No. [_____]

IN THE
SUPREME COURT OF THE UNITED STATES

SANTIAGO ESQUIVEL– PETITIONER

VS.

GARY MINIARD–RESPONDENT

I, Santiago Esquivel, do swear or declare that on this date, May ____, 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 that party's counsel, by placing the foregoing in an envelope containing the above documents, and then placing those documents in the hands of prison officials to be assigned the proper postage and delivered to a third-party commercial carrier for delivery to the Clerk of this Court.

The name of the respondent's attorney served is as follows:

Michigan Department of Attorney General
Corrections Division
P.O. Box 30217
Lansing, Michigan 48909

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

Executed on: 5-26, 2022

Signature

The Supreme Court has stated on numerous occasions that a state court's adjudication of a claim which errs in its application of the legal standard to the facts by failing to give appropriate consideration and weight to pertinent facts results in a §2254(d)(1) unreasonable application. See e.g., *Porter v McCollum*, 558 US 30, 42 (2009)(*per curiam*)("The Florida Supreme Court's decision that Porter was not prejudiced by his counsel's failure to conduct a thorough -- or even cursory – investigation is unreasonable. The Florida Supreme Court either did not consider or unreasonably discounted the mitigation evidence adduced in the post-conviction hearing"); *Rompilla v Beard*, 545 U.S. 374, 388-89 (2005)(state court's "conclusion" that "defense counsel's efforts were enough to free them from any obligation to enquire further" into prior crime evidence that state planned to use in aggravation "fails to answer the considerations we have set out, to the point of being an objectively unreasonable conclusion"). Thus, habeas relief was warranted in light of the clear weight of the evidence in the record supporting rather than refuting Petitioner's claim. See e.g., *Julian v Bartley*, 495 F 3d 487, 494 (7th Cir. 2007)(state "post-conviction court's determination that [petitioner, who had been misadvised by counsel about possible length of prison term that could result from accepting plea offer, actually knew] . . . 'that he was eligible for an extended term was against the clear weight of the evidence and, therefore, an objectively unreasonable determination of undisputed facts").

Furthermore, the district court erred when arriving at its decision to dismiss Petitioner's habeas petitioner with prejudice because it completely overlooked