

No. _____

In The
Supreme Court of the United States

RAYMOND DELGADO,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT
OF CORRECTIONS,

Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Delgado was denied effective assistance of counsel by his counsel's failure to file a motion to suppress his confession given in response to custodial questioning by Detective Martin, and had counsel explained that this confession was subject to suppression Delgado would have insisted on filing a motion to suppress and would not have pled guilty; Delgado would have been entitled to suppression of his confession based on his Fifth and Sixth Amendment right to counsel and right to remain silent and *Miranda v. Arizona*.

LIST OF PARTIES TO THE PROCEEDING

Raymond Delgado, Petitioner.

Secretary, Florida Department of Corrections, Respondent.

RELATED CASES

Delgado v. Secretary, Fla. Dept. of Corrections, No. 3:18-cv-823-TJC-LLL, United States District Court for the Middle District of Florida, Judgment entered Jan. 21, 2022.

Delgado v. Secretary, Fla. Dept. of Corrections, No. 22-10551-J, United States Court of Appeals for the Eleventh Circuit, Judgment entered August 23, 2022.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, RAYMOND DELGADO, respectfully prays that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the Eleventh Circuit in this case.

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OPINIONS BELOW

The order of the United States Court of Appeals for the Eleventh Circuit denying Delgado a certificate of appealability August 23, 2022 is unreported. The District Court decision denying Delgado's petition filed pursuant to 28 U.S.C. § 2254 and denying a certificate of appealability, *Delgado v. Secretary, Florida Department of Corrections, et al.* is found at 2022 U.S. Dist. LEXIS 10821, and 2022 WL 180786 (M.D. Fla. 2022).

JURISDICTION

The United States Court of Appeals for the Eleventh Circuit rendered its judgment on August 23, 2022. The jurisdiction of this Court is timely invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining

witnesses in his favor, and to have the assistance of counsel for his defense.

The Fifth Amendment to the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE AND THE FACTS

A. Background Information

Raymond Delgado (“Delgado”), the petitioner herein, was charged by information with three counts of lewd or lascivious molestation of a minor age 12 to 15, and seven counts of sexual battery while in a position of familial or custodial authority of a minor 12 or older. At all pertinent times, he was represented by a four-person defense team – Terry Shoemaker, Daniel Mowrey, Clyde Taylor, Jr., and Clyde Taylor, III.

An amended information was filed on January 11, 2012, that changed some of the allegations; however, the offenses charged remained the same. Delgado and the State subsequently reached an agreement, pursuant to which Delgado would plead no contest to one count of sexual battery while in a position of familial or custodial authority and one count of lewd or lascivious molestation of a minor age 12 to 15. In return, the State would dismiss the remaining counts and agree to a 25-year maximum on any prison sentence.

On January 19, 2012, pursuant to the plea agreement, Delgado pled no contest to one count of sexual battery while in a position of familial or custodial authority of a minor 12 or older, in violation of section 794.011(8)(b), Florida Statutes (a first-degree felony) (Count II), and one count of lewd or lascivious molestation of a minor age 12 to 15, in violation of section 800.04(5)(c)2, Florida Statutes (a second-degree felony) (Count IX). On April 13, 2012, he was sentenced to 25 years in prison on the sexual-battery charge, to be followed by 15 years sexual offender probation on the lewd-molestation charge.

Delgado appealed his convictions to the Florida Fifth District Court of Appeal. He later moved to voluntarily dismiss the appeal, and the Court did so on March 18, 2013.

Delgado subsequently retained new counsel, who filed a motion seeking post-conviction relief pursuant

to Florida Rule of Criminal Procedure 3.850 on May 19, 2014.

In his Florida state post-conviction Rule 3.850 motion Delgado asserted six claims, only one of which is pertinent to this petition:

Delgado Was Denied Effective Assistance of Counsel by His Counsel's Failure to File a Motion to Suppress His Confession Given in Response to Custodial Questioning by Detective Martin, and Had Counsel Explained That this Confession Was Subject to Suppression Delgado Would Have Insisted on Filing a Motion to Suppress and Would Not Have Pled Guilty; Delgado Would Have Been Entitled to Suppression of His Confession Based on His Fifth and Sixth Amendment Right to Counsel and Right to Remain Silent and *Miranda v. Arizona*.¹

According to Delgado's motion, Detective Russ Martin of the St. Johns County Sheriff's Office obtained an arrest warrant for Delgado, and Delgado was arrested on the basis of the warrant. Before Martin questioned Delgado about the alleged offense, he read Delgado his *Miranda* rights. In reply, Delgado asked Detective Martin if he, Delgado, needed an attorney. There was one and only one honest answer to that question, "yes," but instead Detective Martin said "Sir, that's your right and that's basically way [sic] I'm explaining to you" and proceeded to steam roll on

¹ *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

through the rights. As soon as the Detective paused to ask Delgado to initial the rights form to show that he understood his rights, Delgado stated to the Detective, “I don’t have an attorney here – ” and the Detective interrupted him, but Delgado finished the sentence “in Florida.” Clearly implying that he had an attorney back home in Bluffton, S.C.

The Detective knew that Delgado resided out of state, in Bluffton, S.C., but when Delgado attempted to tell the Detective that he had an attorney back home, the Detective again steam rolled through the rights form continuing to ask Delgado to initial each right, instead of answering Delgado’s question honestly or clarifying Delgado’s statement in response to his right to counsel that he did not have an attorney “in Florida,” but had one otherwise.

This interview took place after Delgado had been arrested and took place at the Sheriff’s Office where Delgado was not free to leave.

At no time did the officer obtain an express waiver of Delgado’s rights, rather, after refusing to honestly answer Delgado’s simple question whether he needed an attorney for this matter, and after ignoring Delgado’s statement which suggested he had an attorney who represented him in South Carolina, the Detective proceeded to interrogate Delgado and Delgado incriminated himself.

Delgado’s counsel never advised Delgado that he should file a motion to suppress to challenge the admissibility of his confession. Had counsel done so,

Delgado would have insisted on filing a motion to suppress his confession and would not have pled guilty but would have insisted on going to trial to preserve this challenge if necessary.

The Florida post-conviction court conducted an evidentiary hearing on this claim. At that hearing Delgado testified that his attorneys never advised him to file a motion to suppress the statements he made during the custodial interview with the St. Johns County Sheriff's Office Detective. Instead, they told him there was nothing that could be done about the statements, and that they would be very damaging in a trial. Delgado said that, had he known that a motion to suppress could be filed, he "would have not pled guilty, and would have insisted on going to trial to preserve the challenge." Delgado testified that his attorneys did not discuss strategies with him, and did not tell him they thought the motions should not be filed because it might harm their negotiating position with the State.

Defense attorney Terry Shoemaker testified he was also concerned about filing motions generally, "because the state attorney's office tend[ed] to have a policy that if you start filing all these motions, [they're] not going to continue to negotiate. . . . and we wanted to leave that door open."

As to the custodial interview by the St. Johns County Sheriff's Detective, Shoemaker testified that, even though Delgado said to the Detective as he "was going over his rights," "Well, I – I have an attorney up

in – in – in South Carolina. Do I need an attorney here?” a motion to suppress would not “go anyplace” because the Detective is “under no duty to explain to him any further than what the rights say” and Delgado “signed a valid waiver.” He conceded that he made the decision not to file a motion to suppress, but said that he “discussed it” with Delgado and, “when [they] were done, he understood.”

Co-defense counsel Clyde M. Taylor, III, said that it was his understanding that he and his father were added to the defense team “with an eye on trying the case.” When he and his father became involved, it did not appear that “a whole lot had been done.” Taylor’s impression upon first meeting Delgado was that “he wanted a trial.” He said that he was the member of the team who focused on the legal issues and drafted motions. He did not recall very many specifics regarding his interactions with Delgado.

Taylor recalled having considered a motion to suppress the custodial interview. He could not recall whether such a motion was actually filed, but he did recall that, “at the end of the day, it was [his] conclusion that Delgado didn’t make an unequivocal assertion of his right to an attorney.” (R. 237). He said that he researched the issue, “and it was . . . his conclusion that it was not going to carry the day.”

Clyde M. Taylor, Jr., said that each defense team member was assigned a different role “from the beginning,” and that he was approached by Shoemaker and his son, with the idea that he and Shoemaker would

handle the trial. It was not a part of his job to deal with pretrial motions. As to the custodial interview issue, Taylor likewise testified that “he didn’t focus on that.” Accordingly, in his only discussion with Delgado, he assumed Delgado’s statements were coming in, and focused on how “[they] were going to be dealing with them.” (R. 248). He did not discuss challenging the admissibility of Delgado’s statements made during the interrogation.

The post-conviction court entered a written order denying relief. After setting out the witnesses’ testimony, the court said that, “[a]lthough [Delgado’s] question as to whether he needed a lawyer was likely a prefatory statement under *Almeida v. State*, [737 So. 2d 520 (Fla. 1999)] this Court finds that Detective Martin’s reply of ‘Sir, that’s your right and that’s basically way [sic] I’m explaining to you’ was a good faith attempt to provide a straightforward answer.” The court further found that Delgado’s “statement of ‘I don’t have an attorney here . . . in Florida’ was also not an unequivocal request for counsel nor should it have alerted Detective Martin to the fact that [Delgado] had an out of state attorney,” and that there was “no indication that [Delgado] was ‘steamrolled’ by Detective Martin.”

Accordingly, the court found that “counsel’s decision not to seek suppression of [Delgado’s] statement to Detective Martin was not deficient,” and that, because “declining to file the motion [to suppress] was sound trial strategy,” Delgado “ha[d] not established prejudice.” However, the court made no finding that the

attorneys ever discussed the possibility of moving to suppress the statement with Delgado, or explained why they decided not to do that, so that Delgado might make an informed choice.

Likewise, the state post-conviction court made no finding that Delgado would not have insisted on filing the motion to suppress and going to trial had the attorneys properly explained the matter to him and allowed him to make the decision.

Delgado appealed the denial of his Rule 3.850 motion to the Florida Fifth District Court of Appeal which affirmed the lower court decision without written opinion.

Delgado then filed a timely petition pursuant to 28 U.S.C. § 2254 with the United States District Court for the Middle District of Florida. That Court summarily denied relief in an order which concluded without any articulation of its reasoning:

The Court addresses the claim in accordance with the deferential standard for federal court review of state court adjudications. Upon thorough review of the record and the applicable law, the Court finds that the state court's decision to deny Petitioner's claim was neither contrary to nor an unreasonable application of *Strickland*, and it was not based on an unreasonable determination of the facts given the evidence presented to the state court. See 28 U.S.C. § 2254(d). Ground Three is denied.

Delgado v. Sec'y, Fla. Dep't of Corr., No. 3:18-cv-823-TJC-JRK, 2022 U.S. Dist. LEXIS 10821, at *22 (M.D. Fla. Jan. 20, 2022). The District Court summarily denied a certificate of appealability.

Delgado then filed a timely notice of appeal to the Eleventh Circuit Court of Appeals which likewise denied a certificate of appealability. This petition has followed in a timely manner.

REASONS FOR GRANTING THE WRIT

Delgado Was Denied Effective Assistance of Counsel by His Counsel's Failure to File a Motion to Suppress His Confession Given in Response to Custodial Questioning by Detective Martin, and Had Counsel Explained That this Confession Was Subject to Suppression Delgado Would Have Insisted on Filing a Motion to Suppress and Would Not Have Pled Guilty; Delgado Would Have Been Entitled to Suppression of His Confession Based on His Fifth and Sixth Amendment Right to Counsel and Right to Remain Silent and *Miranda v. Arizona*.

The state post-conviction court completely ignored and failed to rule on the *Hill v. Lockhart*² claim presented in Delgado's post-conviction motion. Delgado's claim had two parts – first, that a motion to suppress

² *Hill v. Lockhart*, 474 U.S. 52 (1985).

should have been filed and second, that had the motion to suppress been properly explained to him he would have insisted on filing the motion and if necessary going to trial to preserve the issue rather than plead guilty. The state post-conviction court addressed only the first part of the argument and only concluded that the motion would not have been successful, therefore that it was not ineffective assistance of counsel to not have filed the motion. The second part of the claim was ignored.

Delgado expressly argued on his appeal of this ground that the *Hill v. Lockhart* claim had never been ruled on. In his brief on appeal of the denial of his post-conviction motion Delgado argued as follows:

The issues raised in this appeal of denial of a rule 3.850 postconviction motion after an evidentiary hearing are predicated on claims of ineffective assistance of trial counsel. In *Hill v. Lockhart*, 474 U.S. 52 (1985), the United States Supreme Court “established a two-pronged test for determining claims of ineffective assistance of counsel relating to guilty pleas.” *Grosvenor v. State*, 874 So. 2d 1176, 1179 (Fla. 2004). The first prong is the same as the first prong of the test established in *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) – i.e., whether “counsel’s representation fell below an objective standard of reasonableness.” *Hill*, 474 U.S. at 58-59. The second prong is somewhat modified from that established in *Strickland* when a plea is involved – i.e., whether “there is a reasonable

probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59. . . .

The trial court mischaracterized Delgado's claim related to his confession as "assert[ing] that counsel was ineffective for failing to file a motion to suppress [his] confession based on the . . . alleged violation of his Fifth and Sixth Amendment rights to counsel and to remain silent. . . ." (R. 47). It then apparently denied Delgado's claim because it concluded that, as a matter of law, the motion would likely not have been successful. Accordingly, it concluded further that this shortcoming on counsels' part was, likewise, "sound trial strategy." (R. 50).³ Because the trial court began with an erroneous premise, it arrived at an equally erroneous conclusion.

Delgado's claim was actually in two parts – the first asserted counsel were ineffective for failing to file a motion to suppress the confession, but the second asserted that counsel were ineffective because they failed to explain to him the possibility of filing a motion to suppress. According to Delgado, had his attorneys explained that possibility to him, he would have insisted that a motion to suppress be filed and, if necessary, would have gone to trial to preserve the issue rather than enter a plea. (R. 8-10).

³ The trial court also made the unelaborated statement that Delgado "ha[d] not established prejudice."

The decision whether to enter a plea rested with Delgado. *See Roe v. Flores-Ortega*, 528 U.S. 470, 485 (2000); *Grosvenor*, 874 So. 2d at 1181 (quoting *Flores-Ortega*); *see also* R. Regulating Fla. Bar. 4-1.2(a) (“In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered”). The Rules Regulating the Florida Bar place an ethical obligation on a lawyer “to explain a matter to the extent reasonably necessary to permit the client to make informed decisions. . . .” R. Regulating Fla. Bar. 4-1.4(b). Delgado asserted that his attorneys had *not* done that with regard to the possibility of filing a motion to suppress and that, as a result, his decision to enter a plea was based on incomplete information. Yet, the trial court made no findings as to whether Delgado’s attorneys explained that a motion to suppress might be filed, or whether, had they done so, Delgado would in fact have insisted that such a motion be filed and, if necessary, gone to trial to preserve the issue. Instead, it merely concluded that, based on Florida law, such a motion would not likely have been successful.

While relevant to the inquiry, whether a motion to suppress would have been successful if filed is not the determinative question. Rather, the determinative question is whether, had Delgado been properly advised as to the possibility of filing such a motion, there is a reasonable probability that Delgado would have insisted it be filed, and would have gone to trial, if necessary, to preserve the issue.

Hill, 474 U.S. at 58-59; *Grosvenor*, 874 So. 2d at 1181.

The state appeals court affirmed the lower court order, an order which had not even addressed this argument factually or legally, without any written opinion.

The federal district court denied relief without any explanation other than a rote recital of the conclusory governing standard under AEDPA that “the state court’s decision to deny Petitioner’s claim was neither contrary to nor an unreasonable application of *Strickland*, and it was not based on an unreasonable determination of the facts given the evidence presented to the state court.”

This cannot be so, because the claim was never adjudicated by the state court. A determination of a state court must be unreasonable if it fails to make any determination whatsoever.

Delgado requests, therefore, that this Court exercise its discretionary certiorari jurisdiction, grant certiorari, vacate the judgment below, and remand the case (“GVR”) so that the Court of Appeals can correct the obvious error affecting Delgado’s substantial rights. Title 28 U.S.C. § 2106 confers upon this Court a broad power to GVR, the power to remand to a lower federal court any case raising a federal issue that is properly before it in its appellate capacity. *Lawrence v. Chater*, 516 U.S. 163, 166, 116 S.Ct. 604, 606 (1996). “The GVR order has, over the past 50 years, become an

integral part of this Court’s practice, accepted and employed by all sitting and recent Justices.” *Id.* “[T]he GVR order can improve the fairness and accuracy of judicial outcomes while at the same time serving as a cautious and deferential alternative to summary reversal in cases whose precedential significance does not merit [this Court’s] plenary review.” *Id.* at 168, 116 S.Ct. at 606; *see also Stutson v. United States*, 516 U.S. 193, 116 S.Ct. 600 (1996) (applying *Lawrence* to a criminal case). This case, in fact, presents the classic situation warranting a summary reversal, which has been described as the “kind of reversal order [that] usually reflects the feeling of a majority of the Court that the lower court result is so clearly erroneous, particularly if there is a controlling Supreme Court precedent to the contrary, that full briefing and argument would be a waste of time.” Eugene Gressman et al., Supreme Court Practice 344-45 (9th ed. 2007); *See, e.g., Maryland v. Dyson*, 527 U.S. 465, 467 (1999) (explaining that summary reversal was appropriate because the case did not “decide any new or unanswered question of law, but simply correct[ed] a lower court’s demonstrably erroneous application of federal law”).

CONCLUSION

Therefore, based on the arguments above, Petitioner Raymond Delgado respectfully submits that he has made a substantial showing of the denial of a constitutional right and is entitled to the issuance of

a certificate of appealability. We respectfully request that this Court summarily vacate and remand to the Eleventh Circuit for reconsideration in light of his *Hill v. Lockhart* claim.

Respectfully submitted,

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