

PROVIDED TO MARION C.I. ... *SC*

6/8/22 FOR MAILING.

Application No.: 21A719

21 - 8130

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

FILED  
JUN 08 2022  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

JAMIE M. COFFEY – PETITIONER

vs.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS; and  
ATTORNEY GENERAL, STATE OF FLORIDA – RESPONDENTS

---

On Petition for Writ of Certiorari to  
The United States Court of Appeals for the 11<sup>th</sup> Circuit

---

PETITION FOR WRIT OF CERTIORARI

Submitted by:

Jamie M. Coffey, Pro Se  
D/C # C09864  
Marion Correctional Institution  
P.O. Box 158  
Lowell, FL 32663-0158  
Tel. No. : None Available

RECEIVED  
JUN 16 2022  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

## QUESTION(S) PRESENTED

1. Do the State and Federal courts violate a petitioner's 14<sup>th</sup> Amendment Right to due process when they decline to apply a new rule governing a criminal procedure retroactively to a case pending on appeal contrary to this Court's holding in *Griffith v. Kentucky*, 479 U.S. 314, 315, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987)?

## LIST OF PARTIES

\_\_\_\_ All parties appear in the caption of the case on the cover page.

**X** 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:

Coffey, Jamie	Appellant/Petitioner/Defendant
Coleman, Barbara	Trial and Postconviction Asst. State Attorney
Grant, Hon. Britt C.	11 <sup>th</sup> Circuit U.S. Court of Appeals Judge
Herce, Dana	Trial Defense Counsel (Asst. Pub. Def.)
Kiley, Lauren R.	Direct Appeal Appellate Counsel
Merryday, Hon. Steven D.	U.S. District Judge
Ripley, Daniel	3.850 Motion Postconviction Counsel
Rosenbaum, Hon. Robin S.	11 <sup>th</sup> Circuit U.S. Court of Appeals Judge
Sisco, Hon. Michelle	Postconviction (3.850) Judge
Tannen, Jonathan S.	Asst. Atty General (3.850 Appeal)
Tharpe, Hon. Chet	Trial Judge

## RELATED CASES

- *Coffey v. State of Florida*, No. 13-CF-08726-A, 13<sup>th</sup> Judicial Circuit Court, in and for Hillsborough County, Florida. Trial, conviction, and sentence occurred March-May 2015.
- *Coffey v. State of Florida*, 191 So.3d 467 (Fla. 2<sup>nd</sup> DCA 2016), Case No. 2D15-2035, Second District Court of Appeal, Lakeland, Florida (Direct Appeal). Per Curiam Affirmed Opinion entered May 11, 2016. Mandate issued June 10, 2016.
- *Coffey v. State of Florida*, No. 13-CF-08726-A, 13<sup>th</sup> Judicial Circuit Court, in and for Hillsborough County, Florida. (Rule 3.850 Motion for Postconviction Relief, 8 Grounds). Summary Denial Order on Ground 5, in part and Ground 8 issued on February 8, 2017. Summary Denial Order on Ground 7 issued on July 18, 2017. The same order granted an evidentiary hearing on Grounds 1, 2, 3, 4, 5 (in part), and 6.
- *Coffey v. State of Florida*, No. 13-CF-08726-A, 13<sup>th</sup> Judicial Circuit Court, in and for Hillsborough County, Florida. (Rule 3.850 Motion for Postconviction Relief). Final denial order on the merits entered September 6, 2018, after an evidentiary hearing. Motion for Rehearing denied as untimely filed on October 16, 2018, and motion for reconsideration of the rehearing dismissal denied on November 15, 2018. Notice of Appeal of denial of 3.850 motion filed November 21, 2018.
- *Coffey v. State of Florida*, 2019 Fla. App. LEXIS 19583 (Fla. 2<sup>nd</sup> DCA 2019), Case No. 2D18-4868, Second District Court of Appeal, Lakeland, Florida (3.850 Motion Denial Order Appeal). Appeal dismissed as untimely filed on October 1, 2019 (Appeal notice filed more than 30 days after entry of the final 3.850 motion denial order).
- *Coffey v. Secretary, Florida Department of Corrections, et al.*, No. 8:20-cv-1758-SDM-CPT, U.S. District Court for the Middle District of Florida, Tampa, FL Division. Petition for Writ of Federal Habeas Corpus filed July 27, 2020. Order dismissing the Petition as time-barred on August 17, 2021. Notice of Appeal filed on September 9, 2021.
- *Coffey v. Secretary, Florida Department of Corrections, et al.*, No. 21-13120-J, U.S. Court of Appeals for the Eleventh Circuit. Opinion affirming the U.S. District Court's opinion that the Petition is time-barred issued on December 21, 2021. Order denying Petitioner's Motion for Reconsideration issued on February 16, 2022.
- *Coffey v. Secretary, Florida Department of Corrections, et al.*, Application No. 21A719, Supreme Court of the United States. Petition for Writ of Certiorari. Extension of time granted until June 16, 2022.

## TABLE OF CONTENTS

QUESTION(S) PRESENTED.....	i
LIST OF PARTIES.....	ii
RELATED CASES .....	iii
TABLE OF CONTENTS.....	iv
INDEX TO APPENDICES.....	v
TABLE OF AUTHORITIES.....	vi-vii
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	3 – 4
REASONS FOR GRANTING THE PETITION.....	5 – 12
CONCLUSION.....	12
OATH .....	13
PROOF OF SERVICE .....	14

## INDEX TO APPENDICES

**APPENDIX A** February 16, 2022 11<sup>th</sup> U.S. Circuit Court of Appeals order denying Petitioner's Motion for Reconsideration.

**APPENDIX B** December 21, 2021 11<sup>th</sup> U.S. Circuit Court of Appeals order affirming U.S. District Court opinion declaring Coffey's Petition for Writ of Federal Habeas Corpus time-barred.

**APPENDIX C** August 17, 2021 U.S. District Court for the Middle District of Florida, Tampa Division, U.S. District Court Order dismissing Coffey's Petition for Writ of Federal Habeas Corpus as time-barred and denying issuance of a COA.

**APPENDIX D** October 16, 2018 13<sup>th</sup> Judicial Circuit Court, in and for Hillsborough County, Florida Order Denying Petitioner's Motion for Rehearing because it was filed after 18 days of the Order Denying his Rule 3.850 Motion for Postconviction Relief.

**APPENDIX E** October 25, 2018 Florida Supreme Court Amendment to Court Rules deleting the "3 extra days to act if an order is served by U.S. mail" under Fla.R.Crim.P. Rule 3.070, and replacing it with "5 extra days to act" under Fla.R.Jud.Admin. Rule 2.514(b). Effective Date January 1, 2019.

**APPENDIX F** November 15, 2018 13<sup>th</sup> Judicial Circuit Court, in and for Hillsborough County, Florida Order Denying Petitioner's Motion for Reconsideration of the dismissal of his Motion for Rehearing.

**APPENDIX G** September 4, 2019 Office of the Attorney General, Tampa, Florida "Motion to Dismiss (3.850) Appeal for Lack of Jurisdiction."

**APPENDIX H** January 29, 2020 Petitioner's "Reply to Appellee's Response" arguing why the 3.850 appeal should not be dismissed including this Court's holding in *Griffith v. Kentucky*, 479 U.S. 314, 315, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987) and *Evans v. Chavis*, 546 U.S. 189, 208 (2006).

**APPENDIX I** February 4, 2020 2<sup>nd</sup> DCA Final Order dismissing the appeal of the Petitioner's Rule 3.850 Motion Denial Order.

## TABLE OF AUTHORITIES

PAGE NO.

### CASES

<i>Alamo Rent-A-Car, Inc. v. Mancusi</i> , 632 So.2d 1352, 1358 (Fla. 1994) .....	7
<i>Amman v. Town of Stow</i> , 991 F.2d 929, 934 (1 <sup>st</sup> Cir. 1993) .....	9
<i>Coffey v. Sec'y. Fla. Dept. of Corrs.</i> , 2021 U.S. App. LEXIS 37823 (11 <sup>th</sup> Cir. 2021).....	1
<i>Crowe v. Bolduc</i> , 365 F.3d 86 (1 <sup>st</sup> Cir. 2004) .....	9
<i>Evans v. Chavis</i> , 546 U.S. 189, 208 (2006) .....	4
<i>Griffith v. Kentucky</i> , 479 U.S. 314, 315, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987) .....	4, 5, 7, 9-12
<i>Harper v. Va. Dep't of Taxation</i> , 509 U.S. 86, 97, 113 S.Ct. 2510, 125 L.Ed.2d 74 (1993).....	10
<i>Hollinger v. Sec'y. Dept. of Corr. 's</i> , 334 Fed. Appx. 302 (11 <sup>th</sup> Cir. 2009) .....	8
<i>In re: Amendments to the Florida Rules of Criminal Procedure</i> , 257 So.3d 66 (Fla. 2018).....	6
<i>James B. Beam Distilling Co. v. Georgia</i> , 501 U.S. 529, 535 (1991) .....	9
<i>Kurzawa v. Jordan</i> , 146 F.3d 435 (7 <sup>th</sup> Cir. 1997) .....	10
<i>Lawrence v. Florida</i> , 549 U.S. 327, 335, 127 S.Ct. 1079, 166 L.Ed.2d 924 (2007) .....	8
<i>Montgomery v. Louisiana</i> , 136 S.Ct. 718, 728 (2016) .....	8, 9
<i>Pace v. Diguglielmo</i> , 544 U.S. 408, 125 S.Ct. 1807, 161 L.Ed.2d 669 (2005) .....	8
<i>Powell v. Nevada</i> , 128 L.Ed.2d 1, 62 U.S.L.W. 4203, 4204, 114 S.Ct. 1280 (1994) .....	10
<i>Prevatte v. French</i> , 459 F. Supp. 2d 1305, 2006 U.S. Dist. LEXIS 85903 (N.D. (Ga.) 2006)....	11
<i>Sampson v. United States</i> , 2017 U.S. Dist. LEXIS 62606 * 16 FN 8 (S.D. (Fla.) 2017).....	12
<i>Schirro v. Summerlin</i> , 542 U.S. 348, 352, 124 S.Ct. 2519, 159 L.Ed.2d 442 (2004) .....	8, 9
<i>Smith v. State</i> , 598 So.2d 1063, 1066 (Fla. 1992) .....	7
<i>Teague v. Lane</i> , 489 U.S. 288, 292, 109 S.Ct.1060, 1065, 103 L.Ed.2d 334 (1989) .....	11
<i>Tyler v. Cain</i> , 533 U.S. 656, 663, 121 S.Ct. 2478, 150 L.Ed.2d 632 (2001) .....	12
<i>United States v. Allen</i> , 134 Fed. Appx. 261 (10 <sup>th</sup> Cir. 2005) .....	11
<i>United States v. Brown</i> , 819 F.3d 800 (6 <sup>th</sup> Cir. 2016) .....	10
<i>United States v. Gaudin</i> , 28 F.3d 943 (9 <sup>th</sup> Cir. 1994) .....	10

## TABLE OF AUTHORITIES (Cont.)

PAGE NO.

### STATUTES

28 U.S.C. §1254(1) .....	1
28 U.S.C. §2244(d)(2) .....	8
28 USC §2254 .....	7, 8

### RULES

Fla.R.Crim.P. Rule 3.070.....	3, 4, 5
Fla.R.Crim.P. Rule 3.850(j) .....	3, 5
Fla.R.Crim.P. Rule 3.850.....	8
Fla.R.Jud.Admin. Rule 2.514(b) .....	3, 5, 6, 8
Supreme Court Rule 29.....	14
U.S. Supreme Court Rule 13.....	1

### OTHER

Fourteenth Amendment of the U.S. Constitution.....	2, 4, 9, 12
----------------------------------------------------	-------------

## OPINIONS BELOW

**X** For cases from **Federal** courts:

The opinion of the 11<sup>th</sup> U.S. Circuit Court of Appeals appears at **Appendix A-B** to the petition and:

reported at *Coffey v. Sec'y. Fla. Dept. of Corrs.*, 2021 U.S. App. LEXIS 37823 (11<sup>th</sup> Cir. 2021).

has been designated for publication but is not yet reported; or

is unpublished.

The opinion of the United States District Court appears at **Appendix C** to the petition and:

is reported at \_\_\_\_\_.

has been designated for publication but is not yet reported; or

is unpublished.

## JURISDICTION

This Honorable Court has jurisdiction under Title 28 U.S.C. §1254(1) to rule on this petition and to review the final judgment rendered on February 16, 2022 via the Eleventh U.S. Circuit Court Order denying the Petitioner's Motion for Reconsideration. U.S. Supreme Court Rule 13 holds that a petition for a writ of certiorari to review a judgment issued by a United States Court of Appeals in a criminal case is timely when filed with the Clerk within 90 days after entry of the judgment. On May 16, 2022, This Honorable Court issued an order extending the filing deadline of this petition for a writ of certiorari to June 16, 2022.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **Constitutional Issue(s) Involved**

The Fourteenth Amendment of the U.S. Constitution provides, in pertinent part, as follows:

“No State shall make or enforce any law which will abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of the law; nor deny any person within its jurisdiction the equal protection of the laws.”

## STATEMENT OF THE CASE

On September 6, 2018, the State lower court denied all grounds of the Petitioner's motion for postconviction relief on the merits. On September 25, 2018, the Petitioner filed his motion for rehearing 19 days after the denial order date. The Petitioner relied upon both Fla.R.Crim.P. Rule 3.850(j) allowing 15 days to file the rehearing motion and Fla.R.Jud.Admin. Rule 2.514(b) that allows an additional 5 days to file the rehearing motion since the court served the denial order by U.S. mail. However, Fla.R.Crim.P. Rule 3.070 conflicted with Fla.R.Jud.Admin. Rule 2.514(b), and only allowed an additional 3 days to file the motion since the court served the denial order by U.S. mail.

On October 16, 2018, the lower court held that under Fla.R.Crim.P. Rule 3.070, the Petitioner's motion for rehearing was untimely, and dismissed it (see **Appendix D**). On November 15, 2018, the lower court denied Coffey's Motion for Reconsideration on the timeliness of his Motion for Rehearing (see **Appendix F**). On November 21, 2018 the Petitioner filed his notice of appeal. On September 4, 2019, the State filed a Motion to Dismiss the Rule 3.850 motion appeal claiming that the November 21, 2018 notice of appeal was untimely (i.e. filed after 30 days from the date of the September 6, 2018 Rule 3.850 motion denial order) (see **Appendix G**). On December 30, 2019, the 2<sup>nd</sup> District Court of Appeal ("DCA") gave Coffey 30 days to reply to the Motion to Dismiss the appeal of his Rule 3.850 motion denial order. On January 29, 2020, the Petitioner filed his "Reply to Appellee's Response" (see **Appendix H**). The Petitioner argued that on January 1, 2019, while his appeal was pending, the Florida Supreme Court issued a new rule governing criminal procedure such that all lower court divisions must abide by Fla.R.Jud.Admin. Rule 2.514(b) that allows an additional 5 days to act

when an order is served by U.S. mail thereby voiding Fla.R.Crim.P. Rule 3.070 in its entirety (see **Appendix E**). The Petitioner argued that he was entitled to retroactive application of the January 1, 2019 new rule because the change was enacted while his appeal was still pending. The Petitioner's Reply arguments included this Court's holding in *Griffith v. Kentucky*, 479 U.S. 314, 315, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987) and *Evans v. Chavis*, 546 U.S. 189, 208 (2006). On February 4, 2020, the State Appellate Court rejected the Petitioner's argument and dismissed his 3.850 motion appeal (see **Appendix I**).

On July 20, 2020, the Petitioner filed his Petition for Writ of Federal Habeas Corpus with the U.S. District Court, Tampa, Florida Division. On August 17, 2021 the U.S. District Court dismissed the Petition as time-barred and refused to give the Petitioner any equitable tolling for the time Coffey attempted to get his Rule 3.850 motion appeal reinstated with the State Courts (see **Appendix C**).

On December 21, 2021, on Federal appeal, the 11<sup>th</sup> U.S. Circuit Court of Appeals upheld the dismissal of the Petition (Case No. 21-13120-J) (see **Appendix B**). On February 16, 2022, Hon. Robin S. Rosenbaum and Hon. Britt C. Grant, U.S. Circuit Court of Appeals, 11<sup>th</sup> Circuit issued the final order denying Coffey's motion for reconsideration (see **Appendix A**).

Had the State and Federal courts given the Petitioner retroactive application of the January 1, 2019 new criminal procedural rule that allows an additional 5 days to act when an order is served by U.S. mail, Coffey's 3.850 motion for rehearing would have been granted. Coffey would then have timely appealed to the State 2<sup>nd</sup> DCA and then filed a timely Federal Petition if he was not afforded any postconviction remedies. The State and Federal courts' refusal to grant Coffey such retroactive application was contrary to your holding in *Griffith v. Kentucky*, id., and violated the Petitioner's 14<sup>th</sup> Amendment Right to due process.

## REASONS FOR GRANTING THE PETITION

**Do the State and Federal courts violate a petitioner's 14<sup>th</sup> Amendment Right to due process when they decline to apply a new rule governing a criminal procedure retroactively to a case pending on appeal contrary to this Court's holding in *Griffith v. Kentucky*, 479 U.S. 314, 315, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987)?**

**A. The State and Federal courts have decided this important federal question differently than the United States Supreme Court has on a set of materially indistinguishable facts.**

On September 6, 2018, the State lower court denied all grounds of the Petitioner's motion for postconviction relief on the merits. At that time, Fla.R.Crim.P. Rule 3.850(j) allowed 15 days to file a rehearing motion and Fla.R.Crim.P. Rule 3.070 allowed an additional 3 days to file since the court served the denial order by U.S. mail. Therefore, the State courts argued that Coffey's motion for rehearing was timely if filed on or before September 24, 2018.

Coffey filed his motion for rehearing on September 25, 2018 because he relied on Fla.R.Jud.Admin. Rule 2.514(b) that allowed an additional 5 days to act on any order served via U.S. mail. On October 16, 2018, the lower court dismissed the motion for rehearing as untimely. On October 24, 2018, Coffey filed a "Motion for Reconsideration" with the postconviction court. On November 15, 2018, the lower court denied Coffey's Motion for Reconsideration on the timeliness of his Motion for Rehearing (see **Appendix E**).

At the time of Coffey filed his motion for rehearing, the Florida Supreme Court had been discussing via committee the discrepancy in the various court rules governing service by mail and e-serving of documents. On October 25, 2018, the Florida Supreme Court deleted Fla.R.Crim.P. Rule 3.070 in its entirety and held that all criminal court filings would use the additional 5 days to act on any order served via U.S. mail contained within Fla.R.Jud.Admin.

Rule 2.514(b) (see **Appendix H**, effective January 1, 2019, *In re: Amendments to the Florida Rules of Criminal Procedure*, 257 So.3d 66 (Fla. Oct. 25, 2018)).

On November 21, 2018 the Petitioner filed his notice of appeal.

On September 4, 2019, the State filed a Motion to Dismiss the Rule 3.850 motion appeal claiming that the Petitioner's November 21, 2018 notice of appeal was untimely (i.e. filed after 30 days from the date of the September 6, 2018 Rule 3.850 motion denial order) (see **Appendix F**). The State argued that Coffey's "error" in using Fla.R.Jud.Admin. Rule 2.514(b) when filing his "untimely" motion for rehearing" did not entitle him to any tolling for the filing of the notice of appeal. The State argued that Coffey only had 30 days from the September 6, 2018 court final order denying the Petitioner's motion for postconviction relief on the merits.

On October 1, 2019, the 2<sup>nd</sup> DCA agreed with the State and issued its order dismissing the Petitioner's 3.850 motion appeal.

On October 17, 2019, the Petitioner filed a timely Motion for Rehearing with the 2<sup>nd</sup> DCA, arguing that the State courts were in error for not affording him retroactive application of the October 25, 2018 rule change that made his Motion for Rehearing on his 3.850 denial order timely.

On November 5, 2019, the 2<sup>nd</sup> DCA ordered the State to respond to Coffey's Motion for Rehearing. In their Response, the State argued not to give Coffey the retroactive benefit of the rule change despite its effective date occurring during Coffey's appeal. The State held that Coffey's legal proceedings were bound by the rules in effect at the time the lower court rendered its judgment. On December 30, 2019, 2<sup>nd</sup> DCA gave the Petitioner time to reply to the Appellee's response.

On January 29, 2020 the Petitioner filed his “Reply to Appellee’s Response” (see **Appendix G**). Coffey argued that he should receive the retroactive benefit of the January 1, 2019 rule change because the rule change occurred while his appeal of his 3.850 judgment that included denial of his rehearing motion as untimely was not yet final, relying on *Smith v. State*, 598 So.2d 1063, 1066 (Fla. 1992) (citing *Griffith v. Kentucky*, 479 U.S. 314, 323, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987)). In *Griffith*, *id.*, 93 L.Ed.2d at 653, you held, “A new rule for the conduct of criminal prosecutions [ ] applies retroactively to all cases, State or Federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a ‘clear break’ with the past.”

On February 4, 2020, the State Appellate Court rejected the Petitioner’s argument and dismissed his 3.850 motion appeal (see **Appendix I**).

On July 20, 2020, Coffey filed what he argued was his timely Petition for Writ of Federal Habeas Corpus with the U.S. District Court, Tampa, Florida Division. Coffey argued that he should receive tolling for the time he was pursuing retroactive application of Florida’s January 1, 2019 procedural/remedial criminal procedure rule change that made his September 25, 2018 motion for 3.850 rehearing timely filed. The failure of the State courts to afford Coffey such retroactive application violated both your holding in *Griffith v. Kentucky*, 479 U.S. 314, 323, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987) and the Florida Supreme Court holdings. See *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352, 1358 (Fla. 1994) (“Procedural or remedial statutes … are to be applied retrospectively and are to be applied to pending cases”; and see *Smith v. State*, 598 So.2d 1063, 1066 (Fla. 1992)). On August 9, 2016, ninety days after his direct appeal opinion date, the one year time limitation for filing a timely 28 USC §2254 Federal Habeas Corpus Petition began to run. On September 20, 2016, forty-one (41) days later, Coffey filed his

Fla.R.Crim.P. Rule 3.850 Motion for Postconviction Relief, thereby stopping the Federal time from running any further. On October 1, 2019, after long and serious consideration of this issue, the 2<sup>nd</sup> DCA dismissed the Appellant's appeal of his Rule 3.850 motion. On July 27, 2020, three-hundred (300) days expired before the Petitioner filed his instant 28 USC §2254 Federal Habeas Corpus Petition. When added to the prior 41 days when no tolling applied, Coffey filed his Petition in **341 days**, which is less than the 365-day time limitation and makes his Petition timely filed. Coffey cited *Hollinger v. Sec'y. Dept. of Corr. 's*, 334 Fed. Appx. 302 (11<sup>th</sup> Cir. 2009) ("Under the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, the one-year limitations period is tolled for the time during which a properly filed application for State postconviction or other collateral review with respect to the pertinent judgment or claim is pending (see 28 U.S.C. §2244(d)(2)). A State postconviction or collateral motion remains pending, and thus tolls under 2244(d)(2), for the time during which the petitioner could have appealed the denial of such motion..."). Also see *Montgomery v. Louisiana*, 136 S.Ct. 718, 728 (2016) ("The other kind of case that is afforded retroactive effect are new 'watershed rules of criminal procedure,' which are capable of shaking the fundamental fairness and accuracy of a criminal proceeding" (quoting *Schirro v. Summerlin*, 542 U.S. 348, 352, 124 S.Ct. 2519, 159 L.Ed.2d 442 (2004)). See *Lawrence v. Florida*, 549 U.S. 327, 335, 127 S.Ct. 1079, 166 L.Ed.2d 924 (2007) ("A petitioner seeking equitable tolling must establish 'that he has been pursuing his rights diligently' and 'that some extraordinary circumstance stood in his way' which prevented him from timely filing his §2254 petition" (citing *Pace v. Diguglielmo*, 544 U.S. 408, 125 S.Ct. 1807, 161 L.Ed.2d 669 (2005))).

The State and Federal courts refusal to give Coffey retroactive application of Fla.R.Jud.Admin. Rule 2.514(b) was contrary to clearly established federal law contained within

case laws on this issue from this Court. This error has resulted in the Petitioner “losing” his State Appellate Court review of his motion for postconviction relief and caused the Federal courts to determine that his habeas corpus petition was untimely filed. This error violated the Petitioner’s right to due process under the 14<sup>th</sup> Amendment to the U.S. Constitution. The 11<sup>th</sup> Circuit Court of Appeals should receive an order reversing the dismissal of the Petitioner’s federal petition and remand those courts to give criminal procedural rules the retroactive application you demanded in *Griffith v. Kentucky*, 479 U.S. 314, 323, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987); *Montgomery v. Louisiana*, 136 S.Ct. 718, 728 (2016); and *Schirro v. Summerlin*, 542 U.S. 348, 352, 124 S.Ct. 2519, 159 L.Ed.2d 442 (2004). The 11<sup>th</sup> Circuit Court’s decision in this instant case affects all those State and Federal defendants in Florida, Georgia, and Alabama that also seek retroactive application of criminal procedural rules that are decided when their State collateral motion denial order appeals are pending.

**B. The 11<sup>th</sup> U.S. Circuit Court of Appeals has entered a decision in conflict with other United States Court of Appeals on the same important matter.**

Other United States Court of Appeals outside of the 11<sup>th</sup> Circuit have decided this case consistent with your holding in *Griffith v. Kentucky*, 479 U.S. 314, 323, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987).

**First Circuit:** *Crowe v. Bolduc*, 365 F.3d 86 (1<sup>st</sup> Cir. 2004): “As a general rule, judicial decisions are retroactive in the sense that they apply to both parties in the case before the court and to all other parties in pending cases (citing *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 535, 115 L.Ed.2d 481, 111 S.Ct. 2439 (1991); and see *Amman v. Town of Stow*, 991 F.2d 929, 934 (1<sup>st</sup> Cir. 1993)). This rule is absolute in the criminal context (citing *Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S.Ct. 708 (1987)).”

**Sixth Circuit:** *United States v. Brown*, 819 F.3d 800 (6<sup>th</sup> Cir. 2016): “See *Harper v. Va. Dep’t of Taxation*, 509 U.S. 86, 97, 113 S.Ct. 2510, 125 L.Ed.2d 74 (1993) (“When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.”) See *Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987) (“We therefore hold that a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases … pending on direct review and not final ....”). And even if *Sherer*’s holding were somehow not binding in the present case because *Sherer* was decided after the jury found Brown guilty, I would still apply the waiver rule to this case because, as explained above, the rationale underlying it is sound and persuasive”).

**Seventh Circuit:** *Kurzawa v. Jordan*, 146 F.3d 435 (7<sup>th</sup> Cir. 1997): “A windfall is exactly what Kurzawa is asking us to give him by way of an unwarranted extension of William Danzer. We are not inclined to succumb to his request, and shall abide by the Supreme Court’s directive in *Griffith v. Kentucky* that new rules for criminal prosecutions are to be applied in all cases, state and federal, pending on direct review.”

**Ninth Circuit:** *United States v. Gaudin*, 28 F.3d 943 (9<sup>th</sup> Cir. 1994): “Any defendants whose convictions are now on appeal … will obviously get the benefit of today’s ruling (see *Griffith v. Kentucky*, 479 U.S. 314, 322, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987) (“failure to apply a newly declared constitutional rule to criminal cases pending on direct review violates basic norms of constitutional adjudication”); see also *Powell v. Nevada*, 128

L.Ed.2d 1, 62 U.S.L.W. 4203, 4204, 114 S.Ct. 1280 (1994). This is true even if the defendant's didn't object below, since the majority has deemed this type of error both harmful and plain."

**Tenth Circuit:** *United States v. Allen*, 134 Fed. Appx. 261 (10<sup>th</sup> Cir. 2005): "The government's argument is disingenuous. The Supreme Court in *Booker* specifically followed its earlier holding in *Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987), when it held it "must apply" its holding "to all cases on direct review." *Booker*, 125 S.Ct. at 769 (citing *Griffith* for the proposition that "[A] new rule for the conduct of criminal prosecutions is to be applied *retroactively* to all cases, state or federal, ... not yet final" when the rule is announced) (emphasis supplied); see *Griffith*, 479 U.S. at 323 ("We fulfill our judicial responsibility by instructing the lower courts to apply the new rule retroactively to cases not yet final."). We therefore conclude that Mr. Allen may challenge his new sentence under *Booker*."

However, Federal courts in the 11<sup>th</sup> U.S. Circuit Court has held that your holding on the retroactive application of new procedural rule changes in *Griffith v. Kentucky*, 479 U.S. 314, 328, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987) applies solely to Federal cases on appeal (direct review) and does not apply to habeas corpus petitions. See *Prevatte v. French*, 459 F. Supp. 2d 1305, 2006 U.S. Dist. LEXIS 85903 (N.D. (Ga.) 2006) (*Griffith v. Kentucky* "was only concerned with how retroactivity affects (Federal) convictions that are being directly reviewed.... The *Teague (v. Lane*, 489 U.S. 288, 292, 109 S.Ct. 1060, 1065, 103 L.Ed.2d 334 (1989)) Court held: "Because we hold that the rule urged by the petitioner should not be applied retroactively to cases on

collateral review, we decline to address petitioner's contention." *Id.* at U.S. Dist. LEXIS 34. Further, the 11<sup>th</sup> Circuit has held that the Federal courts lack ability or authority to declare a new rule retroactive and that only this Court has that capability. See *Sampson v. United States*, 2017 U.S. Dist. LEXIS 62606 \* LEXIS 16 Footnote 8 (S.D. (Fla.) 2017) ("The. Supreme Court has clearly stated that "a new rule is not made retroactive to cases on collateral review unless the Supreme Court holds it to be retroactive" (citing *Tyler v. Cain*, 533 U.S. 656, 663, 121 S.Ct. 2478, 150 L.Ed.2d 632 (2001)"). Additionally, "The Supreme Court does not make a rule retroactive when it merely establishes principles of retroactivity and leaves the application of those principles to lower courts" *Sampson*, *id.* at LEXIS 16.

## **CONCLUSION**

A proper reading of this Court's holding in *Griffith v. Kentucky*, 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987) leaves little doubt that new procedural rule changes in criminal convictions, State **or** Federal, should be given retroactive application to all cases still pending on appeal. With the exception of the 11<sup>th</sup> U.S. Circuit Court, the Federal courts appear to be applying your holding liberally and applying your holding to habeas corpus and all collateral criminal proceedings. This Court should grant the instant writ of certiorari with directions for the 11<sup>th</sup> U.S. Circuit Courts to give retroactive application to all new procedural rule changes in criminal convictions, State **or** Federal, because not to do so violates clearly established Federal law and violates the 14<sup>th</sup> Amendment affording petitioners due process of law.

## OATH

Under penalty of perjury, I certify that all of the facts and statements contained in this document are true and correct and that on the 8<sup>th</sup> day of June 2022, I handed this document and exhibits to a prison official for mailing out to this Court and the appropriate Respondents for mailing out U.S. mail.

/s/ Jamie Coffey  
Jamie Coffey, DC #C09864  
Marion Correctional Institution  
P.O. Box 158  
Lowell, FL 32663-0158