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IN THE
SUPREME COURT OF THE UNITED STATES

WASHINGTON D.C.

ORIGINAL

Supreme Court, U.S.
FILED

MAR 07 2022

OFFICE OF THE CLERK

JOHN O. WILLIAMS
(Your Name)

- Petitioner

VS.

RTAKY D. DIXON SEC'y D.O.C. - Respondent(s)

on

PETITION FOR A WRIT OF CERTIORARI

to

THE ELEVENTH CIRCUIT COURT OF APPEALS

(Name of Court that last ruled on merits of your case)

PETITION FOR A WRIT OF CERTIORARI

JOHN O. WILLIAMS
(Your Name)

F.D.O.C. # 944298

BLACKWATER RIVER CORRECTIONAL FACILITY
5914 JEFF ATES ROAD
MILTON, FLORIDA 32583

RECEIVED

MAR 15 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1) Did the United States District Court and the Eleventh Circuit Court of Appeals abuse its discretion in the denial of Petitioner's Fed. R. Civ. P. 60(b)(6) motion, where the Appeals Court held in its unpublished written opinion that the time petitioner spent appealing his judgment could not be charged against?

2) Did the petitioner file his Rule 60(b)(6) motion within a reasonable time, when a 60(b)(6) motion is not subject to the one year limitation that applies to motions made pursuant to Rules 60(b)(1), (2), and (3), Fed. R. Civ. P. 60(c)(1)?

3) If the state and trial court both conceded that the evidence adduced at trial supported the requested lesser-included offense of battery. Was it a denial of due process and the right to a fair trial where petitioner had a constitutional right to have the jury instructed on his theory of defense that was supported by the evidence?

4) The United States Supreme Court held in In re Winship, 90 S.Ct. 1068, 25 L.Ed. 2d 368, 394 US 358, and Jackson v. Virginia, 443 U.S. 307, 309 (1979) that the Constitution prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt, and it is clear that a state prisoner who alleges that evidence in support of his state conviction cannot be fairly characterized as sufficient to have led a rational trier of fact to find guilt beyond a reasonable doubt has stated a federal constitutional claim. Did the petitioner in the instant case state a federal constitutional claim when his counsel argued that the state's evidence was insufficient and that the state failed to prove every element of the crime beyond a reasonable doubt at petitioner's JOA hearing on August 27, 2008?

5) The petitioner was tried for two (2) counts of alleged lewd or lascivious molestation for two (2) different alleged victims that was tried together in a single trial. Did the petitioner meet the two prong test of Keeble v. United States, 412 U.S. 205, 208 (1975) when the jury returned a verdict of guilty as charged count (1) and count (2) attempted lewd or lascivious molestation? Where the court held: it is now beyond dispute that the defendant is entitled to a lesser included offense if the evidence would permit a jury rationally to find him guilty of the lesser offense and acquit him of the greater?

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:

"SEE NEXT PAGE"

Case No. 16-15863-G

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

JOHN O. WILLIAMS,
Appellant,

vs.

SECRETARY, FLORIDA DEPT. OF
CORRECTIONS,
Appellee.

CERTIFICATE OF INTERESTED PARTIES

APPELLEE files the following Certificate of Interested Parties, pursuant to
Eleventh Circuit Rules 26.1-1 through 26.1-4.

1. ~~A. L. Child, trial judge~~
2. Been, Steven A., assistant public defender
3. Benton, the Hon. Robert, appellate judge
4. Clark, the Hon. Nikki A., appellate judge
5. Conley, Anne, assistant attorney general
6. Copek, Alice, trial counsel
7. Dekker, Kathleen, trial judge
8. Del Soule, Adrienne, trial counsel
9. Duffy, Thomas H., assistant attorney general
10. Evans, Eddie, assistant state attorney

11. Gerace, Donna, assistant attorney general
12. Hinkle, The Hon. Robert, district court judge
13. Hurt, Deanna, trial counsel
14. Lewis, the Hon. Joseph, appellate court judge
15. Moore, Jennifer, Assistant Attorney General
16. O., S., child victim of sex crime
17. Osterhaus, The Hon. Timothy, appellate court judge
18. Ray, The Hon. Stephanie, appellate court judge
19. Record, Tracy N., trial counsel
20. Roberts, The Hon. Clayton, appellate court judge
21. Rowe, the Hon. Lori, appellate court judge
22. Sheffield, The Hon. Frank, trial court judge
23. Stevenson, John, postconviction counsel
24. Swanson, The Hon. Ronald, appellate court judge
25. Thomas, the Hon. Bradley, appellate court judge
26. Thomas, Rhonda Di Vagno, Assistant State Attorney
27. Timothy, the Hon. Elizabeth M., magistrate judge
28. Van Nortwick, The Hon. William, appellate court judge
29. Vollrath-Bueno, Lorena, Assistant State Attorney
30. Wetherell, the Hon. T. Kent, appellate court judge

31. Wolf, the Hon. James, appellate court judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this notice was furnished by U.S. Mail to John O. Williams, DC# 977298, Wakulla Correctional Institution, 110 Melaleuca Dr., Crawfordville, FL 32327-4963, on November 7, 2016.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Thomas Howland Duffy
THOMAS HOWLAND DUFFY
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 470325
OFFICE OF THE ATTORNEY GENERAL
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300
COUNSEL FOR APPELLEE

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **Federal Courts:**

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is;

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States District Court appears at Appendix B to the petition and is;

- ☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **State Courts:**

The opinion of the highest State Court to review the merits appears at Appendix ____ to the petition and is;

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

The opinion of the _____ Court appears at Appendix ____ to this petition and is;

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

JURISDICTION

☒ For cases from **Federal Courts:**

The date on which the United States Court of Appeals decided my case was AUGUST 23, , 2021 .

☐ 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: JANUARY 20, 2022 , 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 .
A copy of that decision appears at Appendix .

☐ A timely petition for rehearing was thereafter denied on the following date: , a copy of the order denying rehearing appears at Appendix .

☐ An extension of time to file the Petition for a Writ of Certiorari was granted to and including (date) on (date) in Application No. A .

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fed. R. Civ. P. 60(b)(6), A Rule 60(b)(6) motion must be made "within a reasonable time" and is not subject to the one year limitation that applies to motions made pursuant to Rules 60(b)(1), (2), and (3) Fed. R. Civ. P. 60(c)(1).

Anderson v. Harless, 459 U.S. 4, 103 S.Ct. 276, 74 L.Ed. 2d 3 (1982) The habeas petitioner was granted relief on the ground that a jury instruction violated due process because it obviated the requirement that the prosecution prove all the elements of the crime beyond a reasonable doubt.

Keeble v. United States, 412 U.S. 205, 208 (1967) that it is now beyond dispute that the defendant is entitled to a lesser included offense if the evidence would permit a jury rationally to find him guilty of the lesser offense and acquit him of the greater.

Jackson v. Virginia, 443 U.S. 304, 309 (1979); In re Winship, 394 U.S. 358, 25 L.Ed. 2d 368, 90 S.Ct. 1068, 10 Ohio Ops 2d 323, where a state prisoner who alleges that the evidence in support of his state conviction cannot fairly be characterized as sufficient to have led a rational trier of fact to find guilt beyond a reasonable doubt has stated a federal claim.

Johnson v. United States, 130 S.Ct. 1265, 599 U.S. 133 (2010) the court held that the prosecution can prove a battery in one of three (3) ways, State v. Hearn, 961 So. 2d 211, 218 (Fla. 2007) and the court is bound by the Florida Supreme Court's interpretation of the elements of the state law offense, including the Florida Supreme Court's holding that Florida Statute 784.03(1)(a)'s element of actually and intentionally touching another person is satisfied by any intentional contact, no how slight.

United States v. Lively, 803 F.2d 1124 (11th Cir. 1986) A defendant has the right to have a jury instructed on his theory of defense.

Lisenba v. California, 314 U.S. 219, 236, 86 L.Ed. 166 S.Ct. 280 (1941) Due process violated where lack of fundamental fairness prevents fair trial.

Wilson v. Sellers, 584 U.S. 138 S.Ct. 1188, 1192, 200 L.Ed. 2d 530 (2018) Requiring a full look through.

Kalappatt v. United States, 335 U.S. 601, 614-15, 93 L.Ed. 266, 69 S.Ct. 384 (1949)

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UNITED STATES V. CORNILLE, 92 F.3d 1108, 1109 11TH CIR. 1996)

JOHNSON V. FRANKEL, 117 S. CT. 1800, 138 L. ED. 2d 108 (1997)

STATEMENT OF THE CASE

ON AUGUST 22, 2007 PETITIONER WAS ARRESTED AND CHARGED WITH TWO(2) COUNTS OF ALLEGED LEWD OR LASCIVIOUS MOLESTATION PURSUANT TO FLA. STAT. 800.04

ON APRIL 9, 2008, A JURY TRIAL WAS CONDUCTED ON THE CHARGES OF LEWD OR LASCIVIOUS MOLESTATION ON A PERSON 12 YEARS OF AGE OR OLDER AND LEWD OR LASCIVIOUS MOLESTATION ON A PERSON 12 YEARS OF AGE BUT LESS THAN 16 YEARS OF AGE. PETITIONER WAS CONVICTED AS CHARGED ON COUNT 1 AND CONVICTED OF THE LESSER INCLUDED OFFENSE OF ATTEMPTED LEWD OR LEWD OR LASCIVIOUS MOLESTATION ON COUNT 2. PETITIONER WAS SUBSEQUENTLY SENTENCED TO 25 YEARS IN THE DEPARTMENT OF CORRECTIONS ON COUNT 1 FOLLOWED BY LIFE TIME PROBATION WITH GPS AND A CONCURRENT 5 YEARS ON COUNT 2.

ON APRIL 16, 2009, PETITIONER TIMELY FILED A NOTICE OF APPEAL. ON FEBRUARY 9, 2010, THE PUBLIC DEFENDER'S OFFICE FILED AN INITIAL BRIEF, AND ON SEPTEMBER 29, 2010, THE FIRST DISTRICT COURT OF APPEAL ENTERED A PER CURIAM AFFIRMED OPINION WITH A MANDATE BEING ISSUED ON NOVEMBER 24, 2010 (APPEAL NUMBER 1D09-1780. JUDGES THOMAS AND ROWE CONCURRING IN THE AFFIRMANCE, JUDGE BENTON DISSENTED WITHOUT A WRITTEN OPINION. Williams v. State, 48 So. 3d 59 (FLA. 1ST DCA 2010).

THE FOLLOWING THREE ISSUES WERE RAISED ON DIRECT APPEAL BY PETITIONER'S APPELLATE COUNSEL.

ISSUE I: THE TRIAL COURT ERRED IN DENYING PETITIONER'S REQUEST FOR AN INSTRUCTION ON THE LESSER INCLUDED OFFENSE OF SIMPLE BATTERY.

ISSUE II: THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR JUDGMENT OF ACQUITTAL IN COUNT 1. THE STATE FAILED TO INTRODUCE COMPETENT SUBSTANTIAL EVIDENCE TO ESTABLISH PETITIONER TOUCHED S.O. ON HER BUTTOCKS OR BREAST AREA IN A LEWD OR LASCIVIOUS MANNER.

ISSUE III: THE LIFE SENTENCE IMPOSED IN COUNT 1, VIOLATED PETITIONER'S CONSTITUTIONAL RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT.

ON OR ABOUT NOVEMBER 17, 2011 PETITIONER'S POSTCONVICTION COUNSEL MS. DEANNA K. MARSHALL ESQ. PREPARED AND FILED A RULE 3.850 MOTION ON BEHALF OF THE PETITIONER RAISING FIVE (5) CLAIMS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL AND ONE (1) CLAIM OF CUMULATIVE EFFECT OF INEFFECTIVE COUNSEL, THAT REQUIRED CONDUCTING AN EVIDENTIARY HEARING. THE POSTCONVICTION COURT DENIED THE MOTION AFTER THE HEARING. PETITIONER TIMELY APPEALED THE DENIAL TO THE FIRST DISTRICT COURT OF APPEAL AND WAS DENIED. THE MOTION FOR REHEARING WAS ALSO DENIED WILLIAMS V. STATE, 144 So.3d 991 (Fla. 1ST DCA 2014).

ON NOVEMBER 18, 2014 PETITIONER FILED HIS FIRST 2254 (d) FEDERAL HABEAS CORPUS PETITION RAISING THE THREE (3) DIRECT APPEAL ISSUES AND ALL OF HIS POSTCONVICTION RELIEF CLAIMS.

CHIEF UNITED STATES MAGISTRATE JUDGE MS. ELIZABETH M. TIMOTHY ISSUED AN ORDER TO SHOW CAUSE AND AFTER THE RESPONDENT'S RESPONSE SHE ENTERED A REPORT AND RECOMMENDATION ON MARCH 14, 2016 RECOMMENDING THAT THE PETITION BE DENIED SHE ASSERTED THE FOLLOWING;

IN PETITIONER'S REPLY TO RESPONDENT'S ANSWER, PETITIONER APPEARS TO RAISE THREE (3) ADDITIONAL GROUNDS FOR RELIEF, SPECIFICALLY, THE ISSUES HE PRESENTED ON DIRECT APPEAL OF HIS CONVICTIONS: (1) THE TRIAL COURT ERRED IN DENYING HIS REQUEST FOR A JURY INSTRUCTION ON THE LESSEER INCLUDED OFFENSE OF SIMPLE BATTERY, (2) THE TRIAL COURT ERRED IN DENYING HIS MOTION FOR JOA ON COUNT 1, BECAUSE THE STATE FAILED TO INTRODUCE COMPETENT SUBSTANTIAL EVIDENCE TO ESTABLISH THAT HE TOUCHED S.O. ON HER BUTTOCKS OR HER BREAST AREA IN A LEWD OR LASCIVIOUS MANNER, AND (3) PETITIONER'S LIFE SENTENCE IMPOSED ON COUNT 1 VIOLATED HIS CONSTITUTIONAL RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT. PETITIONER CONTENDS HE EXHAUSTED EACH OF THESE CLAIMS BY RAISING THEM IN HIS INITIAL BRIEF ON DIRECT APPEAL OF HIS CONVICTIONS.

SHE FURTHER ASSERTED THAT THE RESPONDENT DID NOT ADDRESS ANY OF THESE CLAIMS IN ITS ANSWER (INCLUDING WHETHER ANY OF THE CLAIMS WERE UNEXHAUSTED), BECAUSE PETITIONER ASSERTED THEM FOR THE FIRST TIME IN HIS REPLY.

ON APRIL 21, 2016 PETITIONER FILED A MOTION TO DISMISS AND ISSUE AN ORDER TO STAY AND ABeyANCE ASSERTING THAT HIS 2254 HABEAS CORPUS PETITION WAS A MIXED PETITION, BECAUSE THE MAGISTRATE JUDGE OPINIONED IN HER REPORT AND RECOMMENDATION THAT CLAIMS EIGHT (8) AND NINE (9) WERE UNEXHAUSTED. THE MOTION WAS REFERRED TO THE MAGISTRATE JUDGE ELIZABETH M. TIMOTHY.

IN HER SUPPLEMENTAL REPORT AND RECOMMENDATION SHE OPINIONED THAT PETITIONER'S HABEAS PETITION IS NOT TRULY A "MIXED" PETITION AS CONTEMPLATED IN RHINES. ALTHOUGH TWO (2) OF PETITIONER'S TEN (10) HABEAS CLAIMS WERE NOT FAIRLY PRESENTED TO THE STATE COURTS, THEY ARE TECHNICALLY EXHAUSTED BECAUSE STATE COURT REMEDIES ARE NO LONGER AVAILABLE. SEE WOODFORD V. NIGRO, 548 U.S. 81, 92 S.Ct. 2378, 165 L.Ed. 368 (2006) "IF STATE COURT REMEDIES ARE NO LONGER AVAILABLE THOSE REMEDIES ARE TECHNICALLY EXHAUSTED, BUT EXHAUSTION IN THIS SENSE DOES NOT AUTOMATICALLY ENTITLE THE HABEAS PETITIONER TO LITIGATE HIS OR HER CLAIMS IN FEDERAL COURT; INSTEAD, IF THE PETITIONER PROCEDURALLY DEFAULTED THOSE CLAIMS, THE PRISONER GENERALLY IS BARRED FROM ASSERTING THOSE CLAIMS IN A FEDERAL HABEAS PROCEEDING." THEREFORE, PETITIONER'S REQUEST TO STAY THIS CASE OR DISMISS IT WITHOUT PREJUDICE SHOULD BE DENIED.

ON AUGUST 1, 2016 THE UNITED STATES DISTRICT COURT JUDGE THE HONORABLE ROBERT L. HINKLE ADOPTED THE MAGISTRATE JUDGE'S REPORTS AND RECOMMENDATIONS IN HIS DENIAL OF PETITIONER'S 2254 HABEAS PETITION AS THE COURT'S OPINION WITH ADDITIONAL NOTES AS TO CLAIMS EIGHT (8) AND NINE (9).

THE COURT OPINIONED THAT UNDER THE ANTI-TERRORISM AND EFFECTIVE DEATH PENALTY ACT, THE PETITIONER WOULD BE ENTITLED TO RELIEF ON THE JURY INSTRUCTION CLAIM ONLY IF THE STATE COURT'S RULING " WAS CONTRARY TO OR INVOLVED AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES, AND BECAUSE THE SUPREME COURT HAS NOT EXTENDED BECK TO NON-CAPITAL CASES, PETITIONER WOULD LOSE HIS LESSER INCLUDED OFFENSE CLAIM EVEN IF THAT CLAIM HAD BEEN PROPERLY EXHAUSTED.

AND ON THE JUDGMENT OF ACQUITTAL CLAIM, THE EVIDENCE WAS SUFFICIENT TO GO TO THE JURY ON EACH COUNT. DENYING THE MOTION FOR JUDGMENT OF ACQUITTAL WAS NOT UNCONSTITUTIONAL.

AFTER THE DENIAL OF PETITIONER'S 2254 HABEAS PETITION AND (COA) CERTIFICATE OF APPEALABILITY BY THE UNITED STATES DISTRICT COURT ON AUGUST 1, 2016. PETITIONER TIMELY APPEALED THE DENIAL IN THE ELEVENTH CIRCUIT COURT OF APPEALS. ON OCTOBER 18, 2018, THE COURT DENIED THE WITH A WRITTEN OPINION AND ISSUED ITS MANDATE.

PETITIONER FILED A MOTION FOR AN EXTENSION OF TIME ON OR AROUND NOVEMBER 8, 2018 REQUESTING ~~AND~~ ADDITIONAL (60) DAYS TO FILE HIS MOTION FOR RECONSIDERATION AND TO RECALL THE MANDATE, MOTION WAS GRANTED.

ON JANUARY 2, 2019 PETITIONER FILED HIS MOTION FOR RECONSIDERATION AND TO RECALL THE MANDATE WITH A SWORN AFFIDAVIT. THE COURT DENIED THE MOTION ON ~~FEB. 20~~ / 2019.

ON MAY 14, 2019, PETITIONER FILED A PETITION FOR WRIT OF CERTIORARI IN THE UNITED STATES SUPREME COURT AFTER THE DENIAL OF THE MOTION FOR RECONSIDERATION TO CERTIFY A CONFLICT in decisions between THE 3RD, 6TH, 9TH, AND 11TH CIRCUITS AS TO THE LESSER INCLUDED OFFENSE REQUESTED JURY INSTRUCTION. ON OCTOBER 9, 2019, THE SUPREME COURT DENIED THE MOTION/PETITION FOR WRIT OF CERTIORARI APPEAL # 16-15863-G.

ON JULY 23, 2020, PETITIONER FILED A Fed. R. Civ. P. 60 (b) (6) MOTION IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA. THE DISTRICT COURT JUDGE ROBERT L. HINKLE DENIED THE MOTION ON JULY 29, 2020 OPINIONING THAT THE PETITIONER DID NOT FILE THE MOTION WITHIN A REASONABLE TIME AFTER THE AUGUST 1, 2016 RULING AS REQUIRED BY RULE 60 (C) (1). APPENDIX B.

PETITIONER TIMELY APPEALED THE DENIAL IN THE ELEVENTH CIRCUIT COURT OF APPEALS. ON AUGUST 23, 2021, THE COURT ENTERED AN UNPUBLISHED WRITTEN AFFIRMED OPINION, HOLDING THAT PETITIONER IS CORRECT THAT THERE IS NO SPECIFIC TIME LIMITATION ON FILING A RULE 60 (b) (6) MOTION, HE FAILS TO OFFER ANY GROUNDS FOR CONCLUDING THAT THE NEARLY FOUR (4) YEAR DELAY BETWEEN THE AUGUST 1, 2016 JUDGMENT DENYING HIS 2254 PETITION AND HIS JULY 2020 RULE 60 (b) MOTION WAS REASONABLE Fed. R. Civ. P. 60 (C) (1). EVEN ASSUMING THE TIME HE SPENT APPEALING THE JUDGMENT COULD NOT BE CHARGED AGAINST HIM, HE STILL WAITED WELL OVER A YEAR AFTER THE MANDATE ISSUED IN HIS APPEAL, AND OVER SIX (6) MONTHS AFTER THE SUPREME COURT DENIED CERTIORARI TO FILE THE RULE 60 (b) MOTION.

YET THERE APPEARS TO BE NO GOOD REASON FOR THE DELAY IN FILING BECAUSE HE DID NOT RELY ON ANY INTERVENING EVENTS. ACCORDINGLY, THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN CONCLUDING THAT PETITIONER'S RULE 60(b) MOTION WAS NOT FILED WITHIN A REASONABLE TIME. SEE FED. R. CIV. P. 60(c)(1).

THE COURT FURTHER OPINIONED THAT, IN ANY CASE, WHILE THE PETITIONER PERSUASIVELY SHOWS THAT THESE CLAIMS COULD HAVE BEEN RAISED AS FEDERAL IN NATURE IN STATE COURT, HE FALLS SHORT OF SHOWING THAT HE IN FACT DID SO. FOR THESE REASONS, WE AFFIRM THE DENIAL OF PETITIONER'S RULE 60(b) (6) MOTION.
Appendix A

ON SEPTEMBER 9, 2021 THE PETITIONER TIMELY FILED A PETITION FOR REHEARING EN BANC DEMONSTRATING THE FACTS AND CITED CASE LAW THAT THE COURT MIGHT HAVE OVERLOOKED OR MISAPPREHENDED AND TO CORRECT A FUNDAMENTAL MISCARRIAGE OF JUSTICE.

MOREOVER, PETITIONER FURTHER DEMONSTRATED IN HIS PETITION FOR REHEARING EN BANC THE REASONS AND PURPOSE FOR THE ALLEGED FOUR (4) YEAR DELAY IN FILING HIS FED. R. CIV. P. 60(b) (6) MOTION WAS FILED WITHIN A REASONABLE TIME AND THAT THE CLAIMS RAISED WERE PRESENTED AS A FEDERAL CONSTITUTIONAL CLAIM AS TO A DENIAL OF DUE PROCESS AS TO THE LESSER INCLUDED OFFENSE PURSUANT TO KEEBLE V. UNITED STATES, 412 U.S. 205, 208 (1948), AND THE JUDGMENT OF ACQUITTAL CLAIM BASED ON THE EVIDENCE WAS INSUFFICIENT WHERE THE STATE FAILED TO PROVE EVERY ELEMENT OF THE CRIME THAT THE PETITIONER WAS CHARGED WITH BEYOND A REASONABLE DOUBT HAS STATED A FEDERAL CONSTITUTIONAL CLAIM PURSUANT TO THE UNITED STATES SUPREME COURTS OPINIONS IN JACKSON V. VIRGINIA, 443 U.S. 307, 309 (1979) AND IN RE WINSHIP, 397 U.S. 358, 25 L. Ed. 2d 368, 90 S. CT. 1068, 51 OHIO OPS 2d 323. Appendix E

PETITIONER FURTHER ASSERTED THAT HE HAS DEMONSTRATED "due diligence THROUGHOUT HIS PROCEEDINGS SEEKING RELIEF DUE TO A FUNDAMENTAL MISCARRIAGE OF JUSTICE AND A DENIAL OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW UNDER EXTRAORDINARY CIRCUMSTANCES."

REASONS FOR GRANTING THE PETITION

THE PETITIONER ASSERTS THE FACT THAT THE "CATCH ALL" SUBSECTION OF Fed. R. Civ. P. 60 (b) (6) PROVIDES THAT THE COURT MAY RELIEVE A PARTY FROM A FINAL ORDER BASED ON ANY OTHER REASON JUSTIFYING RELIEF FROM THE OPERATION OF THE JUDGMENT, Fed. R. Civ. P. 60 (b) (6), HOLDS THAT A MOVANT NEED NOT FILE A Rule 60 (b) (6) MOTION WITHIN A YEAR OF THE JUDGMENT, AS LONG AS THE MOTION IS FILED WITHIN A REASONABLE TIME, Fed. R. Civ. P. 60 (b) (6).

AS IN THE INSTANT CASE, THE ELEVENTH CIRCUIT COURT OF APPEALS HELD IN ITS UNPUBLISHED WRITTEN OPINION DENYING PETITIONER'S Rule 60 (b) (6) MOTION THAT PETITIONER WAS CORRECT THAT THERE WAS NO SPECIFIC TIME LIMITATION ON FILING A Rule 60 (b) (6) MOTION. HE FAILED TO OFFER ANY GROUNDS FOR CONCLUDING THAT THE NEARLY FOUR (4) YEAR delay between THE AUGUST 1, 2016 JUDGMENT DENYING HIS 2254 PETITION AND HIS JULY 2020 60 (b) (6) MOTION WAS REASONABLE ASSUMING THE TIME HE SPENT APPEALING THE JUDGMENT COULD NOT BE CHARGED AGAINST HIM, HE STILL WAITED WELL OVER A YEAR AFTER THE MANDATE WAS ISSUED IN HIS APPEAL AND (6) MONTHS AFTER THE UNITED STATES SUPREME COURT DENIED HIS WRIT OF CERTIORARI TO FILE HIS Rule 60 (b) (6) MOTION. APPENDIX A

PETITIONER FURTHER ASSERTS THAT THE ELEVENTH CIRCUIT COURT OF APPEALS UNPUBLISHED WRITTEN OPINION AFFIRMING THE DENIAL OF HIS Rule 60 (b) (6) MOTION WAS NOT FILED WITHIN A REASONABLE TIME WAS ERRONEOUS BECAUSE PETITIONER DEMONSTRATED THAT THE 11TH CIRCUIT HAD JURISDICTION OF THE APPEAL OF HIS HABEAS PETITION AND HIS CERTIFICATE OF APPEALABILITY FROM 2016 UNTIL OCTOBER 15, 2018 WHEN THE MANDATE WAS ISSUED. PETITIONER THEN FILED A MOTION EXTENDING THE TIME TO FILE A MOTION TO RECONSIDER AND TO RECALL MANDATE WHICH WAS DENIED ON FEBRUARY 20, 2019. THEN ON MAY 14, 2019 HE FILED A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT WHICH WAS DENIED ON OCTOBER 9, 2019.

AROUND NINE (9) OR TEN (10) MONTHS LATER PETITIONER FILED HIS Rule 60 (b) (6) MOTION FOR RELIEF IN JUDGMENT IN THE UNITED STATES DISTRICT COURT WHICH WAS WITHIN A YEAR PURSUANT TO Fed. R. Civ. P. 60 (c) (1).

FURTHERMORE, A DETERMINATION OF WHAT CONSTITUTES A REASONABLE TIME DEPENDS ON THE FACTS IN AN INDIVIDUAL CASE, INCLUDING WHETHER THE MOVANT HAD A GOOD REASON FOR THE DELAY IN FILING AND WHETHER THE NON-MOVANT WOULD BE PREJUDICED BY THE DELAY.

THEREFORE, SINCE THE ELEVENTH CIRCUIT COURT OF APPEALS CONCEDED IN ITS WRITTEN OPINION THAT THE TIME PETITIONER SPENT APPEALING HIS JUDGMENT COULD NOT BE CHARGED AGAINST HIM WHEN HE FILED HIS RULE 60(b)(6) MOTION, PETITIONER ASSERTS THAT BASED UPON HIS DILIGENT EFFORTS IN ADHERING TO THE FEDERAL RULES OF CRIMINAL AND CIVIL PROCEDURE, SEEKING RELIEF FROM HIS JUDGMENT AND CONVICTION HE FILED HIS RULE 60(b)(6) MOTION WITHIN A REASONABLE TIME BASED UPON THE FILINGS IN HIS CASE AND CONTINUOUS JURISDICTION OF HIS CASE BY THE FEDERAL COURTS SINCE HIS AUGUST 1, 2016 JUDGMENT OF HIS FEDERAL 2254 HABEAS PETITION AND COA.

MOREOVER, AS THE COURT OF APPEALS HELD IN ITS WRITTEN OPINION THAT THE PETITIONER PERSUASIVELY SHOWED THAT CLAIMS EIGHT (8) AND NINE (9) COULD HAVE BEEN RAISED AS FEDERAL IN NATURE IN STATE COURT, HE FALLS SHORT OF SHOWING THAT HE IN FACT DID SO.

THE RECORD DEMONSTRATES THAT THE PETITIONER WAS CHARGED WITH TWO (2) COUNTS OF ALLEGED LEWD OR INDULGIOUS MOLESTATION ON TWO (2) DIFFERENT ALLEGED VICTIMS, COUNT (1) LESS THAN 12 YEARS OF AGE, COUNT (2) 12 YEARS OF AGE OR OLDER BUT LESS THAN 16 YEARS OF AGE WHICH WERE TRIED TOGETHER. HOWEVER, THE JURY RETURNED A VERDICT OF GUILTY AS CHARGED ON COUNT (1) AND THE LESSER OF ATTEMPTED LEWD OR INDULGIOUS MOLESTATION AS TO COUNT (2).

PETITIONER DEMONSTRATED THAT THE RECORD REFLECTED THAT THE STATE AND TRIAL COURT BOTH CONCEDED THAT THE EVIDENCE ADDUCED AT TRIAL SUPPORTED THE REQUESTED LESSER INCLUDED OFFENSE OF SIMPLE BATTERY THAT HE ASSERTED IN HIS RULE 60(b)(6) MOTION THAT THE STATE FAILED TO PROVE EVERY ELEMENT OF THE CRIME HE WAS CHARGED WITH DEPRIVING HIM OF HIS PRIMARY DEFENSE, THEREBY AS TO WHETHER OR NOT HE COMMITTED BATTERY, MOLESTATION OR ATTEMPTED MOLESTATION. AND THE TRIAL COURTS FAILURE TO GIVE THE INSTRUCTION DENIED HIM HIS DUE PROCESS RIGHTS TO A FAIR TRIAL UNDER THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION. AND THE TRIAL COURT GIVEN THE REQUESTED INSTRUCTION THERE'S A REASONABLE

PROBABILITY THAT THE JURY WOULD HAVE ACQUITTED HIM OF THE GREATER OFFENSE AND CONVICTED HIM OF THE LESSER OFFENSE "ESPECIALLY" AS TO COUNT (2) WHERE HE WAS CONVICTED OF ATTEMPTED LEWD OR INDECENT MOLESTATION. THE FAILURE TO INSTRUCT ON A LESSER-INCLUDED OFFENSE WHICH IS SUPPORTED BY THE EVIDENCE CONSTITUTES A DUE PROCESS VIOLATION AND CONTRARY TO KEEBLE V. UNITED STATES, 412 U.S. 205, 212, -13, 36 L.Ed. 2d 844, 93 S.Ct. 1993 (1973); See ALSO LISENBA V. CALIFORNIA, 314 U.S. 219, 236, 86 L.Ed. 166, 62 S.Ct. 280 (1941) DUE PROCESS VIOLATED WHERE LACK OF FUNDAMENTAL FAIRNESS PREVENTS FAIR TRIAL.

IN ADDITION FLORIDA ASSESS THE SUFFICIENCY OF THE EVIDENCE UNDER STANDARD IDENTICAL TO FEDERAL APPLIED IN JACKSON V. VIRGINIA, 443 U.S. 304, 99 S.Ct. 2781, 2798, 61 L.Ed. 2d 560 (1979); IN RE WINSHIP, 397 U.S. 358, 25 L.Ed. 2d 368, 90 S.Ct. 1068, 51 OHIO OPS 323, HOLDINGS THAT IT IS CLEAR THAT A STATE PRISONER WHO ALLEGES THAT THE EVIDENCE IN SUPPORT OF HIS STATE CONVICTION CANNOT BE FAIRLY CHARACTERIZED AS SUFFICIENT TO HAVE LED A RATIONAL TRIER OF FACT TO FIND GUILT BEYOND A REASONABLE DOUBT HAS STATED A FEDERAL CONSTITUTIONAL CLAIM.

THEREFORE, SINCE PROOF BEYOND A REASONABLE DOUBT IS AN ESSENTIAL OF FOURTEENTH AMENDMENT OF DUE PROCESS. PETITIONER CLEARLY DEMONSTRATED BY THE RECORD THAT HIS JUDGMENT OF ACQUITTAL COUNSEL STATED A FEDERAL CONSTITUTIONAL CLAIM AT HIS EVIDENTIARY JUDGMENT OF ACQUITTAL HEARING WHERE COUNSEL ASSERTED THAT THE STATES EVIDENCE WAS INSUFFICIENT AND FAILED PROVE IT BEYOND A REASONABLE STATED A FEDERAL CONSTITUTIONAL CLAIM.

WHEREFORE, BASED UPON THE FACTS, RECORD, SWORN AFFIDAVIT, AND CITED AUTHORITIES THE PETITION SHOULD BE GRANTED TO PREVENT A DENIAL OF DUE PROCESS AND CORRECT A FUNDAMENTAL MISFEASANCE OF JUSTICE.

FOOTNOTE: PURSUANT TO WILSON V. SELLERS, 584 U.S. 138 S.Ct. 1188, 1192, 200 L.Ed. 2d 530 (2018) BASED UP THE FACTS, RECORD AND CITED AUTHORITIES IN THE INSTANT PETITION IN ACCORDANCE WITH SELLERS REQUIRES A FULL LOOK THROUGH.

CONCLUSION

This Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

/s/ John O. Williams

Date: _____

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WASHINGTON DC,

JOHN O. WILLIAMS — PETITIONER
(Your Name)

VS.

RICKY D. DIXON, SEC'y DOC. — RESPONDENT(S)**PROOF OF SERVICE**

I, JOHN O. WILLIAMS, do swear or declare that on this date, _____, 2022, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

SUPREME COURT OF THE UNITED STATES, ONE FIRST ST. N.E.
WASHINGTON, DC 20543, AND THE OFFICE OF THE ATTORNEY
GENERAL, THE CAPITOL PL-01 TALLAHASSEE FLA. 32399-1050

I declare under penalty of perjury that the foregoing is true and correct.

Executed on MARCH 7TH, 2022

John O. Williams
(Signature)

NOTARY

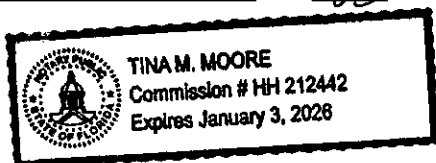
STATE OF FLORIDA

COUNTY OF Santa Rosa

Before me, the undersigned authority, this day personally appeared Williams, John, who first being duly sworn, says that he has read the foregoing and has personal knowledge of the facts and matters therein set forth and alleged and that each and all of these facts and matters are true and correct.

/s/ John Williams
JOHN O. WILLIAMS
DC# 947298
Blackwater River Corr. Facility
5914 Jeff Ates Road
Milton, Florida 32583

SWORN AND SUBSCRIBED TO before me on this 7 day of March, 2022



/s/ Tina M. Moore
Notary Public

Personally known _____ or

Identification produced _____

Type of Identification produced FDOC ID

GENERAL AFFIDAVIT

STATE OF FLORIDA

COUNTY OF MILTON

SS 265-69-0206

I, JOHN O. WILLIAMS, do hereby swear that the following statement is true and correct and made of my own free will from my own personal knowledge.

I AM THE PETITIONER IN THE INSTANT CAUSE AND SUBMITS THIS PETITION AS A PRISONER PRO SE LITIGANT UNSKILLED IN THE SCIENCE OF LAW AND WISHES THAT MY PETITION AND ENTRATIES TO THE COURT BE RECEIVED AS SUCH. PETITIONER MOVES THIS HONORABLE COURT NOT TO LET OR PERMIT FORM TO OVERRIDE SUBSTANCE OR PROCEDURAL TECHNICALITIES TO DEFEAT FAIRNESS AND JUSTICE.

MOREOVER, A PRO SE LITIGANT'S PLEADINGS ARE TO BE CONSTRUED LIBERALLY AND HELD TO A LESS STRINGENT STANDARD THAN FORMAL PLEADINGS DRAFTED BY LAWYERS. HAINES V. KERNER, 404 U.S. 519 (1972); BOAG V. McDOUGALL, 454 U.S. 363 (1982).

UNDER PENALTIES OF PERJURY, I declare THAT I HAVE READ THE FOREGOING AFFIDAVIT AND THE FACTS STATED IN IT ARE TRUE AND CORRECT IN ACCORDANCE WITH 92.525 OF THE FLORIDA STATUTES.

Executed on 3/8/22 By John O. Williams
(DATE) (AFFIANT)

THE PETITIONER ASSERTS THAT HIS due PROCESS RIGHTS TO A FAIR TRIAL WERE DENIED UNDER THE due PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION AND THAT HE'S BEING HELD IN CUSTODY IN VIOLATION OF THE LAWS AND TREATIES OF THE UNITED STATES CONSTITUTION. PURSUANT TO WILSON V. SELLERS, 584 U.S. 138 S.Ct. 1188, 1192, 200 L.Ed. 2d 530 (2018) REQUIRES A FULL LOOK THROUGH.

MOREOVER, PETITIONER FURTHER ASSERTS THE FOLLOWING IN SUPPORT OF HIS PETITION FOR WRIT OF CERTIORARI THATS SUPPORTED BY THE PETITION, RECORD, AND CITED AUTHORITIES THEREIN:

1) THE UNITED STATES DISTRICT COURT AND THE ELEVENTH CIRCUIT COURT OF APPEALS ERRED AND ABUSED ITS DISCRETION IN THE DENIAL OF PETITIONER'S Rule 60 (b) (6) MOTION WHERE THE RECORD DEMONSTRATES THAT PETITIONER WAS APPEALING HIS AUGUST 1, 2016 JUDGMENT UP UNTIL HE FILED HIS Rule 60 (b) (6) MOTION ON JULY 23, 2020 AFTER HE SOUGHT A WRIT OF CERTIORARI IN THE UNITED STATES SUPREME COURT WHICH WAS DENIED ON PRIOR TO THE FILING OF THE Rule 60 (b) (6) MOTION ON JULY 23, 2020. THE PROCEDURAL HISTORY OF JUDGMENT AND FILINGS ARE CONTAINED IN THE STATEMENT OF THE CASE IN THE INSTANT PETITION AND PETITIONER'S PETITION FOR A REHEARING AT APPENDIX (E).

2) PETITIONER STATED A FEDERAL CONSTITUTIONAL CLAIM IN THE STATE COURT AT HIS RENEWED MOTION FOR JUDGMENT OF ACQUITTAL HEARING ON AUGUST 27, 2008 WHEN HIS COUNSEL ARGUED THAT THE STATE'S EVIDENCE WAS INSUFFICIENT AND THAT THE STATE FAILED TO PROVE EVERY ELEMENT OF CRIME CHARGED BEYOND A REASONABLE DOUBT. SEE JACKSON V. VIRGINIA, 443 U.S. 304, 309 (1979); IN RE WINSHIP, 397 U.S. 358, 25 L.Ed. 2d 368, 90 S.Ct. 1068, 51 OHIO OPS 323 (1970).

3) PETITIONER HAS EXHIBITED DUE DILIGENCE THROUGH HIS PROCEEDINGS UNDER EXTRAORDINARY CIRCUMSTANCES AND BASED UPON THE RECORD, FACTS AND CITED AUTHORITIES JUSTIFIES THE REOPENING OF HIS JUDGMENT IN ORDER TO PREVENT DENIAL OF DUE PROCESS AND CORRECT A FUNDAMENTAL MISARRANGE OF JUSTICE, IN WHICH REQUIRES A FULL LOOK THROUGH AND THE REASON THE INSTANT PETITION SHOULD BE GRANTED. SEE, WILSON V. SELLERS, 584 U.S. 138 S.Ct. 1188, 200 L.Ed. 2d 530 (2018).