

21-7518

No. _____

U.S. SUPREME COURT
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

MAR 25 2022

OFFICE OF THE CLERK

JAY ALAN MYERS — PETITIONER
(Your Name)

vs.

SECRETARY, FLA. DEPT. OF CORRECTIONS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. DIST. Ct. MIDDLE DIST OF FLORIDA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JAY ALAN MYERS
(Your Name)

5052 SAN ROCCO COURT
(Address)

DUNTA GORDA, FLORIDA 33450-7922
(City, State, Zip Code)

(941) 575-1992
(Phone Number)

QUESTION(S) PRESENTED

INTRODUCTION: EVERYTHING IN THIS CASE REVOLVES AROUND MYERS'S FILING AN UNAUTHORIZED PRO-SE NOTICE OF APPEAL SOLELY ON THE TRIAL VERDICT WHILE REPRESENTED BY COUNSEL. THE FLORIDA COURT IMPROPERLY PERFECTED THE UNAUTHORIZED NOTICE INSTEAD OF DISMISSING IT AS A NULLITY, AND THEN INCORRECTLY RULED THAT MYERS HAD ABANDONED DEFENSE COUNSEL'S MOTIONS FOR NEW TRIAL AND JUDGMENT OF A CREDITAL ASSERTING JURY TAMPERING AND LACK OF EVIDENCE. THE MISTAKEN APPEAL PERFECTION HAS CAUSED THESE 2 FATAL ERRORS TO GO UNDECIDED THROUGHOUT THE APPELLATE PROCESS.

1. CAN A FLORIDA TRIAL COURT UNLAWFULLY PERFECT AN UNAUTHORIZED PRO-SE NOTICE OF APPEAL, ON A VERDICT ONLY WHILE REPRESENTED BY DEFENSE COUNSEL, BY IMPROPERLY CLAIMING LACK OF JURISDICTION, IN VIOLATION OF THE FLORIDA CONSTITUTION AND PRECEDENT LAW, TO AVOID 2 FATAL TRIAL ERRORS?
2. CAN A STATE POSTCONVICTION TRIAL COURT, IN DIRECT VIOLATION OF FLORIDA SUPREME COURT PRECEDENT, DISALLOW A CRIMINAL DEFENDANT FROM FILING A VALID POSTCONVICTION CLAIM OF JURY TAMPERING BY HOLDING IT IS NOT COGNIZABLE FOR THE FIRST TIME IN A POSTCONVICTION MOTION UNDER 3.850 Fla. R. Crim. Proc.?
3. WAS APPELLATE COUNSEL INEFFICIENT FOR NOT ATTACKING ON DIRECT APPEAL THE FACT THAT THE STATE DID NOT AND COULD NOT PROVE, IN TRIAL, AN ESSENTIAL ELEMENT OF THE CRIME CHARGED; AND WAS THE CONSTRUCTIVE DENIAL OF THE ASSISTANCE OF APPELLATE COUNSEL PER-SE PREJUDICIAL TO MYERS?

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:

RELATED CASES

1. MYERS V STATE, 05-64F FLORIDA DIRECT APPEAL AND POSTCONVICTION HEARING.
2. MYERS V SECRETARY, FLA. DOC., 2:17-cv-493-JLB-MRM, U.S. Dist. Ct., Middle Dist. of Florida, Fr. MYERS DIVISION
3. MYERS V SECRETARY, FLA. DOC, 21-12004, U.S. COURT OF APPEALS, 11th CIRCUIT.

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BASIS FOR JURISDICTION

THE 11TH CIRCUIT ENTERED A RULING DENYING A COA ON 10/14/2021. IT DENIED A MOTION FOR RECONSIDERATION ON 12/29/2021. MYERS IS WITHIN HIS 90 DAYS TO REQUEST CERTIORARI.

AS ELABORATED ON IN THE ENCLOSED 3 QUESTIONS, THIS COURT HAS JURISDICTION TO RESOLVE CONFLICT WITH RULES 10 (a), (b), (c) RULES OF U.S. SUP. CT. THERE ARE MULTIPLE INCIDENTS OF CONFLICT WITH U.S. SUP. CT. PRECEDENT, FLA. SUP. CT. PRECEDENT, AND MISAPPLICATION OF THE RULES OF COURT SO Egregious AS TO VIOLATE MYERS'S 5TH AND 6TH AMEND RIGHTS.

MYERS HAS FAIRLY PRESENTED HIS ISSUES TO THE LOWER TRIBUNALS. ALTHOUGH SOMETIMES INARTFULLY PLED, THE ISSUE AND ITS CONSTITUTIONAL IMPLICATIONS HAVE BEEN ASSERTED.

THIS COURT HAS JURISDICTION UNDER § 2254 (d)(1) FED. R. CIV. PROC AS ELABORATED ON IN WHITE V WOODALL, 572 U.S. 415 (2014), PAGES 420-427.

IN ABUNDANCE WITH THE AEDPA, THIS COURT HAS JURISDICTION TO REVIEW AND GRANT RELIEF AS THE ERRORS SHOWN IN THE 3 QUESTIONS RESULTED IN RULINGS THAT ARE IN DIRECT CONFLICT WITH U.S. SUP. CT. PRECEDENT AND WERE BASED ON AN UNREASONABLE AND RIDICULOUS DETERMINATION OF FACTS DUE TO THE LACK OF ANY INCULPATORY EVIDENCE PRESENTED IN THE TRIAL COURT.

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

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A, E 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, C 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 the petition and is

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

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JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was ~~DECEMBER 29, 2021~~ OCTOBER 14, 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: DECEMBER 29, 2021, 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: _____, 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. § 1257(a).

STATEMENT OF THE CASE

1. On 8/22/06, Myers was found guilty of simple robbery for allegedly taking his coworker's shift deposit where they both worked as front desk clerks. There was no forensic evidence of any crime and no evidence from days inn that anything of value or any money was missing. The conviction was based solely on the uncorroborated testimony of Myers's coworker, who was equally in doubt, and what the bailiff told the jury while they were deliberating.
2. On 9/1/06, Myers' trial counsel, Kevin Shirley, filed timely, authorized posttrial motions for New Trial and Judgment of Acquittal. These motions clearly asserted claims of jury tampering and lack of evidence to prove the essential element of robbery under § 812.13 Fla. Stat.
3. On 9/11/06, Myers filed an unauthorized, pro-se notice of appeal, while still represented by trial counsel, on the trial verdict only. Myers could not contract his attorney after the trial. Out of fear and confusion, he filed the unauthorized notice in an attempt to keep the fatal errors from being overlooked. He did not know that his filing was not allowed and must be dismissed under law.
4. On 10/16/06, Myers was adjudicated guilty by the trial court and sentenced to 20 years despite the fact that he was offered 3 years by the state and his sentencing scoresheet scored him at 31.9 months and no new charges or evidence to aggravate surfaced before trial, so Myers received an extra 17 years of punishment for exercising his trial rights.

The trial court refused to hear the posttrial motions before sentencing as required by law, claiming that Myers had abandoned them with his notice of appeal that was unauthorized. The court had "improperly" perfected an improper notice instead of dismissing it as a nullity. ① The trial court claimed it has no jurisdiction to hear the motions due to the appeal.

5. Myers's appellate counsel, Ryan Truskowski, Esq., handled the appeal. He filed a one issue brief on an unpreserved issue, which was the same as sending blank paper. He never addressed the failure to prove the crime or the jury tampering. The Second District Court of Appeals of Florida immediately per curiam affirmed. Counsel's useless effort left Myers, constructively, without a direct appeal, which is a right in Florida.

① If the trial court did not have jurisdiction to hear the posttrial motions, then it did not have jurisdiction to impose sentence. They can't have it both ways.

6. MYERS FILED A HABEAS CORPUS FOR INEFFECTIVE ASSISTANCE OF COUNSEL PER 9.141 FLA. R. App. PROC. WHICH WAS DENIED BY THE SECOND DISTRICT COURT OF APPEAL. HOWEVER, A BAR COMPLAINT ON TRUSKOSKI BY MYERS WAS FOUND TO HAVE MERIT AND A GRIEVANCE PANEL WAS FORMED. ②

7. MYERS PROCEEDED IN THE FLORIDA APPELLATE PROCESS WITH HIS MOTION FOR POSTCONVICTION RELIEF PURSUANT TO FLA. R. CRIM. PROC. 3.850. IN THIS MOTION, HE PRESENTED THE JURY TAMPERING CLAIM AND THE CLAIM ALLEGING FAILURE TO PRESENT SUFFICIENT EVIDENCE AT TRIAL TO PROVE THE ESSENTIAL ELEMENTS OF ROBBERY IN FLORIDA. HE ALSO RAISED AN INEFFECTIVENESS OF TRIAL COUNSEL CLAIM FOR NOT ADDRESSING THE WITNESS PERJURIES AND LACK OF EVIDENCE AND FOR NOT DEMANDING MYERS'S UNAUTHORIZED APPEAL NOTICE BE DISMISSED AS A NULLITY. ③

THE POSTCONVICTION COURT HELD AN EVIDENTIARY HEARING ON MYERS'S MOTION. MYERS WAS APPOINTED, M.L. CONEN, AS COUNSEL DUE TO THE HABERSARIAL NATURE OF THE HEARING. HE TOLD MYERS THAT HE WOULD NOT PURSUE THE INEFFECTIVENESS CLAIM AGAINST MR. SHIRLEY VIGOROUSLY BECAUSE THEY WERE FRIENDS AND HE DID NOT WANT TO HURT HIS CAREER. MYERS MOVED TO DISMISS CONEN AND PROCEED PRO-SE IN THE HEARING, BUT THE COURT REFUSED AND WOULD NOT ALLOW MYERS TO PARTICIPATE IN THE HEARING.

THE POSTCONVICTION COURT REFUSED TO HEAR MYERS'S CLAIM OF JURY TAMPERING. THE COURT HELD THAT JURY TAMPERING MUST BE BROUGHT ON DIRECT APPEAL. MYERS BROUGHT TO THE COURT'S ATTENTION THAT THE FLORIDA SUPREME COURT, IN MARSHALL V. STATE, 854 So.2d 1235 (FLA. 2003), HELD THAT A CRIMINAL DEFENDANT "CAN" BRING A CLAIM OF JURY TAMPERING FOR THE FIRST TIME IN A POSTCONVICTION MOTION FOR EXTRINSIC MATTERS NOT INHERENT IN THE VERDICT. THE COURT STILL REFUSED TO ADDRESS MYERS'S CLAIM EVEN THOUGH IMPROPER COMMENTS BY THE BRIEFER ARE EXTRINSIC AND IMPROPER SINCE BEING RULED AS SUCH BY THE U.S. SUPREME COURT IN 1892 IN MATTOX V. U.S., 146 U.S. 140 (1892). THE COURT THEN DENIED MYERS ANY RELIEF FROM HIS MOTION.

8. MYERS APPEALED TO THE SECOND DISTRICT COURT OF APPEAL IN FLORIDA. THE COURT AFFIRMED THE LOWER TRIBUNAL'S RULING ON THE 3.850 MOTION. THE APPEAL COURT AFFIRMED THE EVIDENTIARY HEARING RESULTS, BUT DID NOT REACH THE MERITS OF THE PROPERLY RAISED JURY TAMPERING CLAIM.

9. MYERS CONTINUED THE APPELLATE PROCESS BY FILING A HABEAS CORPUS PETITION PER § 2254 FED. R. CRIM. PROC. WITH THE U.S. DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, FT. MYERS DIVISION. MYERS PRESENTED HIS PETITION AS 5TH, 6TH, AND 14TH AMEND. U.S. CONST. CLAIMS AS HE HAD IN THE STATE COURTS. THE COURT DENIED THE PETITION, AFFIRMING THE STATE COURT RULINGS, AND DENYING MYERS THE ABILITY TO APPLY FOR A COA.

① MYERS DROPPED THE COMPLAINT IN EXCHANGE FOR TRUSKOSKI'S HELP WITH HIS POSTCONVICTION MOTION.

③ MYERS COUNSEL WOULD NOT ATTACK THESE POINTS AS MYERS ASKED AND THE COURT DENIED MYERS TO DO IT

MYERS FILED A MOTION UNDER RULE 59 BECAUSE THE DISTRICT COURT HAD UPHOLD 3 ERRONEOUS RULINGS BY THE STATE COURTS THAT VIOLATED MYERS'S CONSTITUTIONAL RIGHTS. NAMELY, THAT JURY TAMPERING IS NOT COGNIZABLE FOR THE 1ST TIME IN A 3.850 MOTION WHEN THE FIA. SUP. CT. RULED THAT IT IS; THAT THE COURT IMPROPERLY RULED MYERS' AUTHORIZED POSTTRIAL MOTIONS ABANDONED WHEN THE STATE COURT ILLEGALLY PERFECTED MYERS'S UNAUTHORIZED PRO-SE NOTICE OF APPEAL ON THE VERDICT OF THE TRIAL ONLY, WHILE REPRESENTED BY COUNSEL; AND THAT THE STATE DID NOT AND COULD NOT HAVE PROVEN THE 1ST ESSENTIAL ELEMENT OF ROBBERY UNDER 812.13 FL. STAT. THAT SHOULD HAVE BEEN RAISED BY APPELLATE COUNSEL ON DIRECT APPEAL.

1D. MYERS THEN FILED FOR A CERTIFICATE OF APPEALABILITY FROM THE 11TH CIRCUIT COURT OF APPEALS. THE COURT REFUSED HIM A COA AND IN FORMA PAUPERIS. MYERS FILED A MOTION FOR RECONSIDERATION OF THE COURT'S REFUSAL OF OCTOBER 14, 2021. ON 12/29/2021, THE 11TH CIRCUIT DENIED MYERS'S MOTION FOR RECONSIDERATION.

HENCE, MYERS FILES THIS PETITION FOR CERTIORARI WITH THIS COURT WITHIN NINETY DAYS PURSUANT TO RULE 13, RULES OF THE SUPREME COURT OF THE UNITED STATES.

Argument:

For 17 years, the case at hand has been moving through its first line of appeals. At every point, Myers has presented the errors brought in this certiorari's 3 questions in some form or fashion to all of the lower tribunals, both state and federal. Granted, Myers is a layman at law and his filings are imperfectly pled, he still fairly presented every issue at every step of the proceedings.

The Florida state courts were patently wrong for excusing Myers's appellate counsel for not attacking that the state failed to prove the elements of the asserted crime of robbery under § 812.13 Fla. Stat. for not allowing Myers to bring jury tampering for the first time in his postconviction motion per 3.850 Fla. R. Crim. Proc. when the Florida Supreme Court precedent says he can; and for holding that Myers's unauthorized, pro-se notice of appeal on the trial verdict only, while represented by counsel was lawful and able to be perfected in appeal causing him to abandon the posttrial motions when both state and federal precedent say that a trial verdict cannot be appealed and a pro-se notice while represented by counsel is a nullity and must be dismissed as such.

The federal courts erred in denying Myers's § 2254 petition and request for certificate of appealability by misapprehending the issues presented and affirming the state courts' decisions per-se. By agreeing with the state against Myers, the middle district and 11th circuit courts have placed themselves in contradiction and violation of U.S. Sup. Ct. precedent, Fla. Sup. Ct. precedent and Myers's 5th, 6th, and 14th Amend rights under the U.S. Constitution.

As such, the Florida state courts and federal courts have satisfied the requirements of Rule 10, (a), (b), (c) of the Rules of the Supreme Court of the United States. The serious violations and failure to address Myers's fatal trial errors will be presented below by question. These errors have never been addressed on their merits violating Myers's constitutional rights. The avoidance of reviewing these errors through the state courts' misapplication of procedural rules and the cosigning of those misapplications of procedure clearly invokes the discretionary power of this court.

The 17 year life of this case and the entangled mess of rulings has caused Myers' 17 years of unjust incarceration, trampled his due process and trial rights, and made farce of precedent. It is hard to imagine a case that is riper for and in need of this court to step in with its supervisory power and ensure that Myers's fatal trial errors are addressed on their merits.

QUESTION 1:

CAN A FLORIDA TRIAL COURT UNLAWFULLY PERFECT AN UNAUTHORIZED PRO-SE NOTICE OF APPEAL ON A VERDICT ONLY, WHILE REPRESENTED BY DEFENSE COUNSEL, BY IMPROPERLY CLAIMING LACK OF JURISDICTION IN VIOLATION OF THE FLORIDA CONSTITUTION AND PRECEDENT LAW, TO AVOID A FATAL TRIAL ERROR?

1. THE FLORIDA TRIAL COURT AND APPELLATE COURT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL AND FLORIDA LAW THAT CONFLICTS WITH U.S. SUP. CT. PRECEDENT AND THE FLORIDA CONSTITUTION.

ARTICLE 5, § 4 (b)(1) OF THE FLA. CONST. STATES THAT "FLORIDA DISTRICT COURTS OF APPEAL SHALL HAVE JURISDICTION TO HEAR APPEALS, THAT MAY BE TAKEN AS A MATTER OF RIGHT, FROM "FINAL JUDGEMENTS" OR ORDERS OF TRIAL COURTS," CITING BACHELOR 2014 U.S. DIST. LEXIS 78082.

§ 9.140 (b)(1)(A) FLA. R. APP. PROC. STATES THAT AN APPEAL MAY BE TAKEN FROM A "FINAL JUDGEMENT" ADJUDICATING GUILT. 28 U.S. CODE § 1291 STATES THAT THE COURTS OF APPEAL SHALL HAVE JURISDICTION OF APPEALS FROM ALL "FINAL DECISIONS" OF THE DISTRICT COURTS OF THE U.S.

IN MILBAND ASOPHY CORPORATION V. U.S., 489 U.S. 794 (1989), THIS COURT HELD, "IN THE JUDICIARY ACT OF 1789, 1 STAT. 73, THE 1ST CONGRESS ESTABLISHED THE PRINCIPLE THAT "ONLY FINAL JUDGEMENTS" AND DECREES OF THE FEDERAL DISTRICT COURTS MAY BE REVIEWED ON APPEAL. THE STATUTE HAS CHANGED LITTLE SINCE THEN. IN CRIMINAL CASES, THIS "PROHIBITS APPEALATE REVIEW" UNTIL "AFTER" CONVICTION AND IMPOSITION OF SENTENCE.

SEE ALSO: FLANAGAN V. U.S., 465 U.S. 259 (1984); U.S. V. BERMAN, 302 U.S. 211 (1937)

IN BACHELOR V. GELED GAS CO., 2014 U.S. DIST. LEXIS 78082, @ 5, "DISTRICT COURTS OF APPEAL "ONLY" HAVE JURISDICTION TO HEAR APPEALS FROM FINAL JUDGEMENTS AND ORDERS, SEE FLA. CONST. ART 5, § 4 (b)(1), AND A JURY VERDICT "IS NOT" APPEALABLE. SEE NORM HALL CONSTR. CO. V. JUPITER INLET CORP. 514 So2d 1102, 1105 (FLA 1987).

- ON 8/22/06, MYERS WAS FOUND GUILTY AT TRIAL.
- ON 9/1/06, DEFENSE COUNSEL FILED TIMELY MOTIONS FOR NEW TRIAL, CLAIMING JURY TAMPERING, AND FOR A ACQUITTAL FOR LACK OF EVIDENCE TO PROVE ROBBERY.
- * - ON 9/11/06, MYERS FILED AN UNAUTHORIZED, PRO-SE NOTICE OF APPEAL, WHILE REPRESENTED BY COUNSEL, ON THE "VERDICT ONLY."
- ON 10/16/06, MYERS WAS ADJUDICATED GUILTY AND SENTENCED BY THE TRIAL COURT.

IT IS PATENTLY CLEAR THAT BY PERFECTING MYERS UNAUTHORIZED NOTICE OF APPEAL INSTEAD OF DISMISSING IT AS A NULLITY, THE STATE COURT VIOLATED U.S. SUP. CT. PRECEDENT, FLA SUP. CT. PRECEDENT, THE FLORIDA CONSTITUTION, THE U.S. CODE, THE FLORIDA RULES OF APPELLATE PROCEDURE AND THE JUDICIARY ACT OF 1789.

THE STATE COMPOUNDED THE ERROR BY REFUSING TO HEAR AND RULE ON MYERS'S POSTTRIAL MOTIONS ON THEIR MERITS. THE COURT CLAIMED THAT MYERS HAD ABANDONED THE MOTIONS WITH HIS NOTICE OF APPEAL. THAT HOLDING IS MERITLESS AS THE COURT SHOULD HAVE DISMISSED MYERS NOTICE AS A NULLITY AND HEARD THE POSTTRIAL MOTIONS. HAD THE COURT DONE WHAT WAS LEGAL AND FOLLOWED CONTROLLING PRECEDENT, JUROR LARRY SPRUNKER WOULD HAVE TESTIFIED THAT THE BAILIFF TOLD THE JURY THAT MYERS HAD A PREVIOUS CONVICTION AND THAT IS THE ONLY REASON THEY VOTED TO CONVICT.

THE JURY TAMPERING IN MYERS'S CASE IS IDENTICAL TO THAT IN WATKINS V. U.S. 146 U.S. 140 (1892) AND DARKER V. C. JAMES, 385 U.S. 363 (1966), WHERE THIS COURT HELD THAT IMPROPER COMMENTS BY THE BAILIFF TO THE JURY WERE FATAL TO THE VERDICT AND REQUIRED A NEW TRIAL.

MYERS WAS CLEARLY PREJUDICED BY THE FATAL ERROR OF THE FLORIDA TRIAL AND APPELLATE COURTS. HAD MYERS BEEN GIVEN A HEARING PER RENNER V. U.S., 350 U.S. 377 (1956), AS HELD BY THIS COURT AS THE PROPER REMEDY IN A JURY TAMPERING CLAIM, MYERS'S CONVICTION WOULD HAVE BEEN REVERSED FOR A NEW TRIAL. IN THIS QUESTIONABLE HE SAID/SHE SAID CASE THAT TOOK JURY TAMPERING TO CONVICT, THERE IS A REASONABLE PROBABILITY MYERS WOULD HAVE BEEN ACQUITTED INSTEAD OF SERVING 17 YEARS IN PRISON.

THE MIDDLE DISTRICT AND 11TH CIRCUIT HAVE COMPOUNDED THE ERROR BY NOT ADDRESSING MYERS'S CLAIMS ON THEIR MERITS IN HIS § 2254 PETITION. THEY SIDED WITH THE FLORIDA COURTS THAT CLAIMED PROCEDURAL DEFAULT BY MYERS. AS SHOWN ABOVE, THE PROCEDURAL ERROR REASONING WAS FLAWED AND THE FEDERAL COURTS SIMPLY PERPETUATED THAT ERROR.

THE MIDDLE DISTRICT HAS PLACED ITSELF IN CONFLICT WITH U.S. SUP. CT. PRECEDENT IN MIDLAND, FLANAGAN, AND BERMAN, SUPRA AND THE JUDICIARY ACT OF 1789. IT IS SO BAD AND SO CONFUSING THAT THE MIDDLE DISTRICT HAS PLACED ITSELF IN "DIRECT CONFLICT" WITH ITS OWN "RULING" IN BATCHELOR, SUPRA, WHICH IS PREPOSTEROUS. THE REFUSAL OF COA BY THE 11TH CIRCUIT ONLY COMPOUNDS THE MAGNITUDE OF THIS ONGOING TRAVESTY AND NOW PLACES ITSELF IN CONFLICT WITH U.S. SUP. CT. PRECEDENT, ALONG WITH THE OTHERS, FOR AN UNAUTHORIZED PROCEDURAL ISSUE.

AS SUCH, THIS COURT MUST ISSUE ITS WRIT TO PROTECT THE CONSTITUTIONAL RIGHTS OF MYERS, A U.S. CITIZEN ON THIS POINT UNDER RULE 10 (C) RULES OF THE U.S. SUP. CT.

2. THE SECOND ERROR ADDRESSED IN QUESTION 1 IS THAT THE FLORIDA COURT ACCEPTED AND PERFECTED AN UNAUTHORIZED, PRO-SE NOTICE OF APPEAL FILED BY MYERS WHILE STILL REPRESENTED BY TRIAL COUNSEL.

THE FLORIDA TRIAL COURTS AND APPELLATE COURTS HELD THAT MYERS HAD ABANDONED HIS POSTTRIAL MOTIONS WHEN HE FILED HIS POSTTRIAL PRO-SE NOTICE OF APPEAL. THE COURTS CLAIMED THEY LACKED JURISDICTION TO HEAR AND RULE ON THE POSTTRIAL MOTIONS FOR NEW TRIAL AND DIRECTED VERDICT.

THE TRIAL COURT'S VERY ACTIONS SHOW ITS CONFUSION AND THE HYPOCRISY OF THIS ORDER. THEY CLAIM THAT MYERS'S UNAUTHORIZED NOTICE OF APPEAL TOOK THEIR JURISDICTION TO HEAR HIS POSTTRIAL MOTIONS, HOWEVER, THEY CLAIMED TO STILL HAVE JURISDICTION TO SENTENCE HIM. EITHER THE COURT LOSES JURISDICTION OVER BOTH EVENTS OR NEITHER. THEY CAN'T HAVE IT BOTH WAYS.

THE TRIAL COURT'S RULING FAILS AND ITS HOLDING IS IN DIRECT VIOLATION OF FLORIDA SUPREME COURT PRECEDENT VIOLATING MYERS'S DUE PROCESS AND FAIR TRIAL RIGHTS AS HE HAS ALLEGED IN ALL FILINGS TO DATE.

IN AULT V. STATE, 53 SO3D 175, 203 (FLA 2010), CITING LOGAN V. STATE, 846 SO2D 472 (FLA 2003), THE COURT HELD THAT A PRO-SE NOTICE OF APPEAL WHILE THE DEFENDANT IS REPRESENTED BY COUNSEL IS A "NULLITY" AND "MUST" BE DISMISSED.

WHEN AFFIRMING THE TRIAL COURT'S RULING ON THIS, THE FLORIDA 2ND DISTRICT COURT OF APPEALS PLACED ITSELF IN DIRECT CONFLICT WITH ITS OWN PRECEDENT IN MURRAY V. STATE, 1 SO3D 107 (FLA 2ND DCA 2009). IN MURRAY AT P. 108, THE COURT HELD, "A DEFENDANT 'DOES NOT' HAVE THE RIGHT TO FILE A PRO-SE MOTION WHILE ALSO REPRESENTED BY COUNSEL AND SUCH MOTIONS SHOULD BE TREATED AS 'NULLITIES'."

THE TRIAL COURT WAS REQUIRED TO DISMISS MYERS'S PRO-SE NOTICE OF APPEAL AS A NULLITY, NOT PERFECT IT, THEN RULE ON THE AUTHORIZED, TIMELY FILED POSTTRIAL MOTIONS. HAD A PROPER REMINDER HEARING BEEN HELD, THE MATTOX ERROR WOULD HAVE BEEN EXPOSED AND WE WOULD NOT BE HERE NOW.

BY AFFIRMING THE TRIAL COURT, THE FLORIDA 2ND DISTRICT COURT OF APPEALS PLACED ITSELF IN DIRECT CONFLICT WITH ITSELF AND THE FLORIDA SUPREME COURT, AS SHOWN IN MURRAY AND AULT, SUPRA. THE AFFIRMANCE MADE THE 2ND DCA THE COURT OF LAST RESORT FOR MYERS. AS SUCH, THE U.S. SUP. CT. HAS JURISDICTION BASED ON RULE 10 (b) RULES OF THE U.S. SUP. CT.

FAILURE BY THE U.S. MIDDLE DIST. OF FLORIDA AND 11th CIRCUIT COURTS TO CORRECT THIS ERROR MADE BY THE FLORIDA COURTS PERPETRATES THE VIOLATION OF MYERS'S 5th AND 6th AMEND. RIGHTS PLACING THEM IN VIOLATION OF U.S. SUP. CT PRECEDENT IN MILAND, FLANAGAN, AND GERMAN, SUPRA., AS WELL.

By UNLAWFULLY PERFECTING, INSTEAD OF DISMISSING MYERS'S PRO-SE NOTICE OF APPEAL AND THEN USING THAT TO REFUSE TO CONSIDER HIS POSTTRIAL CLAIM OF JURY TAMPERING AND LACK OF EVIDENCE, THE FLORIDA STATE AND FEDERAL COURTS HAVE VIOLATED MYERS'S 5th AND 6th AMEND. RIGHTS BY NOT ALLOWING HIM A REMMER HEARING ON HIS MATTOX CLAIM.

THE ERRORS PRESENTED IN THIS QUESTION CLEARLY VIOLATE RULE 10 (b) AND (c) RULES OF U.S. SUP. CT. AND IS EXACTLY THE SCENARIO THAT THIS COURT IS EMPOWERED TO RESOLVE. AS SUCH, THIS COURT SHOULD ISSUE ITS WRIT TO RESOLVE THIS PROCEDURAL MESS AND ISSUE CONTROLLING PRECEDENT FOR FUTURE CASES, AND PROTECT MYERS'S CONSTITUTIONAL RIGHTS BY REVERSING THIS CASE, DE MINIMIS, FOR A PROPER REMMER HEARING.

QUESTION 2:

CAN A STATE POST CONVICTION COURT, IN DIRECT VIOLATION OF FLORIDA SUPREME COURT PRECEDENT, DISALLOW A CRIMINAL DEFENDANT FROM FILING A VALID POST CONVICTION CLAIM OF JURY TAMPERING BY HOLDING THAT IT IS NOT COGNIZABLE FOR THE FIRST TIME IN A POST CONVICTION MOTION PER § 3.850 FLA. R. CRIM. PROC.?

IN MARSHALL V STATE, 854 So2d 1235 (FLA 2003), THE FLA. SUP. CT. HELD THAT A CRIMINAL DEFENDANT "CAN" BRING A CLAIM OF JURY TAMPERING FOR THE "FIRST TIME" IN A POST CONVICTION MOTION UNDER § 3.850 FLA. R. CRIM. PROC. FOR EXTRINSIC MATTERS NOT INHERENT IN THE VERDICT. THE JUSTICES HELD THAT THE POST CONVICTION COURT CAN HOLD A HEARING PER REMMER, SUPRA TO ASCERTAIN WHETHER A NEW TRIAL IS WARRANTED.

IN THE CASE AT HAND, JUROR LARRY SPRUNKER CLAIMED THAT THE TRIAL BAILIFF TOLD MYERS'S JURY THAT HE HAD A PREVIOUS FELONY CONVICTION AND THIS WAS THE REASON THEY FOUND MYERS GUILTY. MYERS'S TRIAL COUNSEL FILED A PROPER NEW TRIAL MOTION CLAIMING THE TAMPERING, AND MYERS PROPERLY ASSERTED THE CLAIM IN HIS § 3.850 MOTION. IN U.S. v. GALT, 352 U.S. 985, 986 (1957), THIS COURT HELD THAT THE PROPER INQUIRY IS WHETHER THE UNAUTHORIZED CONTACT IS "POTENTIALLY" PREJUDICIAL NOT WHETHER THE ALLEGED PARTIES DID SO INTENTIONALLY.

IN MATTOX V. U.S. 146 U.S. 140 (1892), AND PATKIN V. G. HANDEL, 385 U.S. 363 (1966), IMPROPER COMMENTS BY THE BAILIFF TO THE JURY WERE FATAL TO THE VERDICT AND REQUIRED A NEW TRIAL. BOTH OF THESE SUP. CT. CASES ARE STILL GOOD LAW AND ARE CONTROLLING PRECEDENT.

IN U.S. V. NUTKEL, 192 F.3d 893 (9th Cir 1999), THE COURT HELD THAT THE PROSECUTOR MUST SHOW THAT THERE WAS NO REASONABLE POSSIBILITY THAT THE JURY WAS AFFECTED OR THE NEW TRIAL MUST BE GIVEN.

THIS IS EXACTLY THE ISSUE IN THE CASE AT HAND. THIS WAS A QUESTIONABLE HE SAID / SHE SAID CASE WITH NO DIRECT EVIDENCE TO CORROBORATE THE ACCUSED OR EXCULPATE HER FROM EQUAL DOUBT. THE STATE KNEW THAT BEYOND A REASONABLE DOUBT WAS NOT ESTABLISHED AT TRIAL, SO THE PROSECUTOR SENT THE BAILIFF TO THE JURY TO TELL THEM OF MYERS'S PRIOR AND GAIN THE STATE THE CONVICTION.

THIS IS THE REASON THAT THE TRIAL COURT HAS TRIED TO KEEP MYERS'S CLAIM FROM BEING HEARD ON ITS MERITS WITH THE TACTICS PRESENTED IN QUESTION 1 ABOVE. NOW, THE POST CONVICTION COURT, ALSO OF THE 20th CIRCUIT CHARLOTTE COUNTY, FLORIDA DELIBERATELY VIOLATES THE FLA. SUP. CT. PRECEDENT IN MARSHALL, SUPRA TO CONTINUE TO BLOCK THE HEARING ON JURY TAMPERING.

IN STOFFER V. TRAMMELL, ~~142 F.3d~~ 1073 F.3d 1205, 1214 (10th Cir 2014), THE COURT HELD THAT WHEN PRESENTED WITH CREDIBLE EVIDENCE OF JURY TAMPERING, THE TRIAL COURT HAS A "DUTY" TO INVESTIGATE AND THE PROPER REMEDY IS A REMINDER HEARING AS CLEARLY ESTABLISHED BY THE SUPREME COURT.

THE 11th CIRCUIT AND NINTH DISTRICT FEDERAL COURTS AND THE FLORIDA APPEAL COURTS HAVE PLACED THEMSELVES IN DIRECT CONFLICT WITH THE FEDERAL 10th CIRCUIT IN STOFFER, SUPRA AND THE FLORIDA SUPREME COURT IN MARSHALL, SUPRA PREJUDICING MYERS BY VIOLATING HIS 5th AND 6th AMEND. RIGHTS UNLAWFULLY.

AS SUCH, THESE COURTS' VIOLATIONS FALL WITHIN THE JURISDICTIONAL SCOPE OF RULE 10 (A) AND (B) RULES OF THE U.S. SUP. CT. COMPELLING THIS COURT TO ISSUE IT'S WRIT AND, DEMINIMUS, REVERSE FOR A REMINDER HEARING ON MYERS'S MATTOX CLAIM, IN ORDER TO BE IN ACCORD WITH IT'S PRECEDENT RULING IN SMITH V. PHILLIPS, 455 U.S. 209 (1982)

QUESTION 3:

WAS APPELLATE COUNSEL INEFFICIENT FOR NOT ATTACKING ON DIRECT APPEAL THE FACT THAT THE STATE DID NOT AND COULD NOT PROVE, IN TRIAL, AN ESSENTIAL ELEMENT OF THE CRIME CHARGED. AND WAS THE CONSTRUCTIVE DENIAL OF THE ASSISTANCE OF APPELLATE COUNSEL PER-SE PREJUDICIAL TO MYERS?

IN FIORIE V WHITE, 531 U.S. 225, 228-29 (2001), THIS COURT HELD, "THE DUE PROCESS CLAUSE OF THE 14TH AMEND. U.S. CONST. FORBIDS A STATE TO CONVICT A PERSON OF A CRIME WITHOUT PROVING ALL OF THE ELEMENTS OF THAT CRIME BEYOND A REASONABLE DOUBT."

IN GROUND 4, § 3 OF IT'S ORDER, THE MIAMI DISTRICT COURT ERRED IN IT'S REHARK OF MYERS'S CONTENTION IN HIS § 2254 PETITION. (APP B-25) THE DISTRICT COURT CLAIMED, "SPECIFICALLY, PETITIONER ASSERTS THAT THE STATE DID NOT AND COULD NOT PROVE THE "VALUE" OF THE PROPERTY HE TOOK DURING THE ROBBERY AND THEREFORE FAILED TO ESTABLISH THE ELEMENTS OF ROBBERY UNDER FLORIDA STATUTE § 812.13 BEYOND A REASONABLE DOUBT."

THAT IS NOT TRUE. IN GROUND 4, § 3, P. 4 OF HIS § 2254 (APP A 25, 26) MYERS CLEARLY ASSERTS, "THERE WAS NO EVIDENCE PRODUCED AT TRIAL TO PROVE MYERS TOOK THE 2 ITEMS (BUSINESS PROPERTY) ALLEGED OR THAT "ANYTHING" WAS TAKEN." MYERS WAS INDICTED FOR TAKING 2 SPECIFIC ITEMS OF BUSINESS PROPERTY FROM HIS WORK PLACE AT DAYS INN, A SHIRT DEPOSIT AND A REGISTER TILL.

AT NO TIME IN THE TRIAL DID THE STATE INTRODUCE ANY DAYS INN RECORDS EVIDENCE, OR BOOKKEEPERS, OWNERS, OR INSURANCE COMPANY TESTIMONY TO PROVE THAT EITHER OF THE 2 BUSINESS ITEMS WERE TAKEN OR THAT "ANYTHING" WAS ACTUALLY TAKEN FROM THE DAYS INN. ④

PER § 812.13 FLA. STAT, THE 1ST ESSENTIAL ELEMENT OF ROBBERY THAT MUST BE PROVEN IS:
"1. TAKING MONEY OR OTHER PROPERTY WHICH MAY BE THE SUBJECT OF LARCENY."

WITHOUT PROVING THAT MYERS TOOK EITHER OF THE ONLY 2 BUSINESS ITEMS CHARGED, THE STATE DID NOT PROVE THAT HE TOOK "ANYTHING" AND HENCE FAILED TO PROVE THE 1ST ESSENTIAL ELEMENT OF ROBBERY IN FLORIDA. THE RESULTANT CONVICTION VIOLATED U.S. SUP. CT. PRECEDENT IN HOWE V. FORDEN KIRNER, 444 U.S. 1, 2 (1979) Citing IN RE WINCHELL, 397 U.S. 358 (1970) HOLDING THAT THE DUE PROCESS CLAUSE OF THE 14TH AMEND. PROHIBITS THE CRIMINAL CONVICTION OF ANY PERSON EXCEPT BEYOND A REASONABLE DOUBT.

④ IT IS SO PREPOSTEROUS THAT MYERS DOES NOT EVEN HAVE A RESTITUTION ORDER IN HIS SENTENCING DOCUMENTS.

Ryan Truskowski, Myers' Appellate Counsel, had a duty to raise this issue on Myers' direct appeal. Instead, he filed a one issue brief on an unpreserved issue, effectively no appeal at all, which is constructive denial of counsel.

In Smith v Robbins, 528 U.S. 259, 286 (2000), this Court held, "We would assume prejudice when a defendant has suffered a actual or constructive denial of the assistance of counsel altogether."

This is clearly ineffective assistance of appellate counsel violating Davis v California, 372 U.S. 353 (1963) as Florida guarantees a first appeal as of right.

As held in Evitts v Lube, 105 S.Ct. 830 (1985), Myers' due process rights were violated as nominal representation does not suffice to render the proceedings constitutionally adequate.

In Vance v. Orre, 137 F.3d 270 (5th Cir. 1998), the Court reversed the conviction because there was no evidence to corroborate the accuser's claim and no solid evidence to show any crime took place that could be proven in trial. The court held that the police should have been suspicious of Vance but that there was not enough evidence to support his arrest and prosecution.

The same exact situation exists in Myers' case. There was no evidence introduced to prove that "anything" was missing from Days Inn, and even if there had been, there was nothing to exculpate the accuser from equal doubt. She was not prosecuted but equally culpable.

In Henderson v. Collins, 506 U.S. 390, 401 (1993) citing Jackson v. Virginia, 443 U.S. 307 (1979), this Court held that "A federal court may review a claim that the evidence adduced at a state trial was not sufficient to convict a criminal defendant beyond a reasonable doubt.... The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."

There is no way that without being able to prove "anything" was taken from Days Inn, the 1st essential element of § 812.13 Fla Stat. could not and was not proven, so no judge or jury could have found beyond a reasonable doubt that the essential elements of the alleged crime were proven.

Therefore, appellate counsel was deficient for not attacking this on direct appeal and Myers was clearly prejudiced violating the ruling in ~~Adams~~ Davis, supra.

Failure by the Florida Second District Court of Appeal to address this in Myers's ineffective assistance of appellate counsel claim under §9.141 Fla. R. App. Proc. and the 11th Circuit and Middle District Federal Courts in Myers's §2254 petition place them in conflict with ~~Adams~~ Davis, Fiore, Pilon, and Herrera, supra.

Based on the foregoing, this Court has jurisdiction per Rule 10 (a), (b), (c) and should issue its writ to review and resolve this issue on its merits and protect Myers's 5th & 6th Amend Rights.

Conclusion:

As presented in the text above, the Florida 10th Circuit and Second Appellate District Courts have clearly not reasonably applied the rules established by this Court and they are in violation of Knowles v. Mirzaian, 556 U.S. 111 (2009).

In White v. Woodall, 572 U.S. 415 (2014), this Court held at p. 420, "Rather as a condition for obtaining H.C. relief from a Federal court, a state prisoner must show that the state court's ruling on the claims being presented in Federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fair minded disagreement."

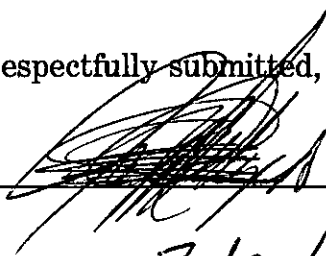
Myers has clearly shown that his jury tampering and lack of evidence claims have not been heard on their merits due to a misapplication of procedural law by both the trial and post conviction courts and then perpetuated by affirmance in the state appellate and federal courts.

This appeal has been ongoing for 17 years in its first line, which is unheard of and a travesty to Myers. The violations of Rule 10 Rules of US Sup. Ct. give this Court the authority to step in. Myers asks this Court to issue its writ and, de minimis, reverse for an evidentiary hearing. This is not too much to ask for the price that has been paid.

CONCLUSION

The petition for a writ of certiorari should be granted.

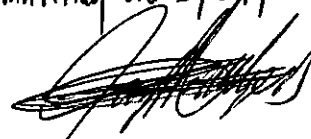
Respectfully submitted,



Date: 3/23/22

UNNOTARIZED OATH

I, Jay Myers, UNDER PENALTY OF PERJURY, DO HEREBY CERTIFY THAT THE FOREGOING PETITION WAS PLACED INTO THE HANDS OF OHIO PRISON OFFICIALS FOR MAILING ON 3/24/22



Jay A. Myers, 266940