

21-7715

No.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

NOV 10 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

LACY E. LEWIS, pro se — PETITIONER
(Your Name)

vs.

MARK S. INCH — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LACY E. LEWIS pro se

(Your Name)

1760 HWY 67 North

(Address)

Carrabell, Fla. 32322

(City, State, Zip Code)

NONE

(Phone Number)

QUESTION(S) PRESENTED

IS the framework as explained in Williams v. Taylor, 529 U.S., 362, 120 S.Ct. 1495, 146 L.Ed 2d 1389 (2000), For Review For 28 U.S.C. 2254 petitions, under the contrary to "clause" applicable to the petitioner where the state of Florida courts neglected to address the primary issue of the petitioner's ineffective assistance of counsel claim that was remanded back to the post conviction court by the state of Florida Second District Court of Appeal for an evidentiary hearing for a fact finding determination as to whether trial counsel's advice to his client that an illegal an unviable defense to the charged offense of burglary was ineffective. See Appendix A Order of the District Court of Appeal. The state of Florida in their response to the show cause order from the United States District Court Magistrate of Northern Florida District court asserted the defense that the issue was unexhausted, contrary to this claim the issue was exhausted as evidenced by the record attached Appendix, should the state of Florida be entitled to a failed to exhaust defense under Rule 5; 28 U.S.C. 2254 (b) 2nd (c) when the facts are contrary to the claim of unexhausted, the issues were fairly presented to state of Florida's highest court's permissible.

Exhausted at every State level
Available Under Fla. Law, See
Appendix (A) (B) (C) Has the District
Court For Florida Northern District
Court Of the United States erred
in procedurally barring the petitioner's
claim for failing to Exhaust all State
Remedies, when the record and facts
Prove contrary to this finding. Does the
District Court Rulings Contradict relevant
Supreme court Cases, that set the
Criteria for Review of 28 U.S.C. 2254
petitions, See *Early v. Packer*, 537 U.S.
318, 123 S.Ct. 362 154 L.Ed 2d (2002);
Has the District Court adjudicated an
Issue that was never resolved in
the State court on its merits,
and the State court was fairly presented
the Issue for ~~the~~ resolution. where
the record reflects an insufficient
factual finding, has the Magistrate
erred adopting the State's defense
of unexhausted, and procedurally
barring the petitioner's claim of
ineffective assistance of counsel for
advising the petitioner that consent
from owner/landlord as oppose to
the occupying tenant was a viable
defense to the charge of defense of
Burglary under Fla tenant Law?

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:

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APPENDIX E	Petitioner's initial Brief to Florida appellate court
APPENDIX F	Judgment from the Northern District Court of Florida.

TABLE OF AUTHORITIES CITED

CASES		PAGE NUMBER
	Caraway v. Betto 1421 F.2d 636 (5th Cir. 1976)	<u>(3) PG</u>
	Cole v. Peyton 389 U.S. 849 S.Ct. 80	<u>(3) PG</u>
	Early v. Procter, 537 U.S. 3, 8, 123 S.Ct	<u>(3) PG</u>
	Overly 154 L.Ed 2d. (2000).	
	Landers v. Warden Attorney Gen. F.3d 1218	<u>(13) PG.</u>
	Lockyer v. Andrade 538 U.S. 43, 72-71	<u>(13) PG.</u>
	McBride v. Sharpe 25 F.3d 942-970	<u>(11) PG.</u>
	Thyler v. Haynes, 559 U.S. 43, 47	<u>(13) PG.</u>
	Rummel v. Estelle 509 F.2d 103, 104	<u>(14) PG.</u>
	Williams v. Taylor, 529 U.S. 362, 120 S.Ct	<u>PG.</u>
	1495, 144 L.Ed 2d 389, (2000).	
	Strickland, 466 U.S. 668-686	
	Portfield, 624 F.2d 127, 124 (10 Cir 1982)	<u>(14)</u>

STATUTES AND RULES

Federal Rule (5) (A)
 Federal Rule (8) (c)
 28 U.S.C. 2254 (b)(2)
 28 U.S.C. 2243 (A)

OTHER

United States Constitution 6th Amendment,
 Counsel Clause.

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 C 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.

The opinion of the Eleventh Judicial Circuit of Fla. court appears at Appendix D to the 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 OCT 3, 2019.

☐ 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 _____.
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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United State Constitution Sixth Amendment
Counsel clause.

Fla. R. crim. P. 3.850

28. U.S.C. 2254

STATEMENT OF THE CASE

On April 12, 2011, after a Jury trial, petitioner was found guilty of Aggravated stalking (count I) and Burglary of a Dwelling (count II). See verdict, Amended information, petitioner was acquitted by the Jury on (count III). (Criminal Mischief). Adjudicated Not Guilty. After a disposition hearing, the court sentenced petitioner, on count (I) to 5 years imprisonment in the department of correction as a prison release reoffender, pursuant to section 775.082 (9) Florida Statute. See Judgment and sentence. On July 5, 2012 petitioner filed an appeal, on April 16, 2012, the First D.C.A. per curiam affirmed the judgment and sentence. See mandate. Petitioner filed a motion for post conviction relief. On March 28, 2013 petitioner amended his motion. The trial court summarily denied the amended motion on August 20, 2014. Petitioner appealed the denial, and on May 15, 2015 the First D.C.A. affirmed in part, and reversed, in part, the denial order by the post conviction court. See; Lewis v. State, 164 So.3d 158 (Fla. 1st DCA 2014) In its written opinion, the First District court directed the trial court/post conviction to reconsider Ground (4) (re-framed by the court as follows); ("Trial) counsel was ineffective for advising [Defendant] that owner/landlord, as opposed to the occupant, was a viable defense." An evidentiary hearing was held on 8/24/2015 and the post conviction court denied Ground 4. 12/13/2016 the First District granted an appeal. On Jan. 10, 2018 the 1st D.C.A. per curiam affirmed the post conviction court denial and final order, the petitioner filed a 28 USC 2254 petition which was denied, This writ of Certiorari followed.

REASONS FOR GRANTING THE PETITION

The writ should ~~issue~~ and certiorari granted. Under the standard of review for a 2254 motion, the District Court has erred in denying the petitioner's 28 USC. 2254 petition. The District Court's Order Denying the petitioner's writ substantiated on procedural bar is not support by the facts of the record. The court has not ruled on the merits of the petitioner's claim according to rule 8(a), Rules governing section 2254 cases in the United States District Courts, ("Habeas Rules"). Pursuant to Rule (5) the states response to the show cause order issued by the Magistrate, was not procedural defect, or failure to exhaust, but unfairly presented to the state courts. See McBride v. Sharpe, 25 F.3d 962, 970 (11th Cir. 1994). As provided by Habeas Rule (5), the Answer shall respond to the allegation of the claims in the petition. There has never been a factual determination as to the effectiveness of Trial Counsel's advice to the petitioner that consent from Owner/Landlord as oppose to actual occupying tenant was a viable defense to the charged offense of Burglary. Trial Counsel's incompetence was before the court but never addressed by the Florida Courts as evidenced by Appendix (1) (1) (1) (1). The petitioner's claim was fairly presented to the highest state courts permissible as noted in the Attached Appendix. Therefore, the procedural bar and unexhaust findings by the District Court is unwarranted and the writ should issue.

An Evidentiary Hearing should have been granted to develop the facts of petitioner's claim where a state court fails to address the merits of the claim and its core issues of counsel's effectiveness, particularly counsel's advice to pursue an illegal/unviable defense to the charged offense, and counsel's incompetence as to Fla. Tenant Law as it pertained to the petitioner's case, see *Landers v. Warden, Attorney Gen. of Ala.*, 776 F.3d 1288 (11th Cir. 2015). (Articulating the relevant standard), As to the disposition of a petition as justice requires, see 28 U.S.C. 2243, 2254, This Honorable Supreme Court has set forth the framework for a 2254 review in *Williams v. Taylor*, 529 U.S. 362 (2000). See *id.*; at 412-13 (O'Connor, J., concurring). Under the framework of *Williams*, a federal court must first determine the "clearly established ~~that~~ federal law", namely "the governing legal principle set forth by the court at the time the state court rendered its decision"; see *Lockyer v. Andrade*, 538 U.S. 63, 71-72 (2003). The law is "clearly established" when a Supreme Court holding at the time of the state court decision embodies the legal principle at issue. See, *Thyer v. Haynes*, 559 U.S. 43, 47 (2000).

In the instant case of the petitioner's claim of ineffective assistance of counsel, the governing legal principles are "Strickland, 464 U.S. 216, 93, and the Sixth Amendment of the United States Constitution counsel clause effective assistance. The core issue of petitioner's claim concerning Trial Counsel's incompetence as to Florida law, his advice that consent from Owner/Landlord as oppose to occupying tenant was a viable defense was the subject of the 12th Appellate Court Remand Back to the Florida Post Conviction Court. Trial Counsel pursued an illegal defense during the trial proceedings, and as a result denied the petitioner the fair and effective adversarial testing guaranteed a defendant under the Sixth Amendment of the United States Counsel clause. Trial Counsel's Representation fell below the minimum required standard of an Attorney Representing a Criminal defendant. Adequate consultation between attorney and client is an essential element of competent representation. *Cole v. Peyton*, 389 F.2d 224, 225-26 (4th Cir. 1968), 393 U.S. 849, 895 S.Ct. 80, 21 L.Ed 120 (1968); Adequate knowledge of the facts, and laws of a potential defense is essential to competent, effective assistance of counsel. *Rummel v. Estelle*,

509 F.2d 103, 104 (5th Cir. 1980); See e.g. Goodwin v. Balkcom, 684 F.2d 103, 104 (5th Cir. 1982). United States v. Portifield, 624 F.2d 122, 124 (10th Cir. 1980). Application of the governing principle in the instant case of the petitioner is not difficult, the State of Florida rendered its decision contrary to Federally established law. Strickland, 466 U.S. 668-686, Caraway v. Beto, 421 F.2d 636, 637 (5th Cir. 1970). Counsel is ineffective unless acquainted with the facts, laws and circumstances of a criminal defendant's case that he represents. Additionally, before counsel undertakes to act or not to act, counsel must make a rational and informed decision on strategy and tactics founded upon adequate knowledge of the law, facts and circumstances. A lawyer who is ignorant to the facts and laws of his client's case, cannot serve the client effectively.

American Bar Association Standard (4.3).

There is nothing in the record to support the finding and conclusion of unexhausted and procedural bar asserted in the District Court's order denying the petitioner's 28 USC 2254 petition. It is a general rule that relief from a final conviction on the ground of incompetent or ineffective counsel shall be granted when the trial was a mockery of justice and the adversarial testing envisioned in the 6th Amendment of the United State Constitution counsel clause

is not brought to bare by an attorney representing a criminal defendant, see; Tollett v. Henderson, 1973, 411 US 258, 93 S.Ct. 1602, 36 L.Ed. 2d 235. Trial Counsel erroneously pursued an illegal defense and misadvised the petitioner as to Florida Tenant Law as it related to the charged offense of burglary. The District Court adoption of the Magistrate's Report and recommendation, and erroneously constrains the petitioner's claim as procedurally bar and UNEXHAUSTED in state courts as a claim of Deprivation of a Fair trial is without merit and unsupported by facts contained in the record see; Appendix () (), petitioner's initial Brief to the Florida Appeals Court, Exhausting all state court procedures available in accordance to 28 USC 2254 (b)(1), see Pope v. Sec'y, Dept of Corr. 680 F.2d 1271, 1284 (11th Cir). The petitioner's claim in his 28 USC. 2254 was fairly presented and Exhausted as evidenced by the record. All the facts necessary to support the claim was before the Florida Courts pertaining to grounds in petitioner's 2254 Petition for habeas corpus Relief. The petitioner prays that this Honorable Supreme Court Grant his Petition for Certiorari and the writ Issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date:
