IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

21-6828

JAMES JONATHAN MITCHELL,
Plaintiff/ Petitioner,

v.

CASE NO: _____

RICKY DIXON,- SECTY. F.D.O.C., et.al.
Defendant In Error/ Respondant./

ON
PETITION FOR CERTIORARI WRIT
TO THE
FIRST DISTRICT COURT OF APPEAL IN Florida

PETITION FOR WRIT OF CERTIORARI

JAMES JONATHAN MITCHELL – D.C.# P 05455
OKALOOSA CORRECTIONAL INSTITUTION
3189 COLONEL GREG MALLOY ROAD
CRESTVIEW, Florida 32539-6705

_____
PLAINTIFF/Petitioner PRO SE
"SAPIENTES DOMINADITUR ASTRIS ET JUSTITIA"

~ GOD SAVE THE U.S.A. ~

AFFIRMATIVE CERTIORARI QUESTIONS

I. Does it tonsure (shear) due process & equal protection for the State (Florida) to summarily "dismiss as unauthorized" a prison Petitioner's is State writ of habeas corpus (initially raising issues of ineffective assistance of appellate counsel) by asserting justification therefor on grounds of overwhelming workload created exclusively by Gideon v. Wainwright, 372 us 335 (1963), espoused in Baker v. State, 878 so. 2d 1236 (Fla. 2004); yet in express & direct conflict with Parker v. State, 904 so. 2d 370 (Fla. 2005) (explaining a PWHC is proper vehicle for challenging IAAC, and Petitioner's factual allegations must be accepted in absence of a hearing {904 so 2d 377})?

II. Does it violate fundamental fairness for a State appellate court (Florida) to deny a prison inmate his right to seek belated collateral relief in habeas corpus mode via the doctrine of equitable tolling, when in conflict with State v. P.a.k., 240 so. 3d 885 (Fla. 1988); Machules v. Dept of Admin, 523 so. 2d 1132 (Fla. 1988); and Re Kratochvil, U.S. App. Ct. (May 18, 2015) Lexis 23393?

III. Does it tonsure due process for a State PC CT to deny a prisoner applicant for collateral relief (bringing error of a fundamentally unfair trial in privation of effective assistance of trial counsel & an unbiased, dispassionate jury) His requested, constitutionally & statutorily required appointment of counsel, when in conflict with Russo v. State, 724 so 2d 1152 (Fla. 1998); Mann v. State, 937 so. 2d 722 (Fla. 3d DCA 2006); Bloom v. IL, 391 us 194. See also section 924.051(9), F.S. (2005).

LIST OF PARTIES

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

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. The State of Florida - Attorney General's Office, PL-01 The Capitol, Tallahassee, FL 32399-1050.
2. Thomas Williams, as Asst. State Attorney - State Attorney's office, 190 Governmental Center, Pensacola, FL 32502
3. Ricky Dixon, as Secty. of F.D.O.C. (Successor in interest) - 501 S. Calhoun Street, Tallahassee, FL 32399

RELATED CASES

See Page ii.

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PARTIES TO THE ACTION

1. RICKY DIXON, SECTY – F.D.O.C.(SUCCESSOR IN INTEREST)
   501 SOUTH CALHOUN STREET
   TALLAHASSEE, Florida 32399
2. THOMAS WILLIAMS(AS ASSISTANT State ATTORNEY)
   M.C. BLANCHARD JUDICIAL BLDG
   190 GOVERNMENTAL CENTER
   PENSACOLA, Florida 32502

RELATED CASES

. 2014-CF-2101 A (ORIGINATING CASE).
. 1D15-5313 (DIRECT APPEAL)
. 1D21-2444 (DENIAL APPEAL OF THE 2nd 3.850 MOTION)(PENDING).
. 1D20-1804 (DENIAL APPEAL – 1st 3.850 MOTION.
. 1D21-1341 (State PETITION FOR WRIT OF HABEAS CORPUS (PWHC)(APPENDIX E).
. SC21-1398 (PETITION FOR DISCRETIONARY REVIEW OF PWHC DENIAL.)

TABLE OF AUTHORITIES

. GIDEON V. WAINWRIGHT, 372 US 335 (1963)

. BAKER V. STATE, 878 So 2d 1236 (Fla.2004)

. PARKER V. STATE, 904 So 2d 370 (Fla.2005)

. STATE V. T.A.K., 240 So 3d 885 (Fla 2nd DCA 2018)

. MACHULES V. DEPT OF ADMIN, 523 So 2d 1132 (Fla.1988).

.RE KRATOCVIL, U.S. APP. CT. (MAY 18th ,2015)LEXIS 23393

. RUSSO V. STATE, 724 So 2d 1152 (Fla.1998)

. MANN V. STATE, 937 So 2d 722 (Fla 3rd DCA 2006)

. BLOOM V. ILLINOIS, 391 US 194, 20LEd2522.

. HENDERSON V. SARGENT, 929 F.2d 706 (8th CIRC 1991)

. RE MURCHISON, 349 US 133 (1963)

. STRICKLAND V. WASHINGTON, 466 US 668 (1984)

. DUNCAN V. LOUISIANA, 391 US 145 (1968)

. ADAMS V. STATE, 957 So 2d 1183, 1186 (Fla. 3rd DCA 2006)

. KRUSE V. STATE, 222 So 2d 13 (Fla.4 DCA 2017)

. JAMASON V. STATE, 447 So 2d 892, 895 (Fla. 4th DCA 1983)

. EVITTS V. LUCEY, 469 US 387,83 LED 2d 821 (1985)

. ANGLIN V. MAYO, 88 So. 918, 919 (Fla. 1956)

. BARNES V. U.S., 412 US 837,852,37 LED 2d 380 (1973)

. CUYLER V. SULLIVAN, 446 US 335, 64 LED 2d 333 (1980)

. MCDANIEL V. STATE, 219 So 2d 421,422 (Fla.1969)

. DOUGLAS V. PEOPLE OF CALIFORNIA, 372 US 353 (1963)

. WISENBAUGH V. JONES, US DIST. CT. (MAY 3rd , 2018) LEXIS 75875

. DUCKWORTH V. SERRANO, 454 US 1, 70 LED 2d 1 (1981)

. BROWN V. ALLEN, 120 LED 2d 225, 1125 CT 2482.

. MYSTAN V. STATE, 339 So 2d 200 (Fla 1976)

. WILLIAMS V. TAYLOR, 529 US 362 (2000)

. GONZALEZ V. STATE, 990 So 2d 1017,1031 (Fla.2008)

. ROCKY V. ARKANSAS , 483 US 44, 49 (1987)

. PAVEL V. HOLLINS, 261 F.3d 210 (2nd CIRC. 2001)

. SNEED V. SMITH, 670 F.2d 1348 (4th CIRC. 1982)

. TOLIVER V. POLLARD, 688 F.3d 853, 863 (7th CIRC.2012)

. GARCIA V. STATE, 981 So 2d 1263 (Fla. 2nd DCA 2008)

. U.S V. CRONIC, 466 US 648 (1984)

. BRADY V. MARYLAND, 373 US 83 (1963)

. KYLES V. WHITLEY, 514 US 419 (1995)

. STATE V. CABLE, 51 So 3d 434 (Fla.2010)

. WILSON V. ARKANSAS, 514 US 927 (1995)

. U.S. V. AGURS, 427 US 97, 103 (1976)

. SIMS V. STATE, 285 So 3d 1025 (Fla. 1st DCA 2019)

. THOMAS V. STATE, 269 So 3d 68 (Fla.2nd DCA 2019)

. GREENWADE V. STATE,124 So 3d 215, 221-24 (Fla.2013)

. U.S. V. COLLADO, 975 F. 2d 985 (3rd circ. 1992).

. HOLSCLAW V. SMITH, 822 F. 2d 1041 (11th CIRC.1987)

. GIGLIO V. U.S., 405 US 150 (1972)

. PEAREEV V. STATE, 880 So 2d 561 (Fla.2004)

. LEARY V. U.S., 395 US 6 (1969)

. U.S. V. ORR, 636 F. 3d 944, 951 (8th CIRC.2011)

. PEOPLE V. LAFLER, 734 F. 3d 506 (6th CIRC.2013)

. MOORE V. MARR, 254 F. 3d 1235, 1241 (10th circ. 2001).

. HAWKINS V. HANNIGAN, 185 F. 3d 1146, 1152 (10th CIRC.1999)

. LAMAN V. U.S., 973 F. 2d 107, 113 (2nd CIRC.1992)

. OWENS V. U.S., 387 F. 3d 607 (7th CIRC.2004)

. BOLIN V. STATE, 650 So 2d 19 (Fla.1995)

. BOLIN V. STATE, 736 So 2d 1160 (Fla.1999).

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

N/A [ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished. only the postconviction circuit court reviewed half of the issues submitted via a 3.850 motion.

The opinion of the Fla. 1st DCA court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished. A summary denial of motion to Reconsider.

JURISDICTION

[N/A] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

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

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

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[✓] For cases from **state courts**:

The date on which the highest state court decided my case was 7/6/2021. A copy of that decision appears at Appendix A.

[✓] A timely petition for rehearing was thereafter denied on the following date: Sept. 01, 2021, and a copy of the order denying rehearing appears at Appendix B.

[✓] An extension of time to file the petition for a writ of certiorari was ~~granted~~ requested to and including _____ (date) on Nov. 28, 2021 (date) in Application No. ___A_____. See Exhibits E & F. (Appendix)

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

CONSTITUTIONAL/STATUTORY PROVISIONS

I. RIGHT TO REVIEW OF IAAC- Florida STATUTE § 79.01;

. FLORIDA CONSTITUTION ARTICLE 1, SECTION 13; ART 1, SECTION 21;
. PARKER V. STATE, 904 So. 2d 370 (Fla. 2005)
. ADAMS V. STATE, 957 So. 2d 1183, 1186 (Fla. 3rd DCA 2006)
. ANGLIN V. MAYO, 88 So. 918,919 (Fla. 1956);
. BAILEY V. ALABAMA, 219 US 219, 55 LED 191 (1911)(UNEQUAL PROTECT.)
. EVITTS V. LUCEY, 469 US 387, 83 LED 2d 821 (1985);
. STALLINGS V. U.S., 536 F. 3d 624,627 (7th CIRC. 2008);
. HAWKINS V. HANNIGAN, 185 F. 3d 1146, 1152 (10th CIRC. 1999);
. TUMEY V. OHIO, 273 US 510 (1927); U.S.C.A. 14.

II. RIGHT TO FILE BELATEDLY AS EQUITABLY TOLLED
. FLORIDA CONSTITUTION ARTICLE 1, SECTION 9; ART 1, SEC 16;
. Fla.R.APP.P. 9.141(d)(5); Fla.R.CRIM.P. 3.850 (l)&(m);
. RE KRATOCHVIL, U.S.APP.CT. (MAY 18,2015) LEXIS 23393.
. MACHULES V. DEPT OF ADMIN, 523 So. 2d 1132 (Fla. 1988);
. State V. T.A.K., 240 So 3d 885 (Fla. 2d DCA 2018).

III. RIGHT TO EVIDENTIARY HEARING & RECORD DEVELOPMNT
. U.S.C.A. 14;
. LAMAR V. STATE, 768 So. 2d 500 (Fla.2nd DCA 2000);
. LOUIMA V. STATE, 247 So. 3d 564 (Fla.4th DCA 2018);
. SIMPSON V. STATE, 100 So. 3d 1258 (Fla. 4th DCA 2012);
. U.S. V. CANTELL, 470 F. 3d 1087,1091 (5th CIRC. 2006).

IV. RIGHT TO APPOINTMENT OF COUNSEL
. U.S.C.A. 6, FLORIDA CONSTITUTION, ART.1, SECTION 16;
. RUSSO V. STATE, 724 So. 2d 1152 (Fla.1998);
. MANN V. STATE, 937 So. 2d 722 (Fla. 3 d DCA 2006);
. GRAHAM V. STATE, 372 So. 2d 1363 (Fla. 1979);
. BLOOM V. ILLINOIS, 391 US 194, 20 LED 2522;
. ROE V. FLORES-ORTEGA, 528 US 470, 484, (2005).

V. JURISDICTION
. THE U.S SUPREME COURT'S JURISDICTION IS HEREBY VERY WELL INVOKED UNDER 28 U.S.C. § 1257(a).

INDEX TO APPENDICES

A – ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS.

B – ORDER DENYING RECONSIDERATION & CERTIFICATION.

C – ORDER OF INSOLVENCY.

D – Fla. SUPREME COURT DENIAL OF JURISDICTION.

E – State PETITION FOR WRIT OF HABEAS CORPUS.

F – Petitioner's MOTION FOR EXTENSION OF TIME.

G – Petitioner's NOTICE OF INQUIRY.

PRELIMINARY STATEMENT

Sole defendant, James Jonathan Mitchell, is herein referenced as - " Mitchell (Mx), Petitioner, He, Him, His, or I. The trial transcripts is "T", followed by relevant page/line numbers. Ineffective assistant of trial/appellate counsel is dentoed "IATC/IAAC". United States constitutional amendment is "USCA". Law enforcement officer is "LEO". Postconviction is also "PC". Post conviction court is also "PC CT". Trial Court is also "TR CT." Trial Counsel is also "TR CL". Florida rules of criminal procedure is "Fla.R.Crim.P.". Florida rules of Appellate Procedure is "Fla.R.App.P.". The 1st district court of appeal in Florida is "DCA". State petition for writ of habeas corpus is "PWHC". Constitutionally guaranteed effective assistance of counsel is "EAOC". Florida department of corrections is "FDOC or DOC". Black tar Heroin is "BTH". Digital video recorder is "DVR".

"secundum" is Latin for according to. "Gnothi Seauton" is Greek for self knowledge. "Apotheosis" is deification of form. "imperium et in aeternum" is Latin for absolutely and forever. "sapientes dominaditur astris et justitia" is Latin for the wise shall have dominion of the stars and justice. All underscores are additions for emphasis. " Res in cardine est" is Latin for the matter is on a hinge.

Retired judge Ed Nickson was the case judge in toto. Madam Judge Linda Nobles adjudicated the pc litigation. Mx also currently challenges trial errors & IATC of constitutional magnitude via federal petition for habeas corpus § 2254-3:21-cv-533-LC/MAF (excluding this issue).

Mx is innocent of trafficking BTH 28 gms < 30 kgs, although he is guilty of possession of 1 gram of Heroin (and addiction from Rx'd opiates). He is not guilty of conspiracy to possess(lessor included of conspiracy to traffic), as that constitutes double jeopardy. He is also not guilty of knowingly resisting LEO, who beat him at 4:30 a.m. with a pistol out of the slumber of his bed. Mitchell just wants a fair trial with EAOC and with a fair and dispassionate jury civil to fundamental fairness, which has been unapologetically denied to him heretofore. If he should be condemned, then for the love of God, may he condemned by every jot & tittle of the law in a fair court, before an impartial jury, and with the EAOC. Reasons and argument for grant of writ addressing the below universally significant issues of this cause of action follow:

STATEMENT OF THE CASE & FACTS

A. Sole defendant - Petitioner Mitchell(Mx) – was tryed in dock by jury & found guilty 9/11/15 of trafficking 28 gms < 30 kgs of Heroin [1], conspiracy to possess Heroin, and resisting LEO. He was sentenced to a 25 year minimum mandatory sentence on 10/16/15.

B. Mx did not testify at his trial due to IATC. He had previously never been convicted of any felony.

C. Prior to trial, Mx requested the physical Heroin evidence he suspected was manufactured and/or tampered with be suppressed because it varied in weight, shape, color variation and packaging from the State's photo evidence; and because it was allegedly seized from Mx's home in flagrant violation of § 933.09 Fla.Stat. Knock and Announce rule, violating his U.S.C.A. 4th right to reasonable & safe warranted searches. Suppression was denied.

D. Prior to trial, Mx moved for denial of irrelevant other bad acts evidence of his alleged possession of 4 gms of Heroin in Kaufman county Texas because there was never any conviction of Mx in that arrest, and that charge was ultimately dismissed. His request was denied and an out-of-State , 6 – person gaggle of Texas public safety personnel was presented at commencement of trial, which became a prejudicial half-day feature of the trial, producing no evidence Mx was culpable in any conspiracy to traffic Heroin. It tainted the entire balance of his 3 – day trial.

E. Mx - indigent – took a public defender – assisted direct appeal of above trafficking conviction, which dismally failed challenging the lyon's share of the fundamental errors having produced his wrongful conviction. The

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1 Heroin was developed by the Bayer Pharma Co. in the late 1890s, named for it's ostensible heroic effects, And touted as an alternative to uber-addictive morphine. Heroin proved to be more addictive. It is legally distributed this day in synthetic form as oxycodone.

appeal was affirmed without opinion in the 1st DCA on May 24, 2017.

F. Mx was committed (in Baker Act fashion) to F.D.O.C.'S crisis/transitional care unit from Aug. 2018 to Nov 14, 2019 for psychosis and self-starvation.

G. While committed ut supra, on Mx's behalf Mx's brother timely filed a bare bones "1st 3.850 motion" on 9/20/19 – grieving IATC where counsel failed to: challenge a non-enunciated illegal conviction for conspiracy to possess, request a jury instruction for a mens rea affirmative defense as the TR CT was removing the defense from the instructions; vet jurors for bias in a known inflamed community atmosphere; call available exculpatory witness waiting in the lobby to testify; call Mx to testify(when he had no prior convictions); challenge a jury instruction misstating the law; challenge blatantly false/tampered evidence; impeach State's key witness - detective Bernard - with her inconsistent deposition Statement; disclose a conflict of interest prior to misrepresenting Mx; and prejudice from cumulative error effect. That motion was summarily denied on April 30, 2020.

H. Petitioner appealed above denial to the 1st DCA (1d 20-1804); affirmed without hearing, or even an answer brief from the State disputing Mx's legal & factual assertions. There was no written opinion either.

I. Mx filed a motion for rehearing, clarification and for certification; summarily denied in toto on April 19, 2021.

J. Mitchell filed a 28 U.S.C. § 2254 PWHC (3:21-cv-533-lc/maf) in the U.S. DIST.CT. -N.D.Fla., Pensacola division on March 25, 2021 – Raising 30 Constitutionally Violative issues (excluding this one) – pending this day.

K. Mx filed a belated "2nd amended (3.850) Motion for Post Conviction relief" May 20, 2021, by right of equitable tolling, grieving IATC for failing to: preserve TR CT'S denial of a psyche evaluation; object to governmental interference; object to a confusing jury instruction of constitutional

magnitude; challenge State's closing argument wholly unsupported by facts of record, prejudicially affecting outcome of trial; request a mistrial for State's use of contrived physical (Heroin) evidence; Object/Preserve State's violation of Mx's Attorney-Client privilege via electronic eavesdropping & breach of legal mail; present even a bubkes of any exculpatory evidence when so much was available; present any evidence to support his opening Statement; and newly discovered evidence – Mx's live-in girlfriend sold BTH without Mx's knowledge near the date his home was searched – allegedly yielding a quantity of BTH.

L. The TR CT summarily denied the 2nd 3.850 motion 7/16/21; Mx appealed in the 1st DCA (1D21-2444) (pending now).

M. On April 28th 2021, Petitioner filed a State PWHC bringing errors of unaddressed fundamental ~~IRCT~~ violations, prosecutor misconduct, and (8) previously unheard issues of IAAC. The petition was filed as equitably tolled due to the State's action (of psyche treatment committment above) that prevented him from asserting his right timely. Howbeit, it was filed indeed within Florida's outlying 4 year limitation time bar, pursuant to Fla.R.App.P. 9.141(d)(5) and Fla.R.Crim.P. 3.850 (I) & (m). The 1st DCA dismissed it as "Unauthorized," citing Baker v. State, 878 so. 2d 1236 (Fla. 2004) (holding State Prisoner's have little or no right to habeas relief in Florida) {828 so.2d at 1245}.

N. Mitchell motioned for reconsideration, clarification & question certification on 7/19/21 – asserting the summary denial of his IAAC grievances violated due process to an objectively fair & adequate testing for challenged illegality of his conviction at bench & bar[2] – marshalling him over Baker's (id) threshold for requisite review of his PWHC,secundum Parker v.

2 Baker {878 So. 2d at 1241}

State, supra @ 380. Mx averred therein the unreasonable spurn to an equitable review of his PWHC essentially neutered his right to be represented by conflict – free counsel guaranteed by the 6th U.S.C.A.; And it would naturally follow there from fractious 5th & 14th U.S.C.A. Eviscerations of the same right to EAOC on direct appeal[3]. Where the State was so bold to wholesale deny Mx a fair contest of his IAAC that stemmed proximately from a constitutionally violative trial. As well, it was a denial of a meaningful access to the courts in pursuit of justice guaranteed by article 1, s. 9 (Due Process) and s. 21, (access to court) of the Florida constitution. That motion was similarly summarily denied on Sept 7th 2021.

O. Mx sought Florida Supreme Court jurisdiction for redress on 9/29/21 (21 SC-1398), requesting review of the stonewalled injustices theretofore below; raising the incongruity in the DCA'S curt dismissal with the holdings in Henderson v. Sargent, 929 f. 2d 706 (8th circ. 1991); Re Muchison 349 us 133 (1963); Strickland v. Washinton, 466 us 668 (1984)(IAAC); Duncan v. La, 391 us 145 (1968); and Kruse v. State, 222 so.2d 13 (Fla.4 DCA 2017). He asserted this case is exceptional to warrant their review to avoid a fundamental miscarriage of justice archetypal of a dauntingly blatant deprivation of EAOC and a constitutionally courteous review of his claim to being denied that, outrageously. That petition was squelched with quickness on Oct 5th 2021, even prior to the court receiving Mx's brief on jurisdiction.

P. Mx timely files this petition for Writ of Certiorari in the United State Supreme court this_____day of January 2022; because the issue(s) quietused inequitably in the Florida courts here are of issues of paramount importance to the people of this great State, and to people throughout the entire union – fundamental issues, everyday taken for granted because they

3 Secundum Evitts v. Lucey, 469 us 387, 83 LED 2d 821 (1985).

have been providently set in jurisprudential stone in the United States of America: sanctity of castle and the guarded, safe & reasonably warranted searches therein; the due process of a fair trial with the EAOC in a fair venue with a fair, unbiased Judge and prosecutor, untainted by politic. And with Justice thereof fail – safed by an objective Appellate and high court surety.

REASONS FOR GRANTING OF WRIT

GREAT SIGNIFICANCE OF THE OMNIBUS ISSUE

Pursuant to Florida Statute § 79.01 and Parker, supra, Mitchell filed in the 1st DCA a request for relief from his unjust trial, conviction and severe 25 year prison penalty which predicated from multiple prejudices of IAAC, an unfair trial with a biased jury and judge, and from multiple assaults from governmental interference. His State PWHC was a proper litigation seeking review originally of the(per Parker, supra) IAAC and for an objective determination of the legality (or lack thereof) of his conviction and sentence. Therein he asserted: an unstainable defect from lack of competent substantial evidence in his culpability of trafficking 28 gms < 30 kgs Heroin) ; the State's failure to prove every element of the crime (knowledge of presence) and the impermissibly repugnant use of pyramidally stacked inferences in this wholly circumstantial evidence case.

Where the PC CT rendered an objectively unreasonable finding on the merits of Mx's grievances in his 1st 3.850 Motion (by misweighing the evidence of record; A failure applying stare decisis praxis as to qualifying reliability of in - court testimonies alleging Mx's culpability, vis à vis their inconsistent deposition Statements; and a misapplication of Strickland, inter alia), Mx asked the district court to allay the constitutionally inviable conviction, judgment and sentence against him - on grounds of State & federal constitutional violations delineated in his PWHC(Not that he's singularly innocent, but that he is not guilty of trafficking

28 gms < 30 kgs of Heroin, nor resisting LEO knowingly). He litigated via that conduit because both the PC CT And the DCA had already summarily & unreasonably denied him in the face of obvious constitutional aberrations & departures from essential requirements of law as of his trial & pc collateral petitions – there were no other avenues or remedies available to Mx, yet he remained unrequited in equity – constitutionally spurned of justice and condemned severely for that which he was not guilty.

Florida's constitution art. I s. 13 promises the great writ (of habeas corpus) shall be grantable of right, freely and without cost. "It shall be returnable without delay, and shall never be suspended unless in case of rebellion or invasion..." They said in Adams v. State, 957 so. 2d 1183, 1186(Fla. 3rd DCA 2006), " if it appears to a court of competent jurisdiction that a man is being illegally curtailed of his liberty, it is the court's responsibility to brush aside formal technicalities [i,e, belatedness or equitable tolling] to issue appropriate orders as will do justice," accord Jamason v. State, 447 so. 2d 892, 895 (Fla. 4 DCA 1983) (quoting Anglin v. Mayo, 88 so. 918, 919 (Fla. 1956). The Barnes justices declared - " the bill of rights was designed to make the job of the prosecutor difficult," in Barnes v. State 412 US 837, 852, 37 LED 2d 380 (1973). But Florida's curious dispensing of a PWHC to review trial fairness through subsequent determination of IAAC, as here, not only makes the prosecutor's job easy, it also makes his desired outcome guaranteed. Florida rolled the dice here to continue denying prisoner a proper constitutionally sound review of his IAAC, while at the same time forfeiting by default any further right to rule on the merits of this everyman issue that groans incessantly for jurisprudential sound remedy in equipoise.

The errors of constitutional magnitude occasioning Mx's trial include: a Daubert violation; irrelevant other bad act allegations that were dismissed for lack
- Daubert v. Merril Dow Pharm. Inc, 509 US 579 (1993).

of evidence; unreasonable denial of a motion for judgment of acquittal challenging insufficient competent substantial evidence to proof in trafficking 28 gms < 30 kgs BTH, and conspiracy to posses; failure to voir dire veniremen & jurors for bias from pretrial media satuation; denial of a plainly indicated psyhe evaluation ante sentencing; a material Brady / discovery violation plainly affecting the outcome of the trial; insidious official animus manifesting ultra – harmful governmental interference with defense counsel and Mx's ability to prepare fairly; unreasonable denial of a motion to suppress evidence dubiously seized in violation of knock & announce statutory rubrics; a confusing, treacherous jury instruction predicating the finding of guilt in conspriacy (different episode) on the finding of guilt in trafficking first – an all or nothing gambit; illegal conviction of a non-enunciated lessor included offense assailing Mx's confrontation rights; an overweeningly misleading jury instruction deploying open – ended phrases- "and/ or" & " or by some other person" - those being undefined, ergo those being every person on the planet; the prosecutor's lubriciously specious closing arguments of facts not in the record, clearly harmful as improperly denigrating Mx's one and only plausible defense, lack of presence knowledge; the court's materially prejudicial allowance of out-of-court hearsay Statements not excepted by relevant statutory provisions; eight (8) substantive & meritorious claims of IAAC; and an unreasonable summary denial of the newly discovered evidence highly probative of Mx's innocence.

Mx is thereby being held captive illegally under a clear & present fundamental miscarriage of justice perfected by the evisceration of his due process and EAOC rights, culminating in privation of a fair trial with a fairly unbiased jury in flagrant disregard for the Bill of Rights and the 5, 6, and 14th U.S.C.A.. Because a State criminal trial is an action of the State within the 14th U.S.C.A. Safeguard, "when the State obtains a conviction through inadequate legal assistance of defendant's retained counsel, it is the State that unconstitutionally

deprives the defendant of his liberty," secundum Cuyler v. Sullivan, 446 us 335, 64 LED 2d 333, 100 s.ct 1708 (1980).

Mx's liberty is similarly curtailed by cause from IATC – a pc challenge via 3.850 motion summarily denied in the PC CT as a result of an objectively unreasonable misapplication of Strickland[4] to the case evidence, found readily on the record's face; and also by subsequent cause organic to injustice from the above IAAC that Mx pursued in PWHC in the 1st DCA, which also was unreasonably & summarily " Dismissed as Unauthorized" without proper requisite consideration of the merits of the substantiated issues of record. That leaves Mx pitiably adrift at sea philosophically, juris - scientifically, and physically restrained – while constitutionally disapproved in the Sunshine State. The un – reviewed violations of his unfair trial with IATC is injustice compounded ā priōrī-ly with the prejudice he suffers from IAAC - unresolved as summarily unconsidered at bench, bar and re – bar.[5]

Of paramount significance here, however is that the State of Florida (through its improvident outright dismissal of his PWHC) has now taken the antiurbane posture that IAAC review may capriciously be denied altogether - at whim and will – by an erroneous misapplication of authority of Baker supra (holding an inmate's PWHC is dismissable as unauthorized where the 3.850 pc motion [doctrinairily] is adequate to accomodate all constitutional claims & IATC). That says (imperium et in aeternum) that in Florida a Prisoner's Right to PWHC will be, in actū, altogether eliminated because of the work level overload created by Gideon v. Wainwright, 372 US 335 (1963). This is most alarming clear & present threat to the cardinal rule & right to due process of fundamental fairness guaranteed by the 5, 6, and 14th U.S.C.A..That hungry juggernaut lurking shadowy in its lair of ferment

4 Strickland v. washington, 466 us 668 (1984).

5 In his first 3.850 motion, Mx grieved the issues of IAAC,Which were summarily denied as needing to be raised in the DCA, Not the PC CT.

could (and likely would) too easily be unleashed to encroach upon the people's cherished rights (as indeed it has been here) by the various "progressive" States seeking expediency in schadenfreudian criminal justice in such provident names as judicial comity, economy and/ or law of the case jurisprudence.

Is this not intolerably untenable for hard – working, freedom – loving American citizens?, For if such brazen encroachment onto fundamental rights (as here) is left unchecked, then the surly injudicious denial of a fair trial (along with summary curtailment of the pc procedures designed to ensure and safeguard that a man's or woman's conviction is not only legal & constitutional, but also jurisprudentially sound) in great probability would become virulent and malignant to constitutional courteous rules of law, precedent and prudent modalities of stare decisis. So if that were to become an acceptable option, then our tried -n- true American jurisprudence likely would become a species endangered by such subtle usurpation of our uniquely American protections to freedom. That would actually threaten America's role in the world too, she being the sublime lodestone & beacon of light - one nation under God, with liberty and justice for all – so coveted by the rest of the world. They believe in America not so much for her might, as for her constitution, her principles of fairness & justice, as all stand equal before the law; and every accused stands equally presumed innocent, until proven otherwise via a fair trial. The world marvels too in awe of the U.S. Citizens who died in our turbulent past to protect this democracy and her freedoms, like so many fallen warriors in quest of a pearl of great value.

Thanks to Madison, Jefferson, and perhaps above all anti – ratification lobbyists who kept Hamilton in check – protections against tyrannical power that got embedded in our constitution and Declaration of Independence were substantial. Many of them are still operative this day. Among the most important is

an accused's right to due process, a fair trial with EAOC before a fair and unbiased jury; which has been denied to Mitchell heretofore. These protections ought justly be defended & preserved from insidious encroachment such as Florida is doing here. We, as the greatest nation in history, should not be so careless to give up those cherished rights when we know full well what the alternative is, for Florida's denial of EAOC at trial & appeal is no less an assault on lady liberty's republic than was Hitler's beer hall putsch an assault on the Weimar republic. If America goes down the road that Florida has embarked on, then - as the pendulum must swing – we may soon no longer need criminal courts because those tribunals would forsooth be transmogrified into essentially no more than horse & pony shows for sake of schmaltzy illusion, yet most pyrrhic. Would that not look like the ante magna carta days of stodgy English jurisprudence where a man shall have no right to a reasonably fair trial with a good barrister, law-of-year advocate; except that he may present his own defense to his own good luck or demise, as fate would have it.

The unchecked arrogation on a defendant's right to due process / EAOC grieved herein – the outright arbitrary & unreasonable denial of the EAOC asserted habeas corpusly -strikes at the very heart of our U.S. Constitutional shield of due process against reckless government overreach in pursuit of criminal justice expediently; it lubriciously places fundamental fairness on the precipice of a ghetto of injustice via sangfroid of ivory towers. Such dissemination in extēnsō, more likely than not, would proximately debouch a jingoistic juris-dictatorially captious procrustean praxes[6] by mini – republics across the nation, indulging whimsically in protean & obstreperous prosecution, and with rancorous adjudications relying on merely abbreviated due process; maybe even fascism; or an ilk of seditious communism masquerading behind some inebriating nomenclature foisted

6 Procrustes stretched opponents to fit the bed.
Praxis is accepted relational practice of theory.

pleasantly with the swankiest calling card. America would do better not going the way of Florida here, where halls of justice have been misused as petri dishes for incubation of Machiavellian paradigmatic facilities for indefensible abridgment of essential fairness requirements of the law.

Florida needs a reset in prudence from this high court. Relief is respectfully requested.

ARGUMENT IN SUPPORT OF THE WRIT REQUEST

I . The DCA's Summary Denial Of The Petition For Writ Of Habeas Corpus.

Mitchell's PWHC to the DCA raised eight (8) substantive & meritorious claims of IAAC which affected the outcome of the trial (as well as the appeal), and one (1) claim of newly discovered evidence highly probative of his innocence in trafficking Heroin. It is well established "that an indigent has a right guaranteed under both the equal protection clause and the due process clause to [the effective assistance of] appellate counsel," per McDaniel v. State, 219 so. 2d 421,422 (Fla. 1969); accord MC Mann v. Richardson, 397 US 759, 771 n.14 90 s ct 1449; U.S. v. Cronic , 466 US 648, 654 (1984). And it is clear that, "in federal courts an indigent accused must be afforded counsel on appeal", secundum Douglas v. California, 372 US 353, 9 LED 2d 811 (1963).

The DCA's curt dismissal of Mx's PWHC was an all-out assault on his equal protection and due process rights that beleaguered and foreclosed any ability or opportunity to seek equitable redress to the prejudice suffered from IAAC, and from the unreasonable denial to hear him on the the newly discovered evidence. It was tantamount to denying Mx outright – Effective representation – altogether because he asserted that but for the deficient omissions of his appointed Appellate Counsel the outcome of the Appeal likely would have been more favorable and he in all probability would have

been granted a reversal and remand for a new trial. That violated the holding of Gideon,supra. In Wisenbaugh v. Jones, US Dist Ct. 17-cv-20690- Altonaga (5/13/18) lexis 75875 – it was explained that in order to circumvent the exhaustion requirement Petitioner must establish that there is an "absence of available State corrective process," or that "circumstances exist that render such process ineffective to protect his rights", {2018 U.S. Dist. Ct lexis 11} (quoted from Duckworth v. Serrano, 454 us 1,70 LED 2d 2 (1981)), {at 2018 U.S. Dist. Lexis. 12}. The Wisenbaugh court also said a Petitioner overcomes failure to exhaust, or a technical bar, by raising the "objective cause for failing to timely raise the claim in State court, and by showing actual prejudice". They further explained, " Any future attempt to exhaust a State remedy would be futile under State procedural default doctrine" {2018 U.S.Dist. Lexis 133}. See also Mystan Marine v. State, 339 so 2d 200 (Fla.1976))(finding no State remedy available qualifies litigant for higher review).

Mitchell asserts – having run the State's gauntlet here--he has reached a dead-end after having made dogged exhaustive efforts by barking & baying up the trunk of a jurisprudentially empty tree. So no other State remedies exist for Mx that would not be an exercise in futility. Mx asserted his right in the DCA to a belated petition by right of equitable tolling, whereof there could be no reasonable finding by fair- mined jurists that an inmate committed to long-term F.D.O.C. Psychiatric care would not qualify him for that special tolling allowance. Because a State's denial to EAOC at trial and on direct appeal is so blatantly egregious & uincdum in se that it rises to the level of great public importance to the Nation at large, it therefore merits and fully warrants this Honorable High Court's audience and remedy.

Mitchell respectfully requests this court's review and finding for the constitutional requirement that a State shall review IATC & IAAC on

challenge in fulfillment of due process and equal protection, else the unreviewed ineffective assistance of counsel issues shall be forfeited by the State, not subject to the deference standard of AEDPA, and unconditionally reviewable de novo by the federal courts, as rēs in cardine est subjudice excelsior. See Brown v. Allen, 120 LED 2d 225, 112 s ct 2482 (cited in Williams v. Taylor, 529 us 362 (2000)(no deference required).

CONCLUSION

As set out in the above Statement of the case & facts (g&k), Mitchell suffered a heavy toll from IATC that rendered his trial utterly unfair, and ergo the outcome is unreliable as having produced a just result. The severest prejudice Mitchell suffered in his trial though, were of three (3) issues : 1).- Mx's one & only defense was not presented by TR CL for the jury's consideration – no defense at all was asserted on Mitchell's behalf;[7]

2).- The State's Brady violation of refusing (in defiance of 2 court orders) to return Mx's home security system's DVR containing exculpatory evidence and the LEO'S Knock & Announce violation[8]; and

3).- Counsel's failure to call either Mx or his 2 available witnesses (waiting under subpoena in the court's lobby)to testify and present Mx's 1 and only defense, resulting in absolutely no defense & no exculpation evidence divulged for the jury and record[9]..

The IAAC was no less lethal to Mx's possibility of receiving a fair trial on

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7 See Garcia v. State, 981 So 2d 1263 (Fla. 2d DCA 2008)(Do nothing Strategy prejudicial); Herderson v. Sargent, 926 F. 2d 706, 712 (8th circ. 1991) Reversing for IATC failing competently to pursue a viable defense); U.S. v. Cronic, 466 US 648 91984)(No adversarial testing- prejudice).

8 Brady v. Maryland, 373 us 83 (1963), Accord Kyles v. Whitley, 514 us 419 (1995); State v. Cable, 57 So. 3d 434 (Fla. 2010); And Wilson v. Arkansas, 514 us 927 (1995)(Knock/ Announcement violation); U.S. v. Agurs, 427 us 97,103 (1976)(Standard for exculpatory/ Discovery evidence production).

9 Gonzales v. State, 990 So 2d 1017 (Fla. 2008), And Rocky v. Arkansas, 483 us 44, 49 (1987)(Right to testify); Pavel v. Hollis, 261 F. 3d 320 (2nd circ. 2001)(prejudice from not calling witness); Sneed v. Smith, 670 F. 2d 1348 (4th circ. 1982) (failing to call witness to prove other committed crime); Teliver v. Pollard, 688 F. 3d 853, 863 (7th circ. 2012)(Failure to call witness is IATC).

reversal due to the 3 major issues of :

1).- Failure challenging the record's lack of any competent substantial evidence proving Mx's guilt in trafficking Heroin in weights of 28 gms < 30 kgs, where all evidence was wholly circumstantial. The State only proved Mx possessed " about a gram" of BTH (1238)[10].

2).- Failure requesting a new trial due to the State key witness claiming she found BTH in Mx's home when her pretrial inconsistent deposition Statements proved otherwise[11].

3).- Failure requesting a new trial due to the State's Giglio violation of presenting known manufactured and / or tampered BTH physical evidence, and due to the trial court's refusal to properly suppress it[12].

But undoubtedly, the final coup de grace, the death knell announcing Mx's unfair sure defeat was the trial court's unchallenged (Via/IAAC) removal of the mens rea affirmative defense jury instruction, leaving Mx with absolutely zero (0) defense when so much exculpatory evidence was available at counsel's disposal. Removal of the mens rea defense violated the special jury instruction requirement ((where defendant had only one defense) in Barnes v. State, 108 so 3d 760 (Fla.. 2003). It violated Mx's right to a defense, as held in Bailey v. Alabama, 219 us 219, 55 LED 191 (1911). It was reversible error, secundum MC kenzie v. State, 830 so 2d 234, 237 (Fla. 4th DCA 2002)(erroneous, incomplete Statement of law; approved by 763 so 2d 276 (Fla. 2002)). And it allowed convictions of Mx without proof of every

10 Sims v. State, 285 So 3d 1025 (Fla.1st DCA 2019)(Evidence wholly circumstantial) And Thomas v. State, 269 So 3d 68 (Fla. 2d DCA 2019)(No circumstantial evidence negated theory of innocence); Green v. State, 124 So 3d 215, 221-224 (Fla. 2013)(Weight unproven fails every element) And U.S. v. Collado, 975, F. 2d 985(3rd circ. 1992)(Heroin Qty. undetermined by record)({ 1992 us .App. Lexis 19-24,37})

11 Giglio v. U.S., 405 us 150 (1972); Pearce v. State, 880 So. 2d 561 (Fla. 2004)(No believe inconsistent statements); Leavy v. U.S., 395 us 6 (1969)(KnowLEDge element unproven); U.S. v. orr, 636 F. 3d 994, 951, (8th circ. 2011)(Failure to impeach), Accord People v. Laffer, 734 F. 3d 503 (6th circ.2013); Accord Moore v. Marr, 254 F. 3d 1235, 1241 (10th circ. 2001).

12 Giglio, Supra; Hawkins v. Hannigan, 183 F. 3d 1146, 1152 (10th circ. 1999)(Prejudice – IAAC failing to raise "Dead bang winner"claim) Laaman v. U.S., 973 F. 2d 107, 113 (2nd circ. 1992)(Standard for failing requesting suppression), Accord Ownes v. U.S., 387 F. 3d 607, (7th circ. 2004); Bolins v. State, 650 So. 2d 19 (Fla. 1995), Accord Bolis v. State, 736 So. 2d 1160 (Fla. 1999)(Fake/Tampered evidence reversibly prejudicial).

element (knowledge) of the crime, incongruous to Winship, 397 us 358 (1970)(proof every element beyond reasonable doubt) and Sandstorm v. Montana, 4420 us 510 (1979). See also 802 F. Supp. At 1303 (statute unconstitutional without mens rea proof).

"Justice is knowledge of the rights of oneself and others, and in thinking and acting in accordance with that knowledge."[13] The courts are its arbiters and dispensers. Health and wealth of the nation then depends on it. As it is God – given, it can render sapience from knavery, gnothi seauton. Even apotheosis – the highest form of knowledge & wisdom to the human creature. But knowledge (truth) has been resultantly denied. And it has been denied through a most insidious subterfuge by stonewalling due process in an apparent endeavor to frustrate and skedaddle.

That must never do, for the denial of justice here by way of reckless Constitutional violations ut supra. abhorrently affronts our rules of law and the very underpinnings of our communal civility and democracy. The injustice here is injustice everywhere – so much so that petitioner must wonder is there no justice for a poor widow's son? Mitchell prays it may be so. So may it be.

Wherefore, James Jonathan Mitchell respectfully requests this honorable supreme court to find in favor as to the intolerability of the State's unbashed absolute denial of the right to effective assistance of trial & appellate counsel down here in Florida; to issue writ holding that a State's procedural denial to a fair review of IAAC in habeas corpus litigation is a clear violation of due process and equal protection under the law; to find that his convictions are improperly & unreasonably main stayed by violations of his rights to a fair trial with the EAOC, and to reverse those, remanding he be provided a new trial unto sured & untrammeled of full, fair due process; or either he be released.

13 Harold Percivil – Masonry and its symbols.

OATH

UNDER PENALTY OF PERJURY AND D.O.C. ADMIN. SANCTIONS FOR FILING A FRIVOLOUS PLEADING IN BAD FAITH: I CERTIFY THE FACTS HEREIN STATED ARE TRUE & CORRECT; THAT I HAVE REASON TO AND DO BELIEVE THIS PETITION FOR WRIT OF CERTIORARI IS MERITORIOUS TO WARRANT RELIEF; AND IT IS TIMELY SERVED AND DOES NOT DUPLICATE PREVIOUSLY FILED PLEADINGS. I UNDERSTAND ENGLISH & HAVE READ/ UNDERSTAND THE FORGOING IN ITS ENTIRETY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE FURNISHED A TRUE COPY OF THE FORGOING PETITION FOR WRIT OF CERTIORARI BY REGULAR U.S. MAIL TO Florida's ATTORNEY GENERAL- ASHLEY MOODY, PL-01, THE CAPITAL IN TALLAHASSEE, AND TO THE 1st DCA IN TALLAHASSEE ON THIS 3rd DAY OF ~~DECEMBER~~ JANUARY 2022.

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT I PLACED THIS DOCUMENT INTO THE HANDS OF OFFICIALS, AT OKALOOSA CORRECTIONAL INSTITUTION FOR MAILING TO THE U.S. SUPREME COURT, THE ATTORNEY GENERAL'S OFFICE AND THE 1st DCA IN TALLAHASSEE, Florida ON THIS 3rd DAY OF ~~DECEMBER.~~ JANUARY, TWO THOUSAND TWENTY ~~FIRST~~ -SECOND YEAR OF GRACE.

SIGNED EX ANIMO: _____

JAMES JONATHAN MITCHELL – P05455
OKALOOSA CORRECTIONAL INSTITUTION
3189 COLONEL GREG MALLOY ROAD
CREST VIEW, Florida 32539

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PRO SE PLAINTIFF IN ERROR/ Petitioner
JUSTITIA OMNIBUS

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