above medical/psych records (in *doc 1-1 habeas* pp 8, 12, 13,23-27 & *doc 8-33 R32* pp22-24). My attnys could have presented the fact that multiple steroid prescriptions were found in my bag at the police station, and the fact that I had been in a blackout, and that at the police station, for three hours, had denied that the crime occurred at all and denied that I had been at the tragic faculty meeting (*doc 8-33 R32* p39,40 & *doc 1-1 habeas*). This evidence of a psychotic break, *alone*, should have been presented at trial, which would have cast reasonable doubt on intent. And, discussed in the *doc 8-33 R32* p25 quote at end of **B3**, the testimony of steroid psychosis expert, in regards to my history of allergies/steroid use/symptoms would have abrogated intent.

Court Memorandum p10 footnote 5, citing *US v Warren* 2nd Circ (1971) states the jury *may* reject steroid psychosis defense, which it did in the case in which the defendant engaged in a complex multi day art theft. However, in my case (where my crime lasted <30 sec) with evidence of allergies/steroid use, evidence of blackout/psychosis during crime, with this as the only defense and the truth, steroid psychosis should have been investigated and presented. In short, a jury *may* reject *any* defense-that is what a trial is all about, a defendant's attny presenting a defense that the jury *may* or *may not* reject.

In short, my attny, Roy W. Miller, had retired. He'd been appointed by the trial court. I was his last case. He wanted the plea deal to stick so he could go home and rest. There in lies my lead attny's conflict of interest. Thus ACCA proforma application of Strickland is in error, as my attny's conflict of interest, just going through the motions, and not presenting/investigating evidence of steroid psychosis is Strickland level IAC.

Refuting District Court's holding, that Ake v Oklahoma (below) states *any* expert is sufficient, or a certain number is sufficient (even if they are inappropriate) we have:

> "that indigent defendants shall receive the assistance of all experts 'necessary for an adequate defense.'...that fundamental fairness entitles defendants to 'an adequate opportunity to present their claims fairly within the adversary system, id (*Ross v Moffat*) at 612, 41 LEd 2d 341, 94 S.Ct. 2437. To implement this principle, we have focused on identifying 'basic tools of an adequate defense or appeal' *Britt v North Carolina* 404 US 226, 227, 30 LEd 2d 400 92 S.Ct. 431 (1971) and we have required that such tools be provided to those defendants who can not afford to pay for them." [*Ake v Oklahoma*, 470 US 68, 84 LEd 2d 53, 105 S.Ct. 1087 (1985) -cited in doc 1-1 hab p26-italics]

And thus, dismissal w/o evidentiary hearing on this critical issue of appropriate expert is not only contrary to Ake v Oklahoma, but also Britt v North Carolina, and Ross v Moffat.. The *(doc 8-41) ACCA* dismissal and the *doc 32-1 Court Memorandum* affirmation was, therefore, not only an unreasonable conclusion in the face of the evidence, but was another erroneous pro forma application of Ake and Strickland.

Also, my case parallels *Hinton v Alabama* 571 US 263, 134 S.Ct., 1081; 188 Led 2d 1;2014 reversed and remanded, cited in *doc 1-1 habeas* p26 . In both my case and Hinton's the attnys initially were denied funds for the appropriate expert, and rather than try a Writ of Mandamus, or other means of funding (no Writ of Mand. for funds for appropriate steroid exp. in state's exhibits--my attnys *did* file writ of Mand. in 2012 for funds for inappropriate experts already retained) both Hinton's and my attnys abandoned the use of the appropriate expert, and went ahead with an inappropriate expert. And,so:

> "For purposes of determining whether an accused has received ineffectiveness of counsel within the meaning of the Federal Constitution's Sixth Amendment, a court in assessing the

> reasonableness of counsel's investigation of potential mitigating evidence, must not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further." *Wiggins v Smith*, 539 US 510, 156 L.Ed.2d.471, 123 S.Ct. 2527 (2003)

The evidence of allergies, steroid use, mental illness my attnys did possess and didn't present, the fact that they did not investigate/procure a steroid psychosis expert, are all errors that demonstrate an egregious lack of attny performance, which is both a Strickland Violation and 6th amendment violation. Thus, the pro forma citing of Strickland was an unreasonable application of same by the *ACCA (doc 8-41)* which was affirmed by the *District Court (doc 32-1)*. The *11th Circ CoA denial* overlooked evidence of the 6th amendment violation and the unreasonable application of Strickland.

A1(3) Failure to investigate-competence:The *doc 8-41 ACCA,* the *District Court in its Memorandum (doc 32-1) pp4,5* (citing the plea colloquoy) and the *11th Circ CoAdenial p3* averred that Dr.Rosenzweig (the forensic psychologist) stated in the plea colloquoy that I was competent to plea, and competent at time of crime. This is error. Here, from the *doc 8-33 R32* pp13,14 quote, is where it plainly states that it was *my attny* Abston who said Dr.R said (hearsay) I was competent to *accept plea. Nothing* was stated anywhere in the plea colloquoy (or trial) as to my competence at time of crime. Neither Dr. R. nor her report were present at the plea colloquoy (or trial).

> 9/11/12 TT plea colloquoy: " Court: Let me ask your attorney...there has been *no request* for a competency hearing in this case, so let me ask you on the record: are you -whoever would like to answer, or all three of you -her counsel-are you convinced she is able to comprehend and understand the proceedings that we are going through here today?
> Mr Tuten: Yes, your Honor.
> Mr Miller: Yes, your Honor.
> Mr Abston: Yes, your Honor, and for the record, as late as Sunday we had a psychologist in contact with her who has advised us that she believes her to be fully competent to make the decision she is making."

The *Court in its Memorandum(doc 32-1) pp4,5* can not extrapolate expert's findings from my trial attny Abston's *hearsay* testimony during plea colloquoy about competence to accept plea. Since my attnys are not psych experts (a Pate Violation-discussed in my R32) my attnys' opinion of my competence is not

sufficient, despite the holding of *11thCirc CoAdenial p3* which overlooked the principles of Pate (*Pate v Robinson* 383 US 375 15 LEd 815, 86 S.Ct. 836)-cited R32 p15. The state's exhibits to the habeas court do not include psych reports, so one can assume the ACCA, and the District Court did *not* possess them to read them. This indicates that the trial court did not receive psych reports entered as evidence, and Dr. R was *never* called as a witness. The state's and defense experts did diagnose me with schizophrenia (told to me by attny Miller and Dr. Rosenzweig) which would in itself warrant further investigation. Also, the evidence of steroid psychosis/psychotic break that my attnys possessed, that would indicate the need for a competency hearing, was not presented. No evidence was presented at the plea, trial, nor was there any competence hearing. In regards to the assessment of my competence:

> "...may not make a determination that an accused is mentally competent merely because he is oriented to time and place and has some recollection of events: the test must be whether the accused has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding of the proceedings against him." *Dusky v US* 362, 402, 4LEd 824, 80 S.Ct. 788 cited in doc 1-1 habeas p25.

The 9/11/12 TT plea colloquoy shows that I was not competent-I gave only one word "yes" or "no" answers, with no awareness of the questions, nor any knowledge that intent was an essential element of my charge-hardly a colloquoy. In fact, my trial attny Miller coached me before plea colloquoy, as I had been totally incapacitated by the coercive pretrial conditions, discussed in claim **B2**, and by the menu of antipsychotics/valium I was on after I became allergic to resperidol. The *11th Cir CoAdenial p3* states that I stipulated an expert believed me to be competent. I did not. Allegedly I stipulated many things, but I did not- I only responded with "yes" and "no". The state's dismissal of these intertwined and synergistic, and thus cumulative errors elucidated in this **A1(3)** subclaim:failure to investigate (in regards to competence) was unreasonable in the face of the pleadings and evidence, and contrary to the holdings of federal law cited above: Strickland, Cone, Cronic, Ake and Dusky and Pate. Thus, the *District Court Memorandum (doc 32-1) pp4,5* stating that attny did proper investigation as to

my competence to plea was in error.

Summary of **A1(3)** Failure to investigate. In light, that I have no memory of the event, as I was in a blackout this caselaw applies:

> "The criminal intent must be proven as much as the overt act, and without a sound mind such intent could not exist, and the burden of proof must always remain with the prosecutor to prove both the act and criminal intent." and earlier in this caselaw "the want of sound memory repels the proof of malice in the same way as proof that the killing was accidental, in self defense or in the heat of blood;..." *State v Bartlett* 43 NH 224, 231, 80 Am. Dec. 154 cited *Davis v US* 40 LEd 499, 160 US 469 cited doc 1-1 habeas p24.

The absence of memory of my crime, the lifelong necessary and often lifesaving use of steroids during allergy flares, with concomitant flares of mental symptoms, finally leading to the tragedy, all explained with evidence above, not only abrogates intent, it is also involuntary intoxication: "Nevertheless the absence of sound mind and discretion I the same as being under 13 years of age, involuntarily intoxicated...eliminates all responsibility under the laws of Georgia for murder as well as all other crimes." *Davis v US* Led 449, 160 US 469 cited *doc 1-1 habeas* p17. The *Court in its Memorandum (doc 32-1) pp4,5* holding there is no case law on voluntary/involuntary intoxication was in error.

The *District Court Memorandum (doc 32-1) p5,* holding, that there is absence of exculpatory evidence, is in error. It does exist and is comprised of the above evidence of steroid psychosis/ mental illness/ incompetence that my attnys and the DA did possess, and withheld from the jury. No witnesses were called by the DA nor my attnys, attesting to my mental illness, no steroid psychosis expert was called, no mental health professionals at all, no questioning of Inspector Gray in regards to the multiple prescriptions for/steroids in my bag, no presentation of my vast medical history of allergies with steroid use. All of the above (as well as the non intent nature of my precrime activities-also withheld) is withholding of exculpatory evidence which is a violation of 5th and 14th am, and a Brady Violation which is demonstrated "by showing that the favorable evidence could reasonably be taken to put the whole case is such a different light as to undermine the confidence in the verdict." *Kyles v Whitley* 514

US 419, 131 LEd 2d 490, 115 S.Ct. 1555 (1995). This *exculpatory evidence* ,exculpating me of intent, an element of my charges, renders me innocent of the capital/ att murder charges (in *R32* p25 & *doc 1-1 habeas* pp3 (part 3b),6, 26 (part 6d), 17-27). These errors addressed in **A1(1-2)**, and the above withholding exculpatory evidence, are egregious and cumulative and thus the Trial Court lacked jurisdiction to convict (*R32* p20 under **B1** & *doc 1-1 habeas* pp 3(3b),6). The *District Court 59(e)/CoA denial (doc 45-1)p4*, in error, asserted that the above errors were harmless, and therefore they could not accumulate to result in cumulative error. In fact, cumulative error *is* the accumulation of *harmless* errors-Habeas Corpus Key 461 from *Cargle v Mullin*, 317 F.3d 1196 (10th Circ. 2003).

In regards to the erroneous proforma application of *Strickland v Washington*, 466 US 668(1984), one should keep in mind the following: "'whether counsel's omission served a strategic purpose is a pivotal point in Strickland and its progeny' and that this 'crucial distinction between strategic judgment calls and plain omissions has echoed in the judgment of this court.'" internal quotes-*Loyd v Whitley*, 977 F.2d 149, 158 (5th Cir 1992); external quotes-*Anderson v Johnson*, 338 F 3d 382;2003. And, "Failure to introduce evidence because of a misapprehension of the law is a classic example of deficiency of counsel." *Smith v Dretke*, 417 F 3d 438; US 2005. My attorneys failure to introduce (omission of) the above exculpatory evidence, and omission/failure to investigate, in light of evidence of lifelong allergies/steroids, with exacerbation of said in the months before the crime, left me with no defense (claim **D)** which definitely violates Strickland. Also,my attorney's omission/ failure to investigate was due to thinking they could *not* get up front funds for an appropriate expert a la A.R Hinton & Smith v Dretke is Strickland IAC. Finally, *US v Drones,* 218, F.3d 496, 500 (5th Cir 2000) states that Strickland "does *not* require ...deference to decisions that are uninformed by an inadequate investigation into controlling *facts* and laws." [italics mine]

A.2. Counsel Did Not Move to Withdraw the Guilty Plea (*doc 1-1 habeas* p5,6 & R32 citations in larger headings **A**) During the plea colloquoy I was not advised by the Court nor my attnys, of my

right to withdraw my guilty plea (9/11/12TT plea colloquoy). After conviction, I was immediately transported to prison and into administrative segregation, as required of all new Life w/o Parole (LWOP), where I was denied phone, store-did not have stamps etc.. When I was advised by seg inmate (Karen Norris-EOS, location unknown) that I could withdraw my plea, I scraped up materials for a letter to my attny J Barry Abston to submit a motion to withdraw my plea. Instead of carrying out my wishes, J Barry Abston wrote me a letter to confirm this request. By the time I got his letter through Tutwiler's slow legal mail (even slower for seg inmates) and I returned a confirmation letter, the time had passed. I could not enter a motion to withdraw a guilty plea *pro se*, to the trial court, as I was represented by counsel and so any *pro se* motion would have been stricken. If mandatory admin seg for LWOPs had not been treated as punishment (no phone, no store) I would have *called* attny Abston and asked him to withdraw my plea, and been within deadline. And if attny Abston had submitted my request to withdraw plea, instead of writing me to double check, I would have been timely. The state's dismissal and District Court's affirmation was error. The *11th Circ CoAdenial p3* denial of this claim overlooks the fact that my attny should have acted as my agent and filed the motion when he first received my request.

The petitioner, *Terry Lee* Hinton, (doc 1-1 hab.p5) averred that his plea was involuntary and wanted it nullified. T.L. Hinton had *not* filed a motion to withdraw a guilty plea. Instead, he appealed (w/o first submitting a R32) requesting to withdraw his guilty plea and got his conviction/sentence voided. Ex parte State of Alabama (Re: *Terry Lee Hinton v State*) Supreme Court of Alabama 668 So.2d 51: 1995 Ala. LEXIS 208 1931688 (1995) cited in *doc 1-1 habeas*. I did more than TL Hinton: I filed a timely motion to pull plea with my attny, requested to pull plea in R32, on up through state courts, and thus should, as had T.L. Hinton, have my conviction/sentence nullified, and my plea pulled. As such, the *ACCA (doc 8-41)* violated its own statutory law in summarily denying my claim **A2**, thus the *District Court (doc 32-1)* should not have shown deference. The *11th Circ CoAdenial p3* overlooked this precedence in its denial of this claim.

Summary of A (IAC) :The above claim **A** with **A1** (comprised of above mentioned cumulative errors) including subclaim **(1)** my attnys *failure to subject* prosecution's case to adversarial testing, and including subclaim **(2)** my attorney's f*ailure to object* to incorrect jury instructions and imbuing pre-crime normal activities with intent, fulfills the first prong of Strickland violation, which is (1) **"**counsel's representation fell below an objective standard of reasonableness,**"** The *third* subclaim of **A1 (3),** my attnys' *failure to investigate,* failing to procure up front funding required by the appropriate steroid expert (Hinton violation) made accepting the plea the only alternative. As my only defense of steriod psychosis (and the truth) had been abandoned, I was left with the prospect of a trial with no abrogation of intent-no defense **D**. And my plea was used against me in trial. All this accumulated to make my trial pro forma conviction and thus fulfills the second prong of Strickland (2) **"**there is a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceedings would have been different.**"** *Strickland v Washington*, 466 US 668(1984). Further, what I had designated the third prong (prejudice) of Strickland analysis is satisfied by the appellant establishing **"**that there is a reasonable probability that, but for the counsel's errors he would *not have pleaded guilty* and would have insisted on going to trial.**"** *Culvert v State*,549, So.2d 568, 572 (Ala.Crim. App. (1989) quoting *Hill v Lockhart* 474 US 52,59 106 S.Ct. 366, 88 Led 2d 203 (1985). Thus the (prejudice) prong of Strickland is fulfilled, where if a steroid expert had been procured, I would *absolutely not* have signed the agreement to plea and have absolutely insisted on going to trial, as I had, for years, been asking to go to trial with steroid expert. The above evidence of my longstanding steroid use and mental health issues was not presented by the prosecution, nor by my attnys. This also fulfills the prejudice prong of Strickland as illustrated with the following caselaw -where the government withheld evidence favorable to the defense, thus the court concluded that **"**absent this misconduct, there was reasonable probability that the petitioner would not have pleaded guilty but, rather...opted for trial.**"** quote from *Ferrara v US*, 456 F.3d 278 (1st Cir 2006) affirming granting of 2255.

For these reasons, the *District Court's (doc 32-1)* dismissal of my IAC claims **A** as non meritorious was an erroneous and *an unreasonable* proforma application of Strickland, and *contrary to* the holdings in Strickland and the other Federal and other Circuit caselaw cited throughout **A**. And "However, 'the Supreme Court certainly did not intend the Strickland analysis to be a total barrier to relief. Id at 1391'" *Sullivan v Fairman* 819 F.2d 1382, 1391 (7th Circ. 1987) which refutes the *Court's (doc 32-1) & 11th Circ CoAdenial* p2 proforma citation of Strickland, used as a magic wand to automatically deny me relief. My attnys did not operate as my representatives at all, violating the 6th am, and yet, the *11thCir CoAdenial* overlooked the slew of evidence and caselaw supporting this egregious IAC, and overlooked my showing of Constitutional Violation required for issuance of CoA.

Question 5: Whether reasonable jurists could debate the District Court's/11th Circuit Court's decision that Anderson's plea was voluntary.

B. Involuntary Guilty Plea Claims (see subclaims for *doc 1-1 habeas* pp & *doc 8-33 R32* pp1-20, 35-41). In response to the *District Court Memorandum p5, footnote 3* suggesting that the guilty plea shall have effect of waiving certain of my rights, I want to clarify that nowhere on my edited plea paragraph (not in state's exhibits) did it have a statement waiving my rights. Although I am sure the *District Court Mem. (doc 32-1)* meant waiver of right to trial (incorrect, as with plea to capital, trial must still be held **A1**) just in case the Court was also inferring a waiver of my R32 rights, here is the following caselaw: a defendant's "plea of guilty did not...waive his previous [constitutional] claim." *Haynes v US* 390 U.S. 85,87, n.2. 88 S.Ct. 722, 19 L Ed 2d 923, 1968-1 C.B. 615 (1968). And also, "an argument survives a guilty plea if it attacks the court's jurisdiction.[citations omitted]" *Class v US* 138 S.Ct. 798;200 Led 2d 37 (2018). And from my R32p11 from Michie's Section 13A-5-42, Michie's Al.Crim.Code (1975) plea waives appeal unless jurisdictional issues or sufficiency of the evidence. And finally, "although a waiver of the right to seek postconviction relief given as part of a plea agreement is generally enforceable, it cannot operate to preclude a defendant from filing a Rule 32 petition

challenging the voluntariness of the guilty plea, the voluntariness of the waiver, or counsels effectiveness." *Boykin v State* 840 So2d at 931, Ala. Crim. App. 2002. [rest of citations omitted].

The *District Court Memorandum p10* also suggests that if plea is rational choice then it is not involuntary. If one has an attny who does not raise any defense at all, abandons the only defense available [**A1(3)**, **B3&D**], then the plea may end up being the only choice-but it is still involuntary. Also, in *Jackson v US*, 390 US 570, 20LEd 2d 138, 88 S.Cy. 1209 (1968) it is stated that when the death penalty is held over defendant's head as a risk if he goes to trial then "it makes the 'risk of death' the price for asserting the right to a jury trial" which this caselaw states as coercive, and thus, certainly makes my plea involuntary.

B.1: Sentencing Court Misstated Applicable Sentences and Other Defects (*doc 1-1 habeas* pp 5,6,13,14,17-18 & *R32* pp3-16 onward interspersed with other claims). The *11th Circ CoAdenial p1* stated that my one statement dealing with misadvice on min/max sentence was the entirety of **B1** claim, overlooking my argument below, which is, that non-advice on intent as essential element makes the plea involuntary.

In the psych cell holding unit (after years of **B2** coercive pretrial stressors,) attny Roy Miller presented me with a plea dealing with my offenses in detail in a typed paragraph . At the same time I was also presented with the form "agreement to plead guilty and explanation of rights." (attny Roy W Miller, MCJ security camera, MCJ visitor log-right before trial-Sept 2012). I understood this coupling of docs to mean that 1.) the "agreement to plea and explanation of rights." was literally *an agreement to* plea, and not the actual plea, and that 2.) the doc with the typed detailed paragraph was my actual plea. This is also what attny Roy Miller stated (attny Roy W Miller retired, HSV,AL). On the actual plea paragraph I crossed out "of sound mind" and "intent", and then initialed above strikes. Attny Roy W. Miller also initialed my strikes. At the time I had no idea intent was a necessary element of both my charges. I crossed out "of sound mind" and "intent" in the plea paragraph only because they were *not*

the truth. With the state's exhibits, I don't have the edited plea, but rather I have the form *agreeing to plead guilty explanation of rights* (Ireland form) which had no intent element described. Unless I had memorized Michie's Criminal Code, I could not have known that the particular capital charge and attempted murder charge, listed on the Ireland form, had a necessary specific intent element, and if I *had* known, I would *not* have agreed to the plea at all. I was uninformed as to the essential element of my charge of capital murder/att murder. Thus the plea was involuntary, and the *District Court (doc 32-1)* and the *ACCA (doc 8-41)* dismissal of this claim was unreasonable. Thus the *Court's* denial of this claim is also contrary to holdings in the federal law *Boykin v AL* 395 US 238 23 Led 2d 274 89 S.Ct. 1709 (1969) cited in R32.

I raise lack of colloquoy on specific intent-the trial court did *not* address the specific intent *not once* in the entire plea colloquoy (9/11/12TT & R32 pp 9,10). The *District Court denial59(e)/CoA(doc 45-1)* p6 cited the DA's one statement during plea colloquoy. However, the DA stating that he will prove the acts were committed, and that they were committed intentionally, is *not* a court led colloquoy that specific intent is an essential element of the crime, and that without intent being proven, a capital conviction can't be had. The DA did not assert that intent was an essential element of my charge, nor did he assert he needed to prove this element beyond reasonable doubt to a jury for a conviction. The Honorable Court did not mention intent at all, nor as an essential element that needs to be proven to a jury. The plea colloquoy must be between the trial judge and the defendant, where all essential elements are elucidated, according to Alabama Rules of Crim P Rule 14.4:

> "the court shall not accept a plea of guilty without first addressing the defendant personally in the presence of counsel in open court for the purposes of (1) Ascertaining that the defendant has a full understanding of what a plea of guilty means and its consequences, by informing the defendant of and determining if the defendant understands (i) the nature of the charge and the *material elements* of the offense to which the plea is offered..."

> And as discussed in R32p20: "Bishop contends that the trial court lacked jurisdiction to accept plea due to the mandatory language of Rule 14.4, Ala. R. Crim.P....The Alabama Supreme Court has held in two cases that when a court acted outside the confines of statutory authority, it lacked

jurisdiction."

In my *R32* p10 I discuss *Henderson v Morgan* 426 US 637, 49 LEd 2d 108, 96 S.Ct. 2253 (1976) in which a defendant was not informed of the element of intent essential to his crime of 2nd degree murder, and because of this "did not receive adequate notice of the nature of the offense to which he pled guilty, his plea was involuntary and the judgment of conviction was entered without due process of law." His plea was set aside. Likewise in my case, my plea should be set aside. The trial court's defying its own statutory rules and lack of jurisdiction (in *doc 1-1 habeas* p6) is discussed in quote: "...the indictment was void due to its failure to allege an essential element of the offense, and this was a jurisdictional defect which could not have been waived by the defendant. *Cogman v State*, 870 So.2d 762, 2003 Ala.Crim. App. LEXIS 65(Crim.App. Apr 2003)" The *11th Circ CoAdenial* overlooked this precedent.

The *ACCA (doc8-41)* p5 erroneously quotes Boykin as relevant for mis-advice on min/max sentences only-and I *did* receive incorrect advice on min/max sentences. However, Boykin is more comprehensive than ACCA alleges, as discussed in the *R32* p15:

> " ' What is at stake for an accused facing death or imprisonment [life without parole] demands the utmost solicitude which the courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequences.' *Boykin v Alabama*, supra, 345, U.S. at 243-244." [brackets/italics mine].

Thus the plea was involuntary, and the *Court (doc 32-1)* and the *ACCA (doc 8-41)* dismissal of this claim was unreasonable. Thus the *Court's* denial of this claim is also contrary to holdings in the federal law *Boykin v AL* 395 US 238 23 Led 2d 274 89 S.Ct. 1709 (1969). The *11thCirc CoAdenial p3* overlooked the evidence and caselaw above in **B1** in asserting that **B1** deals with only min/max sentencing, and in concluding my plea was not involuntary.

B.2. Pretrial Stressors Coerced Guilty Plea -pretrial conditions(*doc 1-1 habeas* p 2, 5-14,16).

Coercion by conditions: For this, a quote from *doc 8-33 R32* pp18,19:

> "For over two years in the Madison County Jail several factors overcame her ability to think and decide for herself. These factors also took a [illegible] toll on Bishop who already suffered from a mental illness. These factors are as follows: [1]Being subjected to a small, cold, isolated cell, limited phone calls, [2] Lights being left on 24 hours a day, [3]Subjected to excessive noise 24 hours a day, [4] malnourishment from an inadequate diet of low protein, low iron and high starch, [5]Fear of Warden Hancock,moving her to isolation, ordering searches of her cell, threatening to set her on fire, [6]Drugs Valium, Resperidol, Vistoril and Abilify,"

The evidence for the quote above, also in *doc 1-1 habeas* pp 7-9,10, is: (February 2010-September 2012: Madison County Jail camera, housing records, disciplinary records, MCJ Med/Nursing records, MCJ Psych records Dr. Al Rafai, MD MCJ psychiatrist, MCJ Psychiatric Nurse Vest, Huntsville Hospital records-suicide attempt necessitating two layers of stitches and IV dextrose to restore osmolality as Warden Hancock did not authorize blood products). Initially the resperidol worked, but when I became allergic to it, the parade of heavy-duty, unsuitable anti psychotics/valium began. In regards to the tremendous levels of antipsychotics and valium administered because of my mental health diagnosis, this caselaw: *Colon v Smith* 438 F.2d 1075, 1079 (5th Circuit), cited in R32 p17, which states that the plea can be involuntary when the defendant is drugged, incompetent, or both.

Coercion by threat.I had learned from Dr Raby of Huntsville~late 2009, right before the crime, that I was allergic to latex and this allergy was one factor in why my allergies flared (intense work in my lab wearing latex gloves). My allergies manifested as asthma and eczema, and, if severe, anaphylaxis (drop in BP, closing of throat-sometimes in minutes, sometimes in seconds). The last year before crime, I was prescribed and carried an epi pen. In 2009-2010 (before crime) I had many instances of anaphylactic shock,which necessitated an epi pen and a trip to the hospital (Dr. Laura Dyer & Zaheer Khan, at Aging Center, So. Memorial Drive, HSV AL; when visiting my parents Cable Emergency, Ipswich MA; Beverly Hospital Emergency, Beverly,MA). I reported this severe latex allergy on MCJ intake, asked attny Miller to provide records, and yet, *certain* officers insisted on searching my cell, or me (*non* invasively but still physical contact) with latex gloves-despite the no latex sign affixed next to my cell. Searches were called for by this officer often, which would lead to a panicked outburst on my

part. MCJ did not have an epi pen. Although I was not averse to dying, I lived in fear of strangling to death from anaphylactic shock. For evidence of these non latex-free searches and the fear factor they engendered I cited MCJ disciplinary reports in both in my *doc 1-1 habeas* and *R32*. (Note: can not subpoena reports, my motions of discovery not successful, my attny declined to supply reports, not in state's exhibits, *no* system in place for inmates to store voluminous discovery.)

Coercion by conditions/threat summary:The *doc 8-41 ACCA* stated that the items of coercion, singly, are harmless and this is error. When taken *together* (and suffered by one prisoner) they are not only additive, but also synergize, and *are cumulative* (non harmless), and thereby rise to the level of 2yrs 7months (31 months) of torture, are well -studied methods of brain washing, thus making me unable to understand the proceedings against me and helped coerce me to accept the plea-the details and consequences of which I did not understand. The entire 9/11/12 TT (<6pp) plea colloquoy, where I only gave one word answers, show that I was not competent. In fact, my trial attny Miller coached me, as I had been totally incapacitated by the coercive conditions that violated the 8th Am.-cruel and unusual punishment, and violated my rights as a pretrial detainee. These conditions drove me to accept the plea, violating due process 5th and 14th Const am. This is contrary to Boykin, which holds that a defendant must intelligently and knowingly accept a guilty plea. And, as discussed in *R32* p17 onward, *Brady v United States* 397 US 742,748 25LEd 2d 747, 90 S.Ct.1463 (1970) it was held that the "waiver of constitutional rights not only must be voluntary but must be knowing, intelligent act done with sufficient awareness of the relevant circumstances and likely consequences." From *doc 8-33R32* p18,19 "...The voluntariness of a plea is required by the Due Process as guaranteed under the Fifth and Fourteenth amendments of the United States Constitution..." Thus the *11th Circ CoA denial p2* overlooked above evidence and caselaw when stated that my plea was not involuntary.

Barker v Wingo Violation. The lack of speedy trial (I begged attny Miller get to trial ASAP)-discussed in *doc 1-1 habeas* p2 (2b), was a violation of 6th am Right to a Speedy Trial. My pretrial

detention was under coercive conditions, sustained anxiety, and where the length of my stay ~31 months (2yrs 7 months) is presumed prejudicial (discussed in my *doc 8-33 R32* and *doc 1-1 habeas*) and this renders the *District Court's (doc 32-1)* denial of this claim contrary to the holdings in *Barker v Wingo* 407 US 514,33 L Ed 2d 101 92 S.Ct. 2182 (1972). Further, **"**trial court should have concluded that the delay of 29 months was presumptively prejudicial and therefore, should have examined and balanced the remaining three Barker factors in evaluating the inmate's speedy trial claim**"** *Ex parte Hamilton*, 970 So 2d, 285, 2006 Ala LEXIS 370 (Ala 2006). And **"**purposeful *or* oppressive delay overrides a failure to demand**"** *Moser v US* 381 F.2d 363 (CA9 1967). The Barker v Wingo Violation was overlooked in the *11thCirc CoAdenial.*

B2 pretrial stressors coerced plea-pretrial publicity As with many of my claims, the *District Court (doc 32-1) & 11th Circ CoA denial* did not specifically address the following items of coercion of plea from pretrial publicity. These items of pollution of the adversarial process/jury and thus coercion to plea, are discussed in *doc 8-33 R32* and in *doc 1-1 habeas* pp9-13.

1.) There was ongoing extravagant and *false* publicity, in regards to details of my case (SNAPPED, 48 hours etc.) which was ubiquitous, and would have polluted any prospective jury.

2.) There was, in the press, implication that my husband was a co-conspirator, polluting any prospective juror. This is widely publicized supposition is false, as before and during crime my husband was at Biztech,HSV,AL(multiple BizTech witnesses and CFO-attny Miller relayed this to me). Alleging that my husband was a co-conspirator, publicly, imbued my crime with intent, and the trial Court used this to its advantage, with the help of attny Miller, during trial (discussed above in **A1(1&2)** IAC). The DA pushed for the indictment of my husband in the event I did not plea (attny Miller told me this) despite the fact the DA knew that my husband was innocent, and had no foreknowledge, which indicates the trial Court was taking advantage of this publicity.

3.) An *absolutely false* story was promulgated by the press (48 hours etc.), about my brother's

death, which had been ruled an accident (with no charges filed) >25 years before my UAH charge. The press-publicized fiction was *false-I did not kill or murder my brother* (forensic records of Chief Polio, Braintree Police Department, Braintree, MA; attny Tipton, 450 Washingon St. Suite 206, Dedham, MA 02026). The Kangaroo court of the press indicted me of my brother's death (48 hours etc.). My attny Miller informed me that the false conclusions of this publicity would be used by the trial court against me at trial if I did not agree to plea. Attny Miller stated that trial court was permitting press at trial and that the court would admit, in his words, "previous bad acts." I had *never* been charged or convicted of any crime prior to my UAH charge, so the Court Motions cited below can only be in regards to my brother's death. The pattern of the trial Courts GRANTED/DENIED indicates that attny Miller was correct in his assessment that the trial court sought to benefit from false conclusions of publicity.

The CAS CC2011-001131-00 entries are as follows:
"5/24/11-#13-MTN to required ST to give notice to assert other acts-GRANTED-KAJ"
"5/24/11-#24 -MTN to produce underlying evidence of prior convictions relied upon to prove aggravating circumstances upon which the state intends to rely on in seeking the death penalty-GRANTED-KAD"
"5/24/2011-#49-MTN in limine to prevent prosecution from arguing illegal issues during opening statement-DENIED"
"5/24/2011-#64-MTN for disclosure of any alleged prior wrongs, crimes, etc.-GRANTED-KAD"
"5/24/2011-#76-MTN to prohibit broadcasting,etc-DENIED-KAD"
"9/22/2011-confidential status of sealed records revoked (AR01)-KAD"

After my UAH charge, the AL DA contacted the Massachusetts (MA) DA to reopen the case of my brother-to charge me/indict me for murder (threaten to indict my parents for unknown reasons) such that, in the words of attny Miller, "after the UAH mess is over, you'll still have to face your brother's case"(witness attny Larry Tipton, Dedham MA-when reopend my brother's case ~2011)-discussed in my *doc 8-33R32 & doc 1-1 habeas* pp 9-13 . Roy Miller's above statement and the false denovo charges in regards to my brother's death, broke my spirit, removed any hope. Along with the pretrial conditions, and abandonment of my steroid psychosis defense (the truth), this drove me to attempt suicide (Lt

Collier MCJ; Huntsville Hosp. HSV,AL). Once I agreed to plea, the indictment against my husband was dropped, the indictments against me and my parents in regards to my brother's death were dropped.

4.) The highly publicized "failure to warn" (had foreknowledge of psychosis/ deteriorating mental health and did not warn/take action) civil suits against my husband and unnamed plaintiffs (civil attny Samuel M. Ingram of Carpenter, Ingram & Mosholder, LLP, 4274 Lomac St. Montgomery, AL 36106) launched by the victims' families and victims, scared off any witnesses that could attest to my degenerating mental health (discussed in *R32 & habeas* p 10,11).

Attny Miller informed me of these ongoing developments as I was locked in an isolation cell in booking with no TV nor newspaper. For most of the 31 months in MCJ, I had the Sword of Damocles over my head in regards to my case, the false case of my brother's death, and on behalf of my husband and parents. Under duress from the publicity, the horrific pretrial conditions, and the absence of a steroid psychosis expert (hence no defense at all) I was coerced to sign (and edit) a "best interest" plea.

This publicity was so false and egregious, this definition of prejudice applies: **"**The harm resulting from a fact-trier's [the jury] being exposed to evidence that is persuasive but inadmissable or that so arouses the emotion that calm and logical reason is abandoned." (Blacks Law Dictionary 8th Ed) The Supreme Court has presumed prejudice in the petitioner's trial, because in the Supreme Court's view **"**the conclusion can not be avoided that this spectacle...in a very real sense was Rideau's trial ...Any subsequent proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality.**"** *Rideau v Louisiana* 373 US 723, 10 LEd 663, 83 S.Ct. 1417 (1963) cited in *doc 1-1 habeas* p12. And, as discussed in my doc 8-33 R32 and doc 1-1 habeas, items of false publicity 1-4 above, also drove me to accept the plea and thus made it involuntary, in violation of Due Process. Not only, did the inferred threat to my husband coerce me to accept my plea, but also polluted the jury. *Even if* the jury had been advised *consistently* and correctly of intent as essential element (discussed in **A1**) the media-blitzed jury surely would have been convinced that I had intent, thus the chance of acquittal of

specific intent had been rendered nil. The jury had not been advised that, right before my trial, upon my agreement to plea, both the case against me in regards to my brother's death, and the case against my husband as alleged co-conspirator, had been dropped.

Final statement of **B2**: The definition below, discussed in my R32 and in doc 1-1 habeas pp6,7, illustrate the items of coercion (all of which occurred in my case) *one* of which nullifies a contract:

> "...coercion intended to restrict another's freedom of action by:(1) threatening to commit a criminal act against that person; (2) threatening to accuse that person of having committed a criminal act; (3) threatening to expose a secret that either would subject the victim to hatred, contempt...(4) taking or witholding an official action or causing an official to take or withhold action...implied coercion. See Undue Influence (1)" "Undue Influence 1. The improper use of power or trust in a way that deprives a person of free will and substitute's another's objective. Consent to a contract, transaction, or relationship or to conduct *is voidable* if consent is obtained through undue influence-Also implied coercion; moral coercion..." Black's Law Dictionary 8th Ed (2004). [italics mine]

All the above 4 items of coercion that took place in my case, synergized and were cumulative.

B.3. Lack of Expert in Steroid Psychosis/competence [*doc 1-1 habeas* p 2,(6, 8, 12 under coercion)14,15,23-27]. This reason for invol plea is covered in, and is a direct result of **A1(3)** Failure to investigate. My initial insanity defense, the above **A1(3)** evidence of steroid psychosis-already known by my attnys, and my attny's initial pursuit of the defense of steroid psychosis, all pointed towards the need for an appropriate allergy/steroid psychosis expert, the absence of which left me with no alternative but to plea, making my plea involuntary. **A1(3)** failure to investigate-evidence of steroid psychosis left me defenseless (**D**) with no alternative but to plea, thus fulfilling the third prong of Strickland-the prejudice prong. Quote from the *R32* p25:

> "If the expert [steroid psychosis expert] had been obtained counsel could have presented evidence to show lack of intent. These experts could have been critical in explaining to a jury the psychological effect that led up to her committing the act. The evidence would have been critical in demonstrating to the jury that she had not intentionally killed these victim or intentionally wounded the other victims. ....[counsel was] per se ineffective resulted in a direct violation of her rights to due process pursuant to the fourteenth amendments of the US Constitution." [in doc 1-1 habeas pp 3(3b), 17-27, 26 (part 6d) - bracketed statements mine] cited in doc 1-1 habeas p2 &16.

B invol plea-final statement The doc 8-33 R32 pp19,20 quote:

"the voluntariness of a plea is required by the Due process guaranteed under the Fifth and Fourteenth amendments of the United States Constitution an involuntary plea is 'obtained in violation of Due Process and is therefore *void. McCarthy v United States* 394 US 459[22 LEd 2d 418, 89 S.Ct. 1166] (1969). ...The Alabama Supreme Court has held in cases that when a court acted outside the confines of statutory authority, it lacked *jurisdiction.* In *ex parte Jenkins*[922 So.2d 1248,1250 (Ala.2007)] " [Bracketed statements & italics mine]. The trial court lacking jurisdiction discussed in doc 1-1 habeas pp 2,3,6.

Once the plea was signed, it was used against me at trial, to secure a conviction without proof of intent-of which the state *still had* a burden to prove beyond reasonable doubt The repeated references to the plea during trial, along with the incorrect jury instructions, discussed in **A1(1)** , confused the jury and *incorrectly* relieved the state of its burden of proving all elements of the crime, thus eliminating the possibility of acquittal of the specific intent crimes (prejudice). The influence of the plea on the jury with the concomitant *prejudice* is discussed in *doc 1-1 habeas* pp2,3 (part 3b), 19 (part 6a) and in my *doc 8-33 R32* pp30,31 quote:

" The numerous times that the guilty plea was mentioned was confusing and misleading to the jury relieving the jury of their role as the fact finders by alluding to the fact that she had already plead guilty to the offense.

Thus relieving the State of the Burden of Proof , by confusing the jury into believing that the State had met their burden due to the fact that she has already plead guilty to the offense. Counsel [my attnys] reference the guilty plea on five occasions was a big factor in misleading of the jury that the State had met it's Burden of Proof ....with the State's and trial Judge's reference to the guilty plea for a total of nineteen times rendered the process fundamentally unfair...." [bracketed statements mine]

Question 6: Whether reasonable jurists could debate that Anderson had a defense at trial. My attnys did not subject the case to adversarial testing (**A1**), did not investigate evidence of steroid psychosis nor raise the evidence of psychosis they did have (**A3**), which left me with no alternative but to plea (**B3**). *No* defense was raised at trial as evidenced by the entirety of the 9/24/12 TT.

Question 7: Whether reasonable jurists could debate the District Court's holding that Anderson suffered no cumulative error. The *11thCircuitCourt CoAdenial* did not address/overlooked my cumulative error

claims.

The errors in the above claims and between claims synergized with each other, resulting in cumulative error. I discussed cumulative error throughout my claims presented in Questions 4-6, which were drawn directly from my *11th Circuit recons CoA* (app. F-cum errors discussed in pp 5, 26, 27, 35, 43, 45, 56, 58, 59) which were drawn wholesale from my *CoA*(app. G-cum errors discussed in pp 6,10,16, 35, 36, 38, 41, 48, 60, 63, 64), which had initially been presented in my *doc 8-33 R32,* to the ACCA, Al.S.Ct. and District Court.

The *ACCA (8-41)* erred in not providing a harmless error analysis, nor cumulative error analysis which, as stated in *US v Rivera*, 900 F.2d 1462 (10th Cir 1990), is a natural extension of harmless error analysis. And so: " we review petitioner's claim of cumulative error denovo, unconstrained by the deference limitations in §2254(d) because OCCA did not conduct the appropriate cumulative error review." *Toles* 297 F.3d at 972 quoted in Cargle v Mullin [Opinion]. The *District Court (doc 32-1)* only briefly noted cumulative error in p9 footnote 4, stating that cumulative error can not be asserted for IAC claims, which is incorrect. In fact they can be asserted for IAC claims, as stated in *Cargle v Mullin*, 317 F 3d, 1196 (10th Circ.2003). The *District Court 59e/CoA denial (doc 45-1)* stated that the errors were harmless, and therefore could not accumulate, which is also incorrect. The definition of cumulative error is the accumulation of errors that singly are *harmless,* while cumulatively, they rise to the level of *non* harmless error. "A cumulative-error analysis on federal habeas review aggregates all errors found to be harmless and analyzes whether their cumulative effect on the outcome of the trial is such that collectively they can no longer be determined to be harmless." Habeas Corpus Key 461 from *Cargle v Mullin*, 317 F.3d 1196 (10th Circ. 2003).

Errors were scattered in all my claims (see Questions 4-6) and therefore: " We conclude that prejudice may be cumulated among different kinds of constitutional error, such as ineffective assistance of counsel and prosecutorial misconduct. We further conclude that prejudice may be cumulated among

such claims when those claims have been rejected individually for failure to satisfy a prejudice component..." *Cargle v Mullin* [Opinion] & *Toles*, 297 F.3d at 972. Many cases, along with Cargle v Mullin & *United States v Rivera*, 900 F.2d 1462 (10th Circ. 1990) found that cumulative error existed and the Court reversed. In *Kyles v Whitley* 514 US 419, 131 Led 2d 490, 115 S.Ct. 1555 (1995) due to cumulative error, a capital petitioner was granted a new trial. " Unless aggregated harmlessness determination can be made, collective error will mandate reversal..." US v Rivera (where Rivera was granted new trial), Criminal Law Key 1186.1. Likewise, I should receive reversal. In light of the multiple and egregious errors in each claim, all synergizing within and between claims (cumulative) the trial court was without jurisdiction to accept plea, render a verdict or sentence.

The cumulative errors within and between claims culminate in Manifest Injustice/Miscarriage of Justice My attnys *failure to subject* the case to adversarial testing [**A1 (1,2)**], *failure to investigate* [**A1(3)**, **B3**,] where my attny abandoned my steroid psychosis defense (**D**), not for strategic reason, but because of failure to procure up-front funds for the appropriate allergy/steroid psychosis expert, along with claims in **A2** & **B** involuntary plea which was used against me at trial, culminated in a total breakdown of the adversarial process, putting the trial outcome in question, in violation of the 6th, 5th & 14th am.. With the appropriate steroid expert, I would *not* have accepted plea and insisted on trial (prejudice Strickland) This IAC and the resultant involuntary plea, are articles of Manifest injustice, according to Black's Law Dictionary 8th Ed (2004): "an error in the trial court that is direct, obvious and observable such as a defendant's guilty plea that is involuntary, or that is based on a plea agreement that the prosecution rescinds." And hence this caselaw from other circuits:

> "However, where a manifest injustice would occur as a result of a *sentence* in a criminal trial, this court may suspend the normal requirements of Federal Rule of Appellate Procedure 28 (a) and consider an issue that would otherwise not properly before this court. See *United States v Olano*, 934 F.2d 1425, 1439 (9th Circ. 1991); *Gramegna v Johnson*, 846 F.2d 675, 677 (11th Circ. 1988)...;*United States v Anderson*, 584 F.2d 849,853 (6th Circ,1978) " *US v Montanye*, 962 F.2d 1332 (8th Circ.1992) [italics mine]

The Constitutional violations and errors, prejudicial to my case, led to my conviction, despite that fact I am not guilty of capital murder/att murder as I am not guilty of the one essential element of these crimes-*specific intent* (*doc 8-33 R32* pp 22-35, 40, 41 & *doc 1-1 habeas* pp 3(3b), 17-27,26 (6d)). This fulfills the definition of fundamental miscarriage of justice as defined in Black's Law Dictionary 8th Ed. (2004). "A grossly unfair outcome in a judicial proceeding as when a defendant is convicted despite a lack of evidence on *an essential element* of the crime." As stated in Black's Law, miscarriage of justice is *not only* conviction of one who is factually innocent (got the wrong guy) but also conviction of one innocent of an essential element of crime, hence the following caselaw:

> "The fundamental miscarriage of justice exception can be used to challenge a procedurally defaulted claim if the result of the error is that the death penalty was imposed on someone 'actually innocent' of a death sentence. To be 'actually innocent' means you are innocent of the *elements of the crime* that pushed your sentence ...to a capital murder sentence." *Dugger v Adams*, 489 US 401,410 n.6, 109 S.Ct., 1211, 1217 n6, 103 L.Ed. 2d, 435, 445 n6 (1989) [italics mine].

Neither claim, manifest injustice nor miscarriage of justice, was specifically addressed by the *11thCirc CoAdenial*, nor by any previous courts, with the exception of the statement that miscarriage of justice excuses procedural default.

CONCLUSION

For these reasons, I humbly a pray a Writ of Certiorari will issue to review the judgment and opinion of the 11th Circuit Court of Appeals in regards to issuance of Certificate of Appealability.

Respectfully submitted,

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Sworn to and subcribed before me this 16th day of December, 2021.

Notary Public of Alabama Patricia Eddins

My commission expires 5-4-2022