No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

RUFUS JONES,
Petitioner,

v.

RICKY D. DIXON,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

On Petition for Writ of Certiorari to the Eleventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345/fax (850) 224-2340
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

COUNSEL FOR THE PETITIONER

A. QUESTION PRESENTED FOR REVIEW

Whether the court of appeals improperly denied the Petitioner a certificate of appealability under 28 U.S.C. § 2253(c) on his claim that his counsel rendered ineffective assistance of counsel by (1) failing to properly advise him regarding the State's pre-verdict plea offer and (2) failing to file a pretrial "Stand Your Ground" motion and/or failing to depose or interview the alleged victim prior to trial.

B. PARTIES INVOLVED

The parties involved are identified in the style of the case.

C. TABLE OF CONTENTS AND TABLE OF AUTHORITIES

1. TABLE OF CONTENTS

A. QUESTION PRESENTED FOR REVIEW ii

B. PARTIES INVOLVED iii

C. TABLE OF CONTENTS AND TABLE OF AUTHORITIES iv

1. Table of Contents iv

2. Table of Cited Authorities v

D. CITATION TO OPINION BELOW 1

E. BASIS FOR JURISDICTION 1

F. CONSTITUTIONAL PROVISION INVOLVED 1

G. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS 2

H. REASON FOR GRANTING THE WRIT 8

The question presented is important 8

I. CONCLUSION 15

J. APPENDIX

2. TABLE OF CITED AUTHORITIES

a. Cases

Alcorn v. State, 121 So. 3d 419 (Fla. 2013) 11

Bruno v. State, 807 So. 2d 55 (Fla. 2002) 11

Chatom v. White, 858 F.2d 1479 (11th Cir. 1988). 11

Jones v. State, 283 So. 3d 429 (Fla. 1st DCA 2019) 2

Jones v. State, 107 So. 3d 563 (Fla. 1st DCA 2013) 2

Lafler v. Cooper, 566 U.S. 156 (2012) 11-12

McMann v. Richardson, 397 U.S. 759 (1970) 1

Miller-El v. Cockrell, 537 U.S. 322 (2003). 14

Steel v. State, 684 So. 2d 290 (Fla. 4th DCA 1996). 10

Strickland v. Washington, 466 U.S. 668 (1984) 11

Sullivan v. Sec'y, Fla. Dep't of Corr., 2015 WL 4756190,
No. 4:12cv250/RV/CAS (N.D. Fla. 2015) 12-13

b. Statutes

28 U.S.C. § 1254 1

28 U.S.C. § 2253(c) ii

28 U.S.C. § 2253(c)(2). 8, 14

28 U.S.C. § 2254 . . . . . *passim*

c. Other Authority

Fla. R. Crim. P. 3.850. 2

U.S. Const. amend. VI 1, 8, 11, 13

The Petitioner, RUFUS JONES, requests the Court to issue a writ of certiorari to review the judgment/order of the Eleventh Circuit Court of Appeals entered in this case on July 14, 2021. (A-3).[1]

D. CITATION TO ORDER BELOW

The order below was not reported.

E. BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1254 to review the final judgment of the Eleventh Circuit Court of Appeals.

F. CONSTITUTIONAL PROVISION INVOLVED

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence." "[T]he right to counsel is the right to the effective assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771, n.14 (1970).

[1] References to the appendix to this petition will be made by the designation "A" followed by the appropriate page number.

G. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

1. Statement of the case.

Following a jury trial in 2011, the Petitioner was convicted of attempted second-degree murder. The state trial court sentenced the Petitioner to twenty years' imprisonment – a minimum mandatory sentence. On direct appeal, the Florida First District Court of Appeal affirmed the Petitioner's conviction and sentence. *See Jones v. State*, 107 So. 3d 563 (Fla. 1st DCA 2013).

Following the direct appeal, the Petitioner timely filed a Florida Rule of Criminal Procedure 3.850 postconviction motion. In the state postconviction motion, the Petitioner raised one claim: defense counsel rendered ineffective assistance of counsel by failing to properly advise him regarding the State's pre-verdict plea offer and failing to file a pretrial "Stand Your Ground" motion. An evidentiary hearing on the Petitioner's state postconviction motion was held on August 23, 2017. At the conclusion of the evidentiary hearing, the state postconviction court orally denied the state postconviction motion. On appeal, the Florida First District Court of Appeal affirmed the denial of the state postconviction motion. *See Jones v. State*, 283 So. 3d 429 (Fla. 1st DCA 2019).

The Petitioner subsequently filed a petition pursuant to 28 U.S.C. § 2254. In his § 2254 petition, the Petitioner raised the same claim that he previously presented in his state postconviction motion. On July 28, 2020, the magistrate judge issued a report and recommendation recommending that the Petitioner's § 2254 petition be denied.

(A-9). Thereafter, on December 21, 2020, the district court denied the Petitioner's § 2254 petition. (A-5 & A-8).

The Petitioner thereafter filed an application for a certificate of appealability in the Eleventh Circuit Court of Appeals. On July 14, 2021, a single circuit judge denied a certificate of appealability on the Petitioner's § 2254 claim. (A-3).

2. Statement of the facts: the State Court Postconviction Evidentiary Hearing.

Mutaqee Akbar. Mr. Akbar stated that he previously represented the Petitioner; he said that Larry Handfield was lead counsel and he was co-counsel. (A-52-53). Mr. Akbar testified that prior to the trial in this case, the State extended a plea deal (and he believes the plea offer was between five and ten years in prison). (A-52 & A-66). Mr. Akbar stated that based on his experience in practicing before the trial judge in the case (the Honorable James Hankinson), he did not believe that Judge Hankinson would have rejected the plea deal had the Petitioner accepted the State's plea offer. (A-53). Mr. Akbar testified that the plea offer was made prior to trial and was then renewed on the day of trial[2] after the alleged victim (Tyrone Pleas) in the case did not show up in court[3] (although he indicated that the offer remained in place after it was learned that Mr. Pleas would be coming to court). (A-53-54 & A-67). Mr. Akbar stated that Mr. Handfield told the Petitioner's family the following about the State's

[2] Mr. Akbar said that the original five-year plea offer may have been lowered (i.e., to a time period less than five years) on the day of trial. (A-56).

[3] Mr. Akbar indicated that Mr. Pleas did not necessarily want the Petitioner to be prosecuted. (A-60).

plea offer:

> And the conversation with the family implied, y'all can do what y'all want, but I don't think he should take this plea, I think I'm going to win this trial. And he was pretty confident about winning the trial.

(A-54). Mr. Akbar testified that the Petitioner "relied heavily on what his family suggested and what they thought," and he said that although he does not "remember exactly," he believes that Mr. Handfield had the same conversation about rejecting the plea deal and winning at trial with the Petitioner in the courtroom. (A-55).[4] Mr. Akbar stated that Mr. Handfield also told the Petitioner something to the effect that Mr. Pleas' testimony would be favorable to the defense's case. (A-55). Mr. Akbar testified that – contrary to Mr. Handfield's advice – he encouraged the Petitioner to accept the State's plea offer, but he said that the Petitioner wanted his family's opinion, and the family relied on Mr. Handfield's statements (i.e., that the Petitioner should reject the plea offer because he was going to win the trial). (A-56-57). Mr. Akbar did not remember that Mr. Pleas was deposed prior to trial. (A-62-63). Mr. Akbar added that prior to trial, Mr. Pleas had never said anything that would support the Petitioner's self-defense theory. (A-64).

The Petitioner. The Petitioner stated that on the day of trial, Larry Handfield was "confident that we was going to win." (A-72). The Petitioner testified that Mr. Handfield told him that Tyrone Pleas' "testimony will be favorable in my behalf." (A-

[4] Mr. Akbar added that during Mr. Handfield's conversation with the Petitioner, "the implication was, we will win this, I will win this" and "I'm confident that we can walk – we can walk out of here, even with Mr. Pleas showing up." (A-55 & A-66).

72). The Petitioner stated that when Mr. Handfield discussed the State's plea offer with him, Mr. Handfield told him to reject the plea, and he said that he rejected the plea offer based on Mr. Handfield's advice. (A-73 & A-80). The Petitioner testified that when Mr. Pleas subsequently testified during the trial, he did *not* give favorable testimony for the defense and he did *not* say anything that supported his' self-defense theory. (A-75). The Petitioner stated that had he known prior to trial that Mr. Pleas' testimony would not be favorable, he would have accepted the State's plea offer. (A-75).

Michael Bauer. Mr. Bauer stated that he was the prosecutor during the Petitioner's trial. (A-83). Mr. Bauer testified that prior to trial, he extended a plea offer of five years in prison. (A-85). Mr. Bauer stated that there were some problems with the State's case (i.e., the alleged victim – Tyrone Pleas – had previously been convicted of murder), but he said that he also believed that the State could disprove a theory of self-defense because Mr. Pleas was shot in the back. (A-85)). Mr. Bauer testified that the defense did not file a "Stand Your Ground" motion in the Petitioner's case. (A-86). Mr. Bauer indicated that the mere filing of a "Stand Your Ground" motion would not have caused him to withdraw his plea offer and that his policy was generally that he would only withdraw a plea offer once a jury was selected and sworn – but he acknowledged that there were exceptions to that general policy. (A-86 & A-88). Mr. Bauer testified that he extended the plea offer in the Petitioner's case – even after the jury was sworn – because Mr. Pleas had shown up late to court. (A-92-95). Mr. Bauer stated the following regarding which of the Petitioner's lawyers appeared

to be "in charge":

> I remember making, I thought, a very generous plea offer for shooting somebody in the back of five years. Mr. Handfield rejected it. I remember discussing this with Mr. Akbar. And our discussion was he should have taken the five years, but Mr. Akbar was not really in charge of, you know, getting the plea offer to the defendant. Mr. Handfield was in charge; he took the lead.

(A-87).

Larry Handfield.[5] Mr. Handfield, the Petitioner's lead counsel at trial, stated that prior to trial, the alleged victim (Tyrone Pleas) "indicated that he didn't see the shooting and that he didn't want to prosecute." (A-111). Mr. Handfield testified that prior to trial, the State extended a plea offer of ten years in prison, but he said that he believed that the offer was "unreasonable." (A-113). Mr. Handfield stated that on the day of trial, the plea offer was reduced to five years in prison, but he claimed that although he thought the offer was "reasonable," the Petitioner rejected the offer. (A-113-114). Mr. Handfield acknowledged that he thought he had a good chance of winning the Petitioner's' trial, but he alleged that he did not offer the Petitioner any guarantees. (A-115-116). Mr. Handfield said that when Mr. Pleas finally showed up on the day of the trial, it was a "game changer" – even though he admitted that the State's plea offer remained on the table after Mr. Pleas arrived at the courthouse. (A-117-118).

On cross-examination, Mr. Handfield stated that he was able to elicit "favorable

---

[5] Prior to Mr. Handfield's testimony, the parties introduced a joint exhibit demonstrating that Mr. Handfield had previously been convicted of misdemeanor tax evasion. (A-104-105).

facts" from Mr. Pleas at trial (A-121-122), but when asked whether Mr. Pleas gave any favorable testimony relating to the self-defense instruction, he responded "I mean, I don't recall." (A-124). Mr. Handfield conceded that he did not talk to Mr. Pleas prior to trial. (A-125). Mr. Handfield also conceded that he did not have an independent memory as to whether Mr. Pleas was deposed prior to trial. (A-126-127). When asked whether Mr. Pleas had admitted prior to trial that "he was attempting to inflict death or great bodily harm either to the Petitioner or his mother," Mr. Handfield responded "I don't believe so." (A-127). Additionally, when asked whether Mr. Pleas had admitted prior to trial that he was "attempting to commit an aggravated battery upon either the Petitioner or his mother" at the time of the shooting, Mr. Handfield responded "[n]o." (A-127).

H. REASON FOR GRANTING THE WRIT

The question presented is important.

The Petitioner contends that the Eleventh Circuit erred by denying him a certificate of appealability on his ineffective assistance of counsel claim. As explained below, the Petitioner has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

In his § 2254 petition (and in his state postconviction motion), the Petitioner argued that defense counsel Larry Handfield rendered ineffective assistance by failing to properly advise him regarding the State's pre-verdict plea offer and failing to file a pretrial "Stand Your Ground" motion (and/or failing to depose or interview the alleged victim prior to trial). As a result, the Petitioner was denied his right to effective assistance of counsel in violation of the Sixth Amendment to the Constitution.

The Petitioner was charged with an offense that was subject to Florida's "10-20-Life" law. If convicted, and if the jury determined that the Petitioner discharged a firearm, the Petitioner was subject to a minimum mandatory twenty-year sentence. The Petitioner's defense at trial was self-defense/defense of others (i.e., he shot the alleged victim, Tyrone Pleas, after Mr. Pleas threatened to kill him and his mother).

Prior to trial, the State extended a plea offer to the Petitioner. However, in explaining that plea offer to the Petitioner, Mr. Handfield did not provide proper advice so that the Petitioner could make a knowing, intelligent, and voluntary decision regarding that plea offer. As testified to by attorney Mutaqee Akbar at the state court postconviction evidentiary hearing, Mr. Handfield said the following to the Petitioner's

family about the State's plea offer:

> . . . . . *I don't think he should take this plea*, I think I'm going to win this trial. And he was pretty confident about winning the trial.

(A-54) (emphasis added). Mr. Akbar added that during Mr. Handfield's conversation with the Petitioner, "the implication was, we will win this, I will win this" and "I'm confident that we can walk – we can walk out of here, even with Mr. Pleas showing up." (A-55, A-66). Notably, Mr. Akbar verified that Mr. Handfield also told the Petitioner that Mr. Pleas' testimony would be *favorable* to the defense's case. (A-55).

Contrary to Mr. Handfield's advice to the Petitioner, at trial, *Mr. Pleas was not a favorable witness.* (A-177-239). Mr. Pleas denied that he – at the time of the shooting – was in the process of committing a violent act toward the Petitioner or the Petitioner's' mother. (A-195-197). *Nothing Mr. Pleas said at trial supported the Petitioner's theory of self-defense/defense of others.* Mr. Pleas' testimony was the foundation for the State's case *against* the Petitioner at trial.[6]

During the state court postconviction evidentiary hearing, Mr. Handfield conceded *that he did not talk to Mr. Pleas prior to trial.* (A-125). It is clearly ineffective assistance of counsel to advise a client to reject a favorable plea offer on the basis that the alleged victim will give favorable testimony at trial *when the attorney has not even talked to the alleged victim to know what he will say.*

Moreover, Mr. Handfield did *not* file a "Stand Your Ground" motion prior to

---

[6] The strength of Mr. Pleas' testimony for the State is confirmed by the prosecutor's closing argument – where the prosecutor relied on Mr. Pleas' testimony and asked the jury to reject the Petitioner's theory of defense.

trial.[7] Had such a motion been filed pretrial, then Mr. Pleas would have been required to testify pretrial and the Petitioner would have been able to hear his testimony and verify Mr. Handfield's assertion that the alleged victim was going to be a "favorable" witness for the defense. Had such a motion been filed and a pretrial immunity hearing conducted – and had the Petitioner seen at such a hearing that Mr. Pleas was not a "favorable" witness – then the Petitioner would have accepted the State's plea offer of five years' imprisonment.

Finally, had Mr. Handfield properly highlighted the risk of proceeding to trial (i.e., the minium mandatory "10-20-Life" sentence), the Petitioner would have accepted the State's plea offer. Mr. Handfield did not emphasize that if convicted, the Petitioner was facing a minimum mandatory sentence under the "10-20-Life" statute.

Thus, the Petitioner rejected the State's plea offer based on Mr. Handfield's representation that he should reject the offer because the defense was going to win at trial because Mr. Pleas would be a favorable witness. No reasonable attorney would have advised the Petitioner to reject a favorable plea offer under these circumstances (i.e., without having confirmed what Mr. Pleas would say by deposing him or calling him as a witness at an immunity hearing – or, at the very least, talking to him prior to trial). *See Steel v. State*, 684 So. 2d 290 (Fla. 4th DCA 1996) (holding that counsel's failure to identify and explain the difficulty of the defendant's case – specifically,

[7] When defense counsel argued for a motion for a judgment of acquittal during the trial, the state trial court commented that a "Stand Your Ground" motion is "generally presented pretrial."

believing there was favorable evidence when really there was not – was sufficient to establish a claim of ineffective assistance of counsel).

The Sixth Amendment right to counsel implicitly includes the right to the effective assistance of counsel. *See Chatom v. White,* 858 F.2d 1479, 1484 (11th Cir. 1988). "The test to be applied by the trial court when evaluating an ineffectiveness claim is two-pronged: The defendant must show both that trial counsel's performance was deficient and that the defendant was prejudiced by the deficiency." *Bruno v. State*, 807 So. 2d 55, 61 (Fla. 2002) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)).

In the context of an ineffective assistance of counsel claim and a plea offer, a defendant must establish the following four factors: (1) but for counsel's ineffectiveness, the defendant would have accepted the plea offer, (2) the prosecutor would not have withdrawn the plea offer, (3) the trial court would have accepted the plea offer, and (4) the conviction or sentence, or both, under the plea offer's terms would have been less severe than under the judgment and sentence that in fact were imposed. *See Alcorn v. State*, 121 So. 3d 419, 430 (Fla. 2013) (citation omitted). *See also Lafler v. Cooper*, 566 U.S. 156 (2012). In the instant case, the Petitioner satisfies all four *Alcorn* factors: (1) he would have accepted the plea offer had Mr. Handfield properly advised him regarding the plea offer, (2) the prosecutor would not have withdrawn the offer – even if a pretrial "Stand Your Ground" motion had been filed,[8] (3) the trial court would have

[8] During the state court postconviction evidentiary hearing, the prosecutor testified that the mere filing of a "Stand Your Ground" motion would not have caused

accepted the offer,[9] and (4) the sentence under the offer's terms would have been less severe than under the judgment and sentence that in fact was imposed.[10]

Accordingly, for all of the reasons set forth above, defense counsel rendered ineffective assistance of counsel. The Petitioner should be afforded the remedy set forth in *Lafler*:

> The correct remedy in these circumstances, however, is to order the State to reoffer the plea agreement. Presuming respondent accepts the offer, the state trial court can then exercise its discretion in determining whether to vacate the convictions and resentence respondent pursuant to the plea agreement, to vacate only some of the convictions and resentence respondent accordingly, or to leave the convictions and sentence from trial undisturbed. Today's decision leaves open to the trial court how best to exercise that discretion in all the circumstances of the case.

Lafler, 566 U.S. at 174-175. *See, e.g., Sullivan v. Sec'y, Fla. Dep't of Corr.*, 2015 WL

---

him to withdraw his plea offer and that his policy was generally that he would only withdraw a plea offer once a jury was selected and sworn – but he acknowledged that there were exceptions to that general policy. (A-86 & A-88).

[9] Mr. Akbar stated that based on his experience in practicing before the state trial judge in the case, he did not believe that the judge would have rejected the plea deal had the Petitioner accepted the State's plea offer. (A-53).

[10] A five-year sentence would have been much less severe than the Petitioner's current twenty-year sentence. Notably, during one of the proceedings in this case, the state trial court stated the following:

> Frankly, I think I hit Mr. Jones a little harder on the mandatories *than I would have otherwise done if – everything being equal.* I think I've said that before. I thought – I understand he shot a man and I don't have any quarrel with the jury verdict. I think it was a proper jury verdict. But under all the circumstances, probably *20 years in prison is probably stiff, pretty stiff for the facts* as, you know, as they were in that case given the aggravation in the case.

(Emphasis added).

4756190, No. 4:12cv250/RV/CAS (N.D. Fla. 2015).

The state courts' rulings in this case were contrary to and an unreasonable application of the Petitioner's Sixth Amendment right to the effective assistance of counsel. Additionally, the state courts' rulings were based on an unreasonable determination of the facts in light of the evidence contained in the state court record.

In the Report and Recommendation, the Magistrate Judge stated:

> The state court found that trial counsel did inform Petitioner of the plea offer and did not advise him to reject it.

(A-34). The Petitioner respectfully disagrees. As explained above, Mr. Akbar specifically testified that Mr. Handfield said that the Petitioner should reject the plea offer. Notably, in ruling on this claim, the state postconviction court did *not* make a finding that Mr. Handfield was more credible than Mr. Akbar.[11]

Thus, for all of the reasons set forth above, defense counsel was ineffective for (1) failing to properly advise the Petitioner regarding the State's pre-verdict plea offer and (2) failing to file a pretrial "Stand Your Ground" motion and/or failing to depose or interview the alleged victim prior to trial. Counsel's actions fell below the applicable standard of performance. Absent counsel's ineffectiveness in the instant case, the result of the proceeding would have been different and/or counsel's ineffectiveness affected the fairness and reliability of the proceeding, thereby undermining any

[11] In fact, the state postconviction court stated "I don't find that there's a direct conflict between the testimony of Mr. Akbar and Mr. Handfield." (A-166). The Petitioner respectfully submits that the state postconviction court's assertion is refuted by the record (as quoted and cited above).

confidence in the outcome.

To be entitled to a certificate of appealability, the Petitioner needed to show only "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The Petitioner has satisfied this requirement because he has (1) made "a substantial showing of the denial of a constitutional right" (i.e., his right to effective assistance of counsel) and (2) the magistrate judge's resolution of this claim (later adopted by the district court) is "debatable amongst jurists of reason." *See* 28 U.S.C. § 2253(c)(2). Hence, the Petitioner meets the standard for obtaining a certificate of appealability – the issue in this case is "adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 336.

Accordingly, the Eleventh Circuit should have granted a certificate of appealability for this claim. The Petitioner therefore asks this Court to address this important issue by either accepting this case for plenary review or remanding it to the Eleventh Circuit for the consideration it deserves.

I. CONCLUSION

The Petitioner requests the Court to grant his petition for writ of certiorari.

Respectfully Submitted,

/s/ Michael Ufferman

MICHAEL UFFERMAN
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308
(850) 386-2345/fax (850) 224-2340
FL Bar No. 114227
Email: ufferman@uffermanlaw.com

COUNSEL FOR THE PETITIONER