NO. _____

IN THE
Supreme Court of the United States

DARNAY THIBODAUX,
PETITIONER,
V.
JON REEVES, DISTRICT ADMINISTRATOR,
JEFFERSON PARISH DISTRICT,
LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS,
DEPARTMENT OF PROBATION AND PAROLE;
LAUREN SKILES, PROBATION OFFICER
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

(1) Whether the United States Court of Appeals for the Fifth Circuit properly denied Petitioner's Motion for Certificate of Appealability ("COA") as to her Application for Writ of Habeas Corpus filed under 28 U.S.C. § 2254.

PARTIES TO THE PROCEEDINGS

The Petitioner is Darnay Thibodaux, the Petitioner and Petitioner-Appellant in the court below. The Respondents are Jon Reeves and Lauren Skiles, the Respondents and Respondent-Appellee in the courts below.

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PETITION FOR WRIT OF CERTIORARI

Petitioner-appellant, **Darnay Thibodaux**, ("petitioner") moves this Honorable Court for the reversal of the United States Court of Appeals for the Fifth Circuit's decision to deny petitioner's Motion for Issuance of a Certificate of a Certificate of Appealability ("COA") in compliance with 28 U.S.C. § 2253 regarding the appeal of the denial of his petition for habeas corpus in the District Court below.

OPINIONS BELOW

The judgment of the United States Court of Appeals for the Fifth Circuit is a decision in the case of *Thibodaux v. Reeves, et al.*, 21-30600 (5th Cir. 5/23/22) which denied petitioner's Motion for Certificate of Appealability as to the decision of the United States District Court for the Eastern District of Louisiana in the case of *Thibodaux v. Reeves, et al.*, No. 2:19-cv-2241 (E. D. La. 9/15/21).

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on May 23, 2022. This Court's jurisdiction is pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitutional and statutory provisions under consideration are as follows:

> United States Constitution: Fourteenth Amendment. Appx. 125.
>
> 28 U.S.C. § 2244. Appx. 167-68.
>
> 28 U.S.C. § 2253. Appx. 167.

STATEMENT OF THE CASE

A) General Background of Prosecution Against Petitioner:

Petitioner-appellant, Darnay Thibodaux ("Petitioner"), pled guilty and was convicted in the matter of *State v. Thibodaux*, No. 534840-1, 22nd J.D.C., Division "C" of two counts of violations of La. R.S. 14:93.4, Exploitation of the Infirmed, purportedly by Petitioner of an elderly gentleman named Sidney Dobronich ("Mr. Dobronich"). Appx 46, 58. The prosecution was predicated upon several transactions executed by Petitioner on Mr. Dobronich's behalf, pursuant to a power of attorney executed in favor of Petitioner, which transactions occurred from February through mid-March of 2013. Appx. 39-45. Petitioner herein asserts that all of these transactions were specifically authorized by Sidney Dobronich. *Id.*

Specifically, Mr. Dobronich had a sizable estate which he maintained in an investment account and several bank accounts. Appx. 39. As he did not have any children, his primary concern was to be permitted to live out his life at his home on Nell Drive in Sun, Louisiana and to not be placed in a nursing home. *Id.* Consistent with this concern, from around 2009 through 2011, Mr. Dobronich attempted to form a relationship with his step-grandson, whereby he transferred control of all of his assets to his step-grandson and lived with him in return for providing care for Mr. Dobronich and not allowing Mr. Dobronich to be placed in a nursing facility. Appx. 39-40. The arrangement failed, and Mr. Dobronich returned to Nell Drive and removed his step-grandson's control of his assets. *Id.*

Throughout the time that Petitioner was performing care-giving services to Mr. Dobronich, beginning in the summer of 2012 through February of 2013, Mr. Dobronich attempted to form a relationship with the Thibodauxs similar to the one he had previously attempted to form with his step-grandson. Appx. 40. Petitioner and Mr. Dobronich had several conversations whereby Mr. Dobronich expressed a strong desire not to be placed in a nursing home and to be allowed to live out his life at his home at 29127 Nell Drive, whereby Petitioner expressed to Mr. Dobronich her intention to continue to take care of Mr. Dobronich and not to allow him to be placed in a nursing home. *Id*. As an incentive for them to stay in Sun, Louisiana and take care of him, Mr. Dobronich discussed with Petitioner and her husband developing and managing rental property with Mr. Dobronich's financial assistance, which would include the property at Nell Drive, as well as other properties in the near vicinity. *Id*. Mr. Dobronich would then leave all of his assets to the Thibodauxs in his will. *Id.*

In February of 2013; Mr. Dobronich decided to enter into his previously discussed arrangement with the Thibodauxs. *Id.* From February through mid-March of 2013, Petitioner, at the specific direction of Mr. Dobronich, and with the use of Mr. Dobronich's power of attorney, engaged in several transactions in connection with their arrangement: assets were moved from Mr. Dobronich's investment account to purchase undeveloped or dilapidated real estate property within the immediate vicinity of Mr. Dobronich's and the Thibodauxs' home, as well

as to purchase several items necessary to develop and renovate such property. Appx. 40-41.

On March 12, 2013, Mr. Dobronich suffered a severely fractured hip from a fall at his home. Appx. 41. Requiring substantial rehabilitation, but not wanting to be placed in a nursing facility during his recovery, Mr. Dobronich and Petitioner decided to purchase a handicapped accessible camper, which would be placed adjoining the Thibodaux's residence to aid Petitioner in assisting with his recovery (as his residence was approximately 50 yards away from the Thibodaux's residence). *Id.* From February through March of 2013, Mr. Dobronich specifically authorized over 30 transactions, which included purchases, cash withdrawals and transfers, totaling over $334,000. *Id.*

On or around March 15, 2013, two of Mr. Dobronich's nephews, George and Forest Dobronich ("the Nephews"), discovered that their uncle had begun spending money from his retirement account. *Id.* Other than a particular awareness of and specific interest in Mr. Dobronich's finances, the Nephews had virtually no connection with the daily life of Mr. Dobronich. *Id.*

On March 18, 2013, the Nephews initiated a criminal prosecution with the St. Tammany Parish Sheriff's Office against Petitioner and her husband for elder exploitation. Appx. 41-42. This criminal prosecution was conducted concurrently with several civil proceedings prosecuted by the Nephews (and others on their behalf), whereby the Nephews were attempting to obtain control and ultimate ownership of Sidney Dobronich's finances. Appx. 41-42, 45-46.

B) The Exculpatory Statements of Petitioner's Purported "Victim" (and Evidence of the Real Perpetrators in this Case):

During the pendency of the criminal investigation and the civil proceedings, and despite being under intense coercion and almost exclusive physical control of the Nephews, Sidney Dobronich had the opportunity to provide sworn testimony in two instances in which he attempted to state that all transactions performed by the Petitioner were specifically authorized and he did not want to prosecute the Petitioner or her husband. On March 27, 2013, Mr. Sidney Dobronich made the following statement, which was hand written, though duly sworn by a notary in good standing in the State of Louisiana:

> Before me, Rebecca D. Crawford, Notary Public, personally appeared:
>
> Sidney Dobronich
>
> who being first duly sworn, states that
>
> 1) He does not want to press charges against Calvin and/or Darnay Thibodaux for acting on his behalf with a Power of Attorney he executed in the presents [sic] of a Notary Public and two witnesses;
>
> 2) Anything purchased was with his consent and were authorized with his full knowledge;
>
> 3) Items such as, Kubota Tractor, a 4-wheeler, 2001 Chevy PK, a 2013 Nissan Altima and property(s) [sic] were purchased with my knowledge; the money came from my account;

Appx. 46-47.

One day after executing the above affidavit, the Nephews visited Mr. Dobronich and obtained a general Power of Attorney from Mr. Dobronich revoking

Petitioner's POA and obtaining power over all of Mr. Dobronich's finances. Appx. 45. From there, the Nephews took Mr. Dobronich to live with Forest Dobronich, whereby he was put under "24/7" supervision and prevented from having any contact with anyone outside of the Nephews (and one or two other individuals, including Forest Dobronich's daughter, who assisted with watching Mr. Dobronich). Appx.45, 49. Additionally, the Nephews initiated several civil lawsuits against Petitioner and her husband, including *Forest Dobronich and George Dobronich v. Darnay Thibodaux and Calvin Thibodaux*, No. 2013-11784, 22nd J.D.C., Div. "D", (hereinafter, "the Civil Revocation Action"). Appx. 45-46.

On June 25, 2013, Mr. Dobronich testified in open court in the Civil Revocation Action, as follows.

> Q. Now, I want to show you an affidavit, sir, and this is an affidavit that I'm going to mark as Defense Exhibit Number 4. Take your time and look at it, and it's dated March 27, 2013, affidavit, okay. When you finish reading just acknowledge your head, okay, please. Are you finished reading it?
> A. Uhm-hum (Affirmative response).
> Q. Would you look at the bottom of it. Do you remember I pointed out Mrs. Crawford. Do you know Rebecca Crawford?
> A. Yeah.
> Q. Is that her name on the bottom of it?
> A. It is.
> Q. And is that your signature on the bottom of it?
> A. Yeah.
> Q. And without going into it, it says - - and we're going to go into it - - that you gave her the power of attorney to buy a Kubota tractor, a four-wheeler, a 2001 Chevy pickup, a Nissan, other property with your full knowledge and with your account and with your consent with your money from your account. Does it say that? And you do

not wish to pursue these people for criminal charges. It says what it says; does it not, sir? Yes?
A. Yeah.
Q. And whose signature is on the bottom of that affidavit? Is that your signature on the bottom?
A. Yeah.

Appx. 48.

Again, on June 25, 2013; Mr. Dobronich specifically testified in the Civil Revocation Action, under direct questioning by the Court, as follows:

BY THE COURT:
Wait. I have a question, Mr. Burns.
BY MR. BURNS:
Yes, sir, surely.
BY THE COURT:
Why did you do this? Did somebody ask you to do this?
BY THE WITNESS:
I don't know.
BY THE COURT:
You don't know why you did this? You don't remember who asked you to do it?
BY THE WITNESS:
(Negative Response).
BY THE COURT:
Was it your idea? You came up with this by yourself?
BY THE WITNESS:
(Affirmative Response)
BY THE COURT:
You called up Ms. Crawford and said I want to do an affidavit?
BY THE WITNESS:
Yeah.
BY THE COURT:
You called her up? Ms. Crawford is right there. You called her up and said I want to do an affidavit and say that everything I did I don't want to prosecute them for and I want to give this to them? You called them up and said that? It was your idea?
BY THE WITNESS:

(Affirmative response).

Appx. 48-49.

Unfortunately at that point, the Court in the Civil Revocation Action terminated Mr. Dobronich's testimony, questioning his mental competence to testify and ordering that his mental capacity be further evaluated. However, it should be noted that Mr. Dobronich made the above independent exculpatory statements on June 25, 2013 after being in the exclusive custody and control of the Nephews, while he stayed at the home of Forest Dobronich, in which Mr. Dobronich was under what was described as "24/7" supervision. Appx. 45-49.

C) Suppression of Exculpatory Statements: Mental "Incapacity" of Mr. Dobronich:

In line with these instances of exculpatory testimony of Mr. Dobronich, prior to August of 2013, Petitioner, through her counsel at the time, made repeated attempts within the Civil Revocation Action proceedings to obtain Mr. Dobronich's testimony in a deposition. Appx. 51. These efforts were consistently thwarted by the Nephews. Appx. 51, 88-89. These efforts included the filing of a rule to compel Mr. Dobronich's deposition testimony, filed on June 13, 2013. Appx. 51-52, 88-89.

On July 9, 2013, apparently in response to the Court's June 25, 2013 directive, the Nephews submitted a medical report of Dr. Paul Verrette to the Court in the Civil Revocation Action, which declared that Mr. Dobronich suffered from "dementia" and that "and that "[h]is dementia is such that he is not able to direct

his affairs concerning person or property in matters consistent with his own interest." Appx. 52, 86.[1]

This report notwithstanding, counsel for Defendant continued to persist with attempting to obtain a deposition of Sidney Dobronich. Appx. 52, 88-89. On July 17, 2013, counsel in the Civil Revocation Action held a status conference with the Court, which counsel for Nephews summarized as follows:

> This is to confirm my conversation with you during the Status Conference with Judge Garcia wherein I informed you and the judge that we oppose the setting of Sidney Dobronich's deposition based on his incompetency and dementia. As a result of that information, Judge Garcia has set this matter on the docket for August 27, 2013.

Appx. 52, 91. The "setting of Sidney Dobronich's deposition", as a contested matter, was set for hearing on August 27, 2013. *Id.*

On August 13, 2013, the Nephews send another report of Dr. Verrette, dated July 25, 2013, not only stating that Sidney Dobronich was not competent to handle his affairs, but also "that [Sidney Dobronich] is not mentally stable enough to be able to provide *any competent testimony* in a court of law, including a deposition." Appx. 53, 93-94 (emphasis added). On August 27, 2013, the Court in the Civil

[1] It is worth noting that, among other improprieties, the Nephew's actions in filing these reports constituted a clear violation of their fiduciary duties to Mr. Dobronich as his attorneys-in-fact under the POA for acting against his interest by representing that he was mentally incompetent. *See Noe v. Roussell*, 310 So. 2d 818-19 (La. 1975). Upon the Court's June 25, 2013 directive regarding Mr. Dobronich's mental capacity, the Nephews were duty bound to *support* a finding of mental capacity, or to, at least, disqualify themselves as his attorneys-in-fact and to seek an independent evaluation under less suspicious circumstances.

Revocation Action issued a judgment declaring Sidney Dobronich incompetent to testify at trial or deposition. Appx. 52, 101.

At that point, Petitioner, through her counsel at the time, ceased her attempts to obtain any additional potentially exculpatory testimony from Sidney Dobronich. Mr. Dobronich passed away on March 25, 2014. Appx. 54.

D) Olographic Will In Favor of The Nephews: Mental Capacity of Mr. Dobronich:

Shortly after Mr. Dobronich's death, on August 6, 2014, the Nephews, Forest and George Dobronich, along with several other purported nieces and nephews, opened a succession: *Succession of Dobronich*, No. 2014-30680, 22nd J.D.C., Division "I" ("the Succession Proceeding"), in which the Nephews submitted an affidavit, dated July 16, 2014, probating a purported olographic (hand written) testament of Mr. Dobronich. Appx. 55-56, 102-105. The affidavit for probate provided in pertinent part:

> BEFORE ME, the undersigned authority personally came and appeared:
>
> FOREST DOBRONICH and GEORGE DOBRONICH
>
> Both persons of the full age of majority, who, after first being duly sworn, did depose and state:
>
> That Affiants are the surviving nephews of the late SIDNEY DOBRONICH.
>
> That affiants are familiar with the handwriting of SIDNEY DOBRONICH and that Affiants have reviewed the Last Will and Testament dated July 18, 2013, which appears on one sheet of paper beginning with the words,

> "I, SIDNEY DOBRONICH, being of sound mine & body" and ending in the words "would like to leave all my possessions at the time of mine of my death to all my nieces and nephews to be divided equally."

Appx. 56, 102.

This hand written will was dated July 18, 2013, bracketed within two weeks by the dates of the Verrette Reports (submitted by the Nephews to Division "D" of the 22nd J.D.C. in the Civil Revocation Action) declaring the diagnosis of dementia and the mental incapacity of Mr. Dobronich to conduct his affairs and to give testimony. *Compare* Appx. 104, *with* Appx. 85-86, 91, 93-94.

On November 7, 2014, Petitioner filed a Petition to Annul the July 18, 2014 testament. In that Petition to Annul, Petitioner herein explicitly raised the issue of Mr. Dobronich's mental capacity to execute the July 18, 2013 hand written will based on the submission of the Verrette Reports to the Division "D" of the 22nd J.D.C. in the Civil Revocation Action. Appx. 57.

E) Criminal Proceedings In State Court: Expert Testimony of Dr. Garriga; Guilty Plea and Attempt to Withdraw Same:

As noted above, on September 6, 2013, the State of Louisiana, through the Louisiana Office of the Attorney General ("LaAG") instituted prosecution against Petitioner and her husband in Division "C" of the 22nd J.D.C. ("the Criminal Matter") for two counts of violations of La. R.S. 14:93.4, Exploitation of the Infirmed. Appx. 46.

Notwithstanding the death of Sidney Dobronich in March of 2014, in August of 2014 (around the same time that the Nephews had filed Succession Proceeding

attempting to probate Mr. Dobronich's purported hand-written will); the State of Louisiana procured expert testimony from Dr. Michelle Garriga regarding a forensic psychiatric analysis of Mr. Sidney Dobronich. Appx. 54, 114-133. The explicitly stated purpose of the evaluation was "to address [Sidney Dobronich's] mental status and capacity to make decisions regarding his financial affairs in February and March of 2013." Appx. 115. This expert testimony relied heavily upon the Verrette Reports and the written statements of the Nephews, as well as the investigation report of Det. Montgomery. Appx. 54-55, Conspicuously, Dr. Garriga's evaluation was "by Records Review Only", despite the availability of the Nephews and Det. Montgomery for live interviews. Appx. 115. Based on the acknowledged limited evidentiary review, Dr. Garriga concluded that Mr. Dobronich suffered from "Major Neurocognitive Disorder (Dementia)" and lacked the mental capacity to consent to any of the transactions conducted within the last two years of his life, including between February and March of 2013 for which Petitioner was being prosecuted:

> **ASSESSMENT:**
>
> It is my opinion to a reasonable degree of medical certainty that Mr. Dobronich suffered from Major Neurocognitive Disorder (Dementia), Possible Vascular Neurocognitive Disorder *prior to February of 2013 and up until his death*.
>
> **BASIS FOR OPINION:**
>
> Mr. Dobronich demonstrated confusion and memory loss, and problems with concentration, executive function, and social cognition during his court testimony on June 25, 2013. Dr. Verrette found disorientation and memory loss in his evaluation on July 2, 2013 leading to his diagnosis of dementia. Based upon his evaluation, Dr. Verrette

> further opined that Mr. Dobronich was "not able to direct his affairs concerning person or property in matters consistent with his own interest."
>
> It is my opinion that he *lacked the same capacity* in the months prior, i.e. during the time in question, February and March of 2014 [sic]. Dementia (except that caused by a sentinel event such as a massive stroke) has a slow, step-wise progression. It does not spontaneously appear to the degree evident in Mr. Dobronich in June and July without it having also been present in the previous months. . . .
>
> Therefore, in summary, it is my opinion that there is ample evidence in the records to indicate that Mr. Dobronich suffered serious dementia and *most likely lacked the capacity* to make decisions regarding his finances, property, or medical care.

Appx. 55, 132-33 (emphasis added).

Of considerable significance, without this expert testimony, in light of the absence of Mr. Dobronich and the two instances of sworn testimony indicating that the transactions were authorized; the State of Louisiana would not have had legal sufficiency to bring the criminal prosecution against Petitioner or her husband. More importantly, without Mr. Dobronich's availability; Petitioner was effectively required to rebut the State's evidence of the over 30 transactions of $334,000, conducted in less than one month's time with nothing but her own admittedly self-serving testimony.

Of further significance, on November 10, 2014, the State of Louisiana tendered to Petitioner what it identified as *Brady* material regarding the July 18, 2013 purported testament of Mr. Dobronich, described as a "video . . . taken by Forest Dobronich", "depicting Mr. Sidney Dobronich dictating a will on July 18,

2013" (conclusively establishing its awareness of the Nephews attempt to probated a testament in direct contravention of its key piece of evidence against Petitioner). Appx. 57, 134.

On December 9, 2014, Petitioner filed a Motion to Exclude the Testimony of Dr. Garriga, based on a violation of Louisiana Rules of Evidence Rule 702 (*Daubert*), in which the Petitioner specifically contested the reliability of Dr. Garriga's testimony as to the mental capacity of Mr. Dobronich. Appx. 57. On December 16, 2014, a hearing on the Defense Motion to Exclude Expert Testimony was held, wherein Dr. Garriga testified against the Petitioner, consistent with her report, that Mr. Dobronich was mentally incapable of conducting any transactions in February of 2013 until his death in March of 2014. Appx. 58. The State did not in any way attempt to qualify, correct or withdraw this testimony; and the Court subsequently denied the Petitioner's Motion at that time. *Id.*

As a result of the potential testimony of Dr. Garriga, and being functionally deprived of Mr. Dobronich's exculpatory testimony, on December 17, 2014, Petitioner and her husband changed their pleas to guilty as charged. Appx. 58. The prosecution, while agreeing to a sentence of probation for Petitioner's husband Calvin Thibodaux, insisted on a pre-sentence investigation as to Petitioner. *Id.* The Court set the sentencing hearing for January 29, 2015. *Id.*

On January 9, 2015, Petitioner herein filed a Motion to withdraw her guilty plea and to dismiss the indictment on the grounds that the Nephews, in coordination with the State of Louisiana, deprived her of Mr. Dobronich's favorable

testimony in violation of the Compulsory Process Clause of the 6th Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Appx. 58-59.

On January 29, 2015, the State District Court denied the Petitioner's Motion to Withdraw Plea/Dismiss and sentenced Petitioner to 10 years in prison with 5 years suspended, and 5 years probation, and ordered restitution to be paid to the purported victims. Appx. 60.

Petitioner filed her Application for Writ of Supervisory Review to the Louisiana First Circuit Court of Appeals on February 18, 2015, *State v. Thibodaux*, 22nd J.D.C. No. 534840-1, 1st Cir. C.A. No. 2015-KW-0280, which application was denied on February 19, 2015. Appx. 60. Petitioner filed her Application for Writ of Supervisory Review to the Louisiana Supreme Court on March 9, 2015. *Id.* On May 15, 2015, the Louisiana Supreme Court denied Petitioner's writ application as to her Motion to Withdraw Guilty Plea. *Id.*

F) The Successions Proceeding and Disavowal of Evidence of Mr. Dobronich's Mental "Incapacity":

Subsequent to the State District Court's rulings and sentence in the Criminal Matter, on February 24, 2015, the Court in the Successions Proceeding held a hearing on the Petition to Annul Testament filed by Petitioner herein. Appx. 60-61. Within that hearing, the proponents of the July 18, 2013 testament offered the sworn testimony of the Nephews, as well as Detective Stefan Montgomery of the St. Tammany Parish Sheriff's Office (the lead investigation against Petitioner in the

Criminal Matter), that, through the timeframe of February 2013 through his death in March of 2014, Sidney Dobronich unquestionably had the mental capacity to execute the purported July 18, 2013 hand-written will. Appx. 61. Additionally, upon attempting to introduce the Verrette Report, the critical evidence supporting the State's expert testimony against Petitioner, the Nephews, through their counsel, objected to the introduction of the report on the grounds that the Verrette Reports constituted unreliable hearsay. Appx. 61, 146-47. Additionally, Forest Dobronich testified that he was certainly aware of the report and that he "disagreed" with the conclusions. Appx. 61, 140-46, 150.

Pursuant to that testimony, the Court in the Successions Proceeding accepted the testimony offered by the Nephews, sustained the hearsay objection as to the Verrette report, and found that Sidney Dobronich had the mental capacity to execute the July 18, 2013 hand-written will. Appx. 61, 146, 152-57.

G) Criminal Proceedings in State Court: State's Motion for Restitution:

On September 21, 2015; the State of Louisiana filed a motion in the Criminal Matter seeking a determination of restitution to be paid by Petitioner and her husband. Appx. 62, 159-60. The initial setting for the hearing on the State's Motion for Restitution was set for October 28, 2018. Appx. 62. On December 9, 2015, the State successfully moved to continue the hearing date, over the Petitioner's objections, which was ultimately reset for January 20, 2016. Appx. 62,

162-63. On January 20, 2016, the State effectively withdrew its Motion for Restitution, and the motion was dismissed at that time. Appx. 62, 164.

H) State Post Conviction Relief Proceedings:

On July 28, 2016, Petitioner filed her claims for post-conviction relief with the Louisiana 22nd Judicial District Court. Appx. 62. In those claims, Petitioner largely re-asserted the facts previously raised in her prior Motion to Withdraw her Guilty Plea and to Dismiss the Indictment against her as well as her unsuccessful writ applications. *Id.* The Post-Conviction Relief petition was predicated substantially on the new evidence, not originally before the State District Court in her previous Motion to Withdraw Plea/Dismiss, containing sworn testimony of George and Forest Dobronich, Det. Montgomery and Courtney Dobronich unequivocally asserting the mental capacity of Mr. Sidney Dobronich, as well as the State District Court's ruling in the case of Successions Proceeding, that Mr. Dobronich had sufficient mental capacity to execute a will on July 18, 2013. Appx. 62-63. In particular, Petitioner's claims included the specific claim of a violation of the Due Process Clause for the knowing submission of the expert testimony of Dr. Garriga, which the State knew was patently false, resulting in the unconstitutional coercion of her guilty plea. *Id.*

On February 23, 2017, the State District Court summarily denied Petitioner's claims for post-conviction relief. Appx. 66. On May 26, 2017, Petitioner filed an application for supervisory writs to the Louisiana First Circuit Court of Appeals. *Id.* After initially refusing consideration on technical grounds, on July 24, 2017, the

Louisiana First Circuit Court of Appeals denied writs, without comment. Appx. 67. On August 22, 2017, Petitioner filed an application for supervisory writs to the Louisiana Supreme Court raising the same issues raised previously with the Louisiana First Circuit Court of Appeals. *Id.*

On January 18, 2019, the Louisiana Supreme Court denied Petitioner's writ application. Appx. 68, 165-66. Significantly, in denying Petitioner's writ application, the Louisiana Supreme Court limited its ruling to the general bases that Petitioner's "guilty plea waived all non-jurisdictional defects in the proceedings leading to her conviction", citing the Louisiana case of *State v. Crosby*, 338 So. 2d 584 (La. 1976). Appx. 68, 166. More significantly, the Louisiana Supreme Court further issued a judgment decreeing that "[r]elator has now fully litigated her application for post-conviction relief in state court" and specifically ordering the district court "to record a minute entry consistent with this per curiam." *Id.*

I) The Federal Habeas Corpus Proceedings:

On March 11, 2019, Petitioner filed her application for Writ of Habeas Corpus with the U.S. District Court for the Eastern District of Louisiana. Appx. 11, 39-84. Contained within that application was a claim pertaining to the Due Process Clause violation for the State of Louisiana's introduction of the false report and testimony of Dr. Garriga, which led to Petitioner's unconstitutionally coerced guilty plea. Appx. 72. On June 18, 2019, petitioner filed a reply brief with the District Court in which she argued that her petition was timely filed under 28 U.S.C. §

2244(d) based upon the pendency of the State's Motion for Restitution from September 21, 2015 through January 20, 2016. *See* Appx. 16, n.32.[2]

On July 27, 2021, the Magistrate Judge in the above captioned matter issued the Report and Recommendations. Appx. 10-38. In the Report and Recommendations, the Magistrate Judge recommended dismissal with prejudice of Petitioner's habeas corpus claims based upon the purported untimely filing of said claims. Appx. 38. In particular, the Magistrate Judge's recommendations were based upon the findings that the one year statutory limitations period under 28 U.S.C. § 2254(d) of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") had expired prior to the filing of the state post-conviction relief petition. Appx. 12-17. With regard to the conclusion as to timeliness under 28 U.S.C. § 2254(d), the Magistrate Judge found that the limitations period commenced on May 15, 2015, upon the Louisiana Supreme Court's denial of Petitioner's writ application pertaining to the initial denial of Petitioner's motion to withdraw her guilty plea, and thus expired on May 16, 2016, prior to the July 28, 2016 filing of the petition for post-conviction relief. *Id.* Furthermore, the Magistrate Judge found that the limitations period was not tolled by the pendency of the State's September 21, 2015 Motion for Restitution. Appx. 15-17, n.32.

On September 15, 2021, the District Court adopted the Report and Recommendations of the Magistrate Judge and dismissed the Petitioner's habeas corpus application with prejudice. Appx. 4-8. In its ruling, the District Court

[2] The Report and Recommendations of the Magistrate Judge erroneously asserted that the State's Motion for Restitution was filed on January 20, 2016.

amplified the findings of the Magistrate Judge with respect to the issue of whether the State's September 21, 2015 Motion for Restitution tolled the statutory limitation of §2244(d), providing that the Motion for Restitution did not toll the statutory limitations period because the basis of the restitution motion was unrelated to the basis of Petitioner's claims for relief in her habeas corpus application. Appx. 5-6.

On December 15, 2021, petitioner filed her Motion for Issuance of a Certificate of Appealability ("COA") with the United States Court of Appeals for the Fifth Circuit. Appx. 1. That Motion was denied on May 23, 2022. *Id.* This Petition follows.

ARGUMENT

I. Petitioner is Entitled to the Issuance of a Certificate of Appealability as to the Dismissal of her Application for Writ of Habeas Corpus Filed Pursuant to 28 U.S.C. § 2254:

A) Standard for Issuance of Certificate of Appealability:

First of all, "under the [AEDPA], a state habeas petitioner must obtain a COA before he can appeal the federal district court's denial of habeas relief." 28 U.S.C. § 2253(c); *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). A COA is warranted upon a "substantial showing of the denial of a constitutional right", which showing is nevertheless required notwithstanding where, as here, the district court has disposed of petitioner's claims on procedural grounds. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). As such, where "the district court denies relief on procedural grounds, the petitioner seeking a COA must show both 'that jurists of reason would find it debatable whether the petition states a valid claim of the

denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

B) Jurists of Reason Would Find it Debatable whether the Petition Sets Forth Valid Claims of Constitutional Rights Violations:

First and foremost, as more fully set forth below, in her application for habeas corpus relief, Petitioner has specifically asserted claims in which jurists of reason could find, at a minimum, set forth valid claims of the denial of constitutional rights as protected under Fourteenth Amendment.

Petitioner asserted a Fourteenth Amendment Due Process Clause violation for the State's knowing submission of false evidence against Petitioner in the form of Dr. Garriga's testimony and report pertaining to the purported absence of Mr. Dobronich's mental capacity to authorize relevant transactions from February 2013 through his death in March of 2014. As to this claim, the Federal jurisprudence has uniformly recognized that "the Due Process Clause of the Fourteenth Amendment forbids the government from knowingly using false testimony against a criminal defendant, or failing to correct said false testimony. *See United States v. Mason*, 293 F.3d 826, 828 (5th Cir. 2002) (citing *Giglio v. United States*, 405 U.S. 150, 153 (1972)). To prove a due process violation, the petitioner (criminal defendant) must establish that (1) the testimony was false; (2) the government knew the testimony was false; and (3) the testimony was material. *Id.* Furthermore, reversal of a criminal conviction for knowingly using false testimony

is proper even where the defense had an opportunity to correct the error. 293 F.3d at 829. In articulating this standard, the court in *Mason* cited the following provision in this Court's holding in *Giglio v. United States*, 405 U.S. 150, 153 (1972):

> As long ago as *Mooney v. Holohan*, 294 U.S. 103, 112, 55 S. Ct. 340, 342, 79 L. Ed. 791 (1935), this Court made clear that deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with "rudimentary demands of justice." This was reaffirmed in *Pyle v. Kansas*, 317 U.S. 213, 63 S. Ct. 177, 87 L. Ed. 214 (1942).

Id. at 153.

In *Mooney v. Holohan*, 294 U.S. 103 (1935), this Court addressed a habeas corpus petition in which the petitioner alleged that his conviction had been obtained by the use of knowingly false testimony. Without addressing the validity of the allegations, the respondent asserted that, irrespective of whether the evidence used was knowingly false, no due process violation existed as long as the petitioner had notice and an opportunity to challenge the knowingly false evidence at a hearing. In rejecting the respondent's contention, this Court provided, as follows:

> Without attempting at this time to deal with the question at length, we deem it sufficient for the present purpose to say that we are unable to approve this narrow view of the requirement of due process. That requirement, in safeguarding the liberty of the citizen against deprivation through the action of the state, embodies the fundamental conceptions of justice which lie at the base of our civil and political institutions. *Hebert v. Louisiana*, 272 U.S. 312, 316, 317, 47 S. Ct. 103, 71 L. Ed. 270, 48 A.L.R. 1102. It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of

> court and jury by the presentation of testimony known to be perjured. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation.

Mooney, 294 U.S. at 112.

In this case, the application of Petitioner and supporting evidence is not merely "debatable amongst jurists of reason", but arguably conclusive, that the State's offer of Dr. Garriga's report and testimony against Petitioner in the Criminal Matter violated Petitioner's Due Process rights under the Fourteenth Amendment. First and foremost, the record clearly establishes that Dr. Garriga's report and testimony that Mr. Dobronich lacked mental capacity to conduct transactions from February 2013 through his death in March of 2014 were patently false. Dr. Garriga's report and testimony, based in large part on the findings in the Verrette Report, found substantial evidence of "Major Neurocognitive Disorder" in Mr. Dobronich in July of 2013, which purportedly existed to such an extent that, based upon the nature of the disorder as a "slow, step wise progression", had to have been present in February and March of that year. Appx. 55, 132-33. However, in the February 24, 2015 hearing in the Successions Proceedings, the question of Mr. Dobronich's mental capacity to execute a will on July 18, 2018 was placed squarely at issue. At that hearing, the court heard testimony from several witnesses, including the lead investigator in Petitioner's criminal case, Det. Montgomery, as to Mr. Dobronich's mental capacity to execute that will. Appx. 61, ROA. 46, 138-157. The court also explicitly rejected the Verrette Report (a

substantial basis for Dr. Garriga's testimony), as unreliable hearsay. Appx. 61, 146-47, 156. Finally, the court necessarily found that Mr. Dobronich did, in fact, have mental capacity to execute his purported July 18, 2013 will. Appx. 61, 155-56. As Dr. Garriga's testimony was predicated primarily upon evidence of dementia exhibited in July of 2013, it is clear from the record that the report and testimony of Dr. Garriga that Mr. Dobronich lacked mental capacity to conduct transactions from February 2013 until his death was patently false.

Second, the record clearly establishes that the State knew that Dr. Garriga's report and testimony were false at the time they were introduced to the court in the Criminal Proceedings in December of 2014. At the outset, it is uncontroverted that the State, on November 10, 2014, provided the Petitioner with what the State itself characterized as *Brady* evidence of Mr. Dobronich creating his purported July 18, 2018 will, over one month prior to Dr. Garriga's testimony and report being introduced to the Court for consideration of Petitioner's motion to exclude her testimony under Rule 702. *See* Appx. 57, 134. An additional indication of the State's knowledge is derived from within Dr. Garriga's report, acknowledging that her opinion was generated on the basis of "by Records Review Only", Appx. 115. This limitation to "Records Only" was noted despite the clear availability of the Nephews and Det. Montgomery for live interviews and despite the fact that a legally reliable forensic psychiatric evaluation under *Daubert* clearly contemplate information gathering "from as many sources as possible." *See In re Succession of Pardue*, 40,177 (La. App. 2 Cir. 11/8/05), 915 So. 2d 415, 420 (emphasis added); *see*

also Succession of Werner v. Zarate, 2007-0829 (La. App. 1 Cir. 12/21/07), 979 So. 2d 506, 509. In this instance, the State controlled the evidence reviewed by Dr. Garriga, specifically allowing her only to review certain evidentiary materials and not permitting an interview of the witnesses, who testified unambiguously to Sidney Dobronich's mental capacity on in the February 24, 2015 hearing in the Successions Proceeding. As such, the "Records Only" limitation is a clear indication that the State of Louisiana was well aware that Dr. Garriga's opinion as to Mr. Dobronich's mental capacity to conduct transactions from February 2013 through his death in March of 2014 was patently false.

Finally, the patently false report and testimony of Dr. Garriga were not only material, they were *sine qua non* to State's ability to maintain its prosecution against the Petitioner in the Criminal Matter. At the time of Petitioner's trial in December of 2014, Mr. Dobronich, Petitioner's purported victim, was deceased. Appx. 54. The only sworn statements of Mr. Dobronich pertaining to Petitioner's supposed guilt were the March 25, 2013 affidavit and the June 25, 2013 testimony in the Civil Revocation Action: both exculpatory. Appx. 46-49. In short, without the false Garriga report and testimony, the State had no basis to bring a prosecution against Petitioner and certainly had no basis to even put her in any position to enter a guilty plea. Appx. 55. With the false Garriga report and testimony, the State had effectively negated (or substantially diluted) any value of the March 27, 2013 and June 25, 2013 sworn statements and had effectively put Petitioner in a position of having to explain making 30 transactions of $304,000.00

with little more than arguably self-serving testimony. *Id.* As such, the patently false report and testimony of Dr. Garriga was, at a minimum, material to the prosecution.

Addressing Petitioner's December 17, 2014 guilty plea, and regarding the Louisiana Supreme Court's January 18, 2019 determination that said guilty plea waived any further assertion of federal due process violations; Petitioner's guilty plea did not waive her particular due process claim pertaining to the State's use of the false report and testimony of Dr. Garriga. Under this Court's jurisprudence, "[w]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *Brady v. United States*, 397 U.S. 742, 748 (1970). In fact, the this Court has rejected the notion of solely relying on a *Boykin* colloquy as a measure of the voluntariness of a guilty plea, specifically stating that "[t]he voluntariness of [a defendant's] plea can be determined only by considering all of the relevant circumstances surrounding it." *Brady v. U.S.*, 397 U.S. at 748. In the case of *Brady v. United States*, this Court has explicitly recognized that "the agents of the State may not produce a plea by actual or threatened physical harm or by mental coercion overbearing the will of the defendant." 397 U.S. at 750. Further explaining, the Court in *Brady v. United States*, using the analysis of the voluntariness of confessions as a parallel, noted likewise that a guilty plea must be "free and voluntary: that is, must not be extracted by any sort of threats or

violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence." 397 U.S. at 754.

On this point, Petitioner's December 17, 2014 guilty plea was, in fact, wrongfully coerced by the introduction of knowingly false evidence in the form of Dr. Garriga's testimony, which constituted the "exertion of improper influence", as prohibited under the holding in *Brady v. United States*. Petitioner submits that the circumstantial analysis surrounding the materiality of that false testimony (as provided above) mirrors the circumstantial analysis as to whether Petitioner's guilty plea was voluntary under *Brady v. United States*. In light of the clear and overwhelming jurisprudence prohibiting the state's use of knowingly false evidence to secure a criminal conviction, Petitioner takes the position that said jurisprudence applies with equal force to situations in where, as here (and explained above), such knowingly false evidence was used to secure a guilty plea.

In any event, given the record in this matter, it is clear that jurists of reason at least could find it debatable that Petitioner has at least asserted a denial of her right to Due Process with respect to the State's introduction of the false report and testimony of Dr. Michelle Garriga in the Criminal Proceedings.

C) Jurists of Reason Would Find it Debatable whether the District Court Was Correct in Finding that the Petition in this Case was Not Timely Filed:

With regard to the District Court's adverse ruling on the issue of timeliness of Petitioner's application, jurists of reason could find it debatable that Petitioner's application was filed within the time as provided under 28 U.S.C. § 2244(d). In its

analysis (as adopted from the Report and Recommendations of the Magistrate Judge) pertaining to the lapse of the one year statute of limitation of 28 U.S.C. §2244(d), the District Court acknowledged the statutory tolling of that period by the filing and pending of Petitioner's Motion to Withdraw Guilty Plea, which was tolled until May 15, 2015. Appx. 15-16. Thus, according to the District Court, the statutory limitations period purportedly lapsed on May 15, 2016, well before the Petitioner even filed her petition for post-conviction relief under Louisiana law on July 28, 2016. *Id.*

However, applying this Court's analysis in the case of *Wall v. Kholi*, 562 U.S. 545 (2011), the statutory limitations period did not lapse until March 20, 2019, making Petitioner's March 11, 2019 filed application timely under 28 U.S.C. § 2244(d). First and foremost, the State of Louisiana, on September 21, 2015, filed a Motion for Restitution, which was pending with the state court until it was dismissed on January 20, 2016. Appx. 62, 159-64. Similar to the Petitioner's Motion to Withdraw Guilty Plea, the State's Motion for Restitution also constituted "collateral review" under the analysis of *Wall v. Kholi* and tolled the limitations period for 122 days as per 28 U.S.C. § 2244(d)(2). In the case of *Wall v. Kholi*, this Court, in a unanimous opinion, noted that the "collateral review" tolling provision of 28 U.S.C. § 2244(d)(2), had not been defined in the AEDPA, so the Court went about defining the term (arguably very broadly), as it applied therein, as follows:

> By definition, something that is "collateral" is "indirect" not direct. 3 OED 473. This suggests that "collateral" review is review that is "[l]ying aside from the main" review, *i.e.*, that is not part of direct review.

* * *

> Of course, to trigger the tolling provision, a "collateral" proceeding must also involve a form of "review", but the meaning of that term seems clear. "Review" is best understood as an "*act of inspecting or examining*" or a "judicial reexamination." Webster's 1944; see also Black's, *supra*, at 1434 ("[c]onsideration, inspection, or reexamination of a subject or thing"); 13 OED 831("[t]o submit (a decree, act, etc.) to *examination or revision*"). We thus agree with the First Circuit that "'review' commonly denotes 'a looking over or *examination* with a view to amendment or *improvement*.'" 582 F.3d at 153 (quoting Webster's 1944 (2002)). Viewed as a whole, then, collateral review of a judgment or claim means a judicial reexamination of a judgment or claim in a proceeding outside of the direct review process.

562 U.S. at 551-52, 553 (emphasis added).

Clearly, the State's Motion for Restitution constituted "an act of inspecting or examining" of the sentence imposed upon Petitioner on January 29, 2015, as it specifically called for the determination of the amount of restitution that was initially ordered by the Court at that time. *See* Appx. 159-60.

Furthermore, the actual language of the tolling provision of 28 U.S.C. § 2244(d)(2) provides, as follows:

> The time during which a properly filed application for State post-conviction *or other collateral review* with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Id. (emphasis added). As read, the phrase "or other collateral review" does not specify that the "collateral review" proceedings are limited to those filed by the petitioner. As such, the State's Motion for Restitution clearly constitutes "collateral

review" under 28 U.S.C. § 2244(d)(2) (or such classification is, at least, debatable amongst jurists of reason), and served to toll the limitations period for 122 days.

The State's Motion for Restitution added 122 days to the May 15, 2016 limitations period calculated by the 22nd JDDO, or until September 14, 2016. As Petitioner filed her Petition for Post-Conviction Relief under Louisiana law on July 28, 2016, Appx. 11, 61, the limitations period was tolled a third time under 28 U.S.C. § 2244(d)(2). Furthermore, at the time the Petitioner's state law Petition for Post-Conviction Relief was filed, she had 47 days after the pendency of the that proceeding to timely file her Application for Writ of Habeas Corpus under 28 U.S.C. § 2244(d).

On January 18, 2019, the Louisiana Supreme Court denied Petitioner's application for supervisory review as to her Petition for Post-Conviction Relief. Appx. 11, 165-66. In conjunction with that denial, the Louisiana Supreme Court issued a judgment decreeing that "[r]elator has now fully litigated her application for post-conviction relief in state court" and specifically ordering the district court "to record a minute entry consistent with this per curiam." Appx. 166. As Petitioner had a right to seek rehearing under Louisiana Supreme Court Rule IX,[3]

[3] Louisiana Supreme Court Rule IX, Section 6 provides that "[a]n application for rehearing will not be considered when the court has merely granted or denied an application for writ of certiorari or a remedial or other supervisory writ . . ." In this case, in denying the petitioner's application for writ of certiorari, the Louisiana Supreme Court also issued a judgment explaining the basis for denial of relief, declaring that petitioner had exhausted her state court remedies and ordering the district court to "record a minute entry consistent with this per curiam." As such, the denial of relief was not "merely" a denial of an application for writ of certiorari;

the tolling period of Petitioner's state law Petition for Post-Conviction Relief ended on February 1, 2019, after the 14 day period for applying for a rehearing had lapsed. *See* La. S. Ct. R. IX, § 1.

Accounting for the tolling of the statutory period by the Petitioner's state law Petition for Post-Conviction Relief, and noting that Petitioner had 47 days remaining to file her Application for Writ of Habeas Corpus with the District Court, Petitioner had until March 20, 2019 to timely file her application under 28 U.S.C. § 2244(d). As Petitioner had filed her application on March 11, 2019, Petitioner's Application for Writ of Habeas Corpus was timely filed (or, more to the point, jurists of reason would at least find such a conclusion debatable).

Additionally, the collective analysis of the Magistrate Judge and the District Court further support the contention that jurist of reason would find it debatable that filing and pending of the State's Motion for Restitution tolled the statutory limitations period under 28 U.S.C. § 2244(d), as per the holding of *Wall v. Kholi*. With respect to the analysis, the Magistrate Judge was initially forced to concede that Petitioner's argument "poses an interesting issue", which, by itself, indicates that jurists of reason could come to differing conclusions. Appx. 17, n.32. Second, in reaching her conclusion, the Magistrate Judge had to admit as to her first premise concerning the concept of restitution motions constituting "collateral review" for tolling purposes, the split in the case-law on that point. *Id.*

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and petitioner had a right to apply for rehearing of her writ application to the Louisiana Supreme Court.

Finally, on the points employed to reach her ultimate conclusion, the Magistrate Judge was forced to acknowledge that her position (admittedly like that of Petitioner's) was not supported by jurisprudence. *Id.* On this point, the Magistrate Judge conceded the following point as to her analysis:

> First, those cases involved motions filed by the petitioner, not by the state. On that distinction, petitioner opines that "the phrase 'or other collateral review' does not specify that the 'collateral review' proceedings are limited to those filed by the petitioner." Rec. Doc. 17, p. 6. True enough; however, it likewise does not specify otherwise, and *it is at least arguable* that such a condition is implicit.

Id. (emphasis added).

As to the second point, the Magistrate Judge attempted to distinguish "modifications" of restitution orders (which the Magistrate Judge recommends are "collateral review") and "enforcement" of an existing order (which the Magistrate Judge recommended would not be "collateral review" and which the extant case would purportedly be appropriately characterized). As to this point, it should respectfully be noted that the State's Motion for Restitution cannot properly be characterized as an "enforcement" of an existing restitution order, as there was no set restitution amount, and certainly no assertion that Petitioner failed to tender any such amount. *See* Appx. 159-60. Again, the Magistrate Judge's analysis appears to strain the language of *Wall v. Kholi*, which, at least arguably, refers to "collateral review" as constituting BOTH judicial "examinations" AND "re-examinations", and appears to not assign any significant distinction between the two. *See Wall v. Kholi*, 562 U.S. at 551-52, 553. In any event, regardless of the

eventual determination, it is clear from the intellectual contortions and consternations of the Magistrate Judge's analysis, necessitated by the language of the ruling in *Wall v. Kholi*, that Petitioner has at least met her burden of proof with respect to the issuance of a COA as to this issue.

With respect to the additional analysis of the District Court, said analysis was arguably more direct and definitive, holding that the collateral review must be related to the issues raised in the habeas corpus application to constituted tolling of the statutory limitations period under §2244(d). Appx. 5. However, far from closing the issue as one in which reasonable jurists may disagree, the District Court's analysis directly contradicts this Court's holding of *Wall v. Kholi*. The case of *Wall* examined whether a state court request for reduction of a defendant's sentence under state law tolled, per 28 U.S.C. § 2244(d)(2), the time for filing an AEDPA petition challenging petitioner's conviction. *Wall*, 562 U.S. at 548-49. The district court in that case found that the pending of the motion to reconsider sentence did not toll the limitations period, but the court of appeals had reversed. This Court explicitly stated the question presented in that particular case as follows:

> Even after subtracting that stretch of time from the 11–year period, however, the period between the conclusion of direct review and the filing of the federal habeas petition still exceeds one year. Thus, in order for respondent's petition to be timely, the . . . motion to reduce sentence [under Rule 35 of the Rhode Island Superior Court Rules of Criminal Procedure] must also trigger the tolling provision.
>
> * * *

> The Courts of Appeals are divided over the question whether a motion to reduce sentence tolls the period of limitation under § 2244(d)(2). We granted certiorari to answer this question with respect to a motion to reduce sentence under Rhode Island law. 560 U.S. 903, 130 S.Ct. 3274, 176 L.Ed.2d 1181 (2010).

562 U.S. 549, 550. In applying the analysis noted above, this Court affirmed the holding of the court of appeals that the pending of a motion to reconsider sentence did toll the limitations period of 28 U.S.C. § 2244(d)(2). In so doing, this Court specifically rejected the issue relationship requirement imposed by the District Court in the extant case. *Id.* at 560. In any event, the depth of analysis that this issue engenders is clear indication that said issue, at a minimum, is one in which jurists of reason could at least disagree and should, therefore, be resolved by the court of appeals after issuance of a COA.

CONCLUSION

Based on the above, petitioner is entitled to a reversal of the decision of the Appellate Court denying petitioner's Motion for Issuance of a Certificate of Appealability as to the following adverse findings by the District Court Below.

Respectfully submitted,

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