22-6142

NO. _____

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

TAJ COLLIER – Petitioner

vs.

RICKEY DIXON,
SECRETARY FLORIDA DEPARTMENT OF CORRECTIONS, et al,
Respondent(s)

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

PETITION FOR WRIT OF CERTIORARI

QUESTIONS PRESENTED

Petitioner Collier humbly asks this Honorable Court to invoke its judicial discretion and consider the following question:

WHETHER THIS COURT SHOULD EXERCISE ITS CERTIORARI JURISDICTION IN ORDER TO REVIEW A CLAIM THAT FLORIDA COURTS OF APPEALS DO NOT PROVIDE FOR EVIDENTIARY HEARINGS IN ORDER TO DETERMINE STRICKLANDS MIXED QUESTION OF LAW AND FACT AS TO WHETHER THE DEFICIENT AND PREJUDICIAL PERFORMANCE OF APPELLATE COUNSELS DECISION TO FOREGO A PROPERLY PRESERVED SUPPRESSION ORDER UNDERMINES THE EXHAUSTION REQUIREMENT OF THE CRIMINAL APPEALS REFORM ACT RESULTING IN THE DENIAL OF PETITIONERS FOURTH, FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO THE CONSTITUTION.

IS THE PROCEDURAL BAR UNDER THE AEDPA OF 1996 PROVISIONS CODIFIED AT 28 U.S.C. § 2254 DENYING RELIEF TO STATE PRISONER'S CLAIMS ADJUDICATED ON THE MERITS APPLICABLE TO THOSE CASES WHICH FALL WITHIN THE PERIMETERS OF FLORIDA'S *TOPPS V. STATE*, 865 SO. 2D 1253 CRITERIA WHEN SEEKING FEDERAL HABEAS CORPUS RELIEF?

WAS THE PETITIONER DEPRIVED A FULL AND FAIR OPPORTUNITY FOR A REVIEW OF HIS 4TH AMENDMENT VIOLATION CLAIMS HERE IN UNDER THE *CLISBY* RULE?

ABSENT PROBABLE CAUSE, WHERE THE FACTS HEREIN KNOWN TO LAW ENFORCEMENT SUFFICIENT ENOUGH TO JUSTIFY THEIR METHOD OF DETAINING THE PETITIONER AS NOT TO EXCEED THE LIMITS OF AN INVESTIGATORY STOP IN VIOLATION OF HIS 4TH AMENDMENT ENTITLEMENTS?

IS A STATE HABEAS PETITIONER ENTITLED TO RELIEF WHERE HIS DENIAL ON A 4TH AMENDMENT VIOLATION WERE THE RESULT OF A DECISION BASED ON AN UNREASONABLE DETERMINATION OF FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDINGS?

ARE THE FEDERAL COURTS TO WHICH THE APPLICATION IS MADE ON A 4TH AMENDMENT VIOLATION IN CONJUNCTION WITH THE 5TH, 6TH, AND 14TH BY A STATE PRISONER NOT OBLIGATED TO AT LEAST HOLD AN EVIDENTIARY HEARING OR TRY THE FACTS ANEW, WHERE THE APPLICANT FOR A WRIT ALLEGES FACTS WHICH WERE NOT CONCLUSIVELY REFUTED BY THE RECORD AND IF PROVEN, WOULD ENTITLE HIM TO RELIEF?

PARTIES TO THE PROCEEDING

There are no parties to the proceedings other than those listed in the caption. The Petitioner is Taj Collier and the Respondent is Ricky D. Dixon, Secretary Florida Department of Corrections.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

On behalf of himself and all others similarly situated, Petitioner respectfully petitions for a writ of certiorari to review the decision of the Fourth District Court of Appeals.

JURISDICTION

The Eleventh Circuit denied Petitioner Collier's certificate of appealability on May 2, 2022, [Appendix HHH] and denied rehearing on August 19, 2022, [Appendix NNN] The petition for writ of certiorari is timely. See Sup. Ct. R. 13.3 (. . . if a petition for rehearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or *sua sponte* considers rehearing, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment); 28 U.S.C. § 2101 (c). Jurisdiction exists pursuant to 28 U.S.C. § 1254(1). This Court has jurisdiction. See *Hohn v. United States*, 524 U.S. 236 (1998) ("We hold this Court has jurisdiction under §1254(1) to review denials of applications for certificates of appealability by a circuit judge or a panel of a court of appeals.").

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fifth Amendment of 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.

The Sixth Amendment of the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy trial 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 compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The Fourteenth Amendment of United States Constitution, section one, provides:

All persons born or naturalized in the States United, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside,

No State shall make or enforce any law which shall 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 law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 28 U.S.C. § 2254(a)-(d) provides:

a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B) (i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any

claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Title 28 U.S.C.A § 2253, provides:

(a) In a habeas corpus proceeding or a proceeding under section 2255 [28 USCS § 2255] before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255 [28 USCS § 2255].

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

STATEMENT OF CASE AND FACTS

On Dec 5, 2007 Petitioner's Trial counsel files a motion to suppress evidence based upon an unlawful search and seizure (App. A) The motion challenged that the stop of the4 vehicle the defendant was driving was not supported by a well-founded, reasonable articulatable suspicion of criminal activity, all evidence obtained against the defendant including narcotics and statements must be suppressed as they were obtained in violation of the defendants right to be free from an unreasonable search and seizure. On Jan 2, 2008 and Feb 1, 2008 pg 1-147 trial court held a hearing on the motion to suppress. (App. B)

Testimony of the evidentiary held on the motion to suppress revealed Hallandale Beach Police department responded to Pill store Pharmacy to investigate an attempted prescription fraud. During the investigation the Petitioner vehicle was surrounded and stopped in the roadway then ordered of his vehicle at gun point. (App. B) Pg.29 lines 2-25; Pg.30 lines 1-2; Pg.51 lines 13-25; Pg.63 lines 19-25; Pg.64 lines 1-19; Pg72 lines 8-25; and Pg.73 lines 1-5). None of the officers who actually effectuated the stopped of the vehicle testified at the hearing.

No tip led to Petitioners vehicular stop because none was ever conveyed to the officer that initiated the stop directly or indirectly before the stop. (App. B Pg.47 lines 17-23; Pg.69 lines 14-18; Pg.70 lines 24-25; Pg. 71 lines 1-08; Pg.86 lines 21-25; and Pg.87 lines 1-27.

The trial court found the issue in trial counsel's motion as a challenge to the reliability of the information provided from La Shawn Hankerson and Evelyn Stafford (App. C At 3) The trial court held the police had well-founded, articulable

suspicion to perform the investigatory stop on the Appellant's vehicle given the totality of the circumstances, (App. C at 6-7) The trial court determined that Hankerson's and Staffold tip were reliable, which authorized law enforcement do perform each investigatory stop and that sufficient probable cause arose there from given authority to the seizure of the statements and evidence (Id at 6-7). On Feb 27th, 2008 Petition motion to suppress was denied (App. C)

After which Petitioner went to trial and on June 24, 2009 was found guilty by a jury in case number 06-4699 CF-10D on court one conspiracy to traffic in between 28 grams and 30 kilograms of Oxycodone and count two trafficking in between 14 and 28 grams of Oxycodone.

Petitioner appealed the judgments and statements and sentences of the Fourth District Court of Appeal (App. D). After briefing, (App. E) the Fourth District per curiam affirmed the judgments and sentences on case number 4D09-3568 May 23, 2013. Mandated was then issued on June 21, 2013. (App. G) Petitioner filed a Habeas Petition alleging ineffective assistance of Appellate counsel on July 29th, 2013, (App. H) which he amended on October 24th, 2013. (App. I) In the petitioner , he alleged that his appellate attorney was ineffective for failing to raise the denial of the motion to suppress as an issue in his direct appeal; and sought the issuance of a belated appeal; whereby the petitioner, could raised the issue. After the state filed a response. (App. K) The Fourth District denied the Petition (App. L) on a unelaborated order which is a failure to adjudicated the merit

of the petitioner claim. Petitioner moved for rehearing (App.M) which the Fourth District denied on July 25th, 2014 (App. N)

Petitioner filed a successive Habeas Petition, entitled "petition for Reconsideration of Writ of Habeas Corpus of prior Appellate Decision on the Ground that such Decision Constitute a Manifest Injustice," raising the same grounds he raised in the first petition. (App. O) Give the courts the opportunity to correct it error. The Fourth District discussed it as improperly successive. (App. P)

Petitioner appealed the dismissal to the Florida Supreme Court under case number SC15-358 (App. R) After jurisdictional briefing, the Florida Supreme Court declines to exercise its discretionary jurisdiction to review the case. (App. S).

Petitioner also filed a Habeas Petition in the circuit court alleging that the trial court denied the motion to suppress based on a mistake of fact (App. T)

The court denied the Petition as improperly successive notifying that he had already addressed this issue before the Fourth District Court of Appeal and a Writ of Habeas Corpus may not be used to obtain a second appeal on a matter already disposed of by the appellate court" (App. U) Petitioner appealed the order denying the petition to the Fourth District Court of Appeal (App. W) case number 4D16-3107.

After briefing, the Fourth District per curiam affirmed the denied with a citation. (App. Z) Petitioner filed for rehearing (App. AA) which the court denied (App. BB)

Petitioner filed a motion for a postconviction relief pursuant to Florida Rules of Criminal Appellate Procedure 3.850 on September 15th, 2014, raising 17 grounds for relief (App.CC) The trial court entered an order deny grounds 15 and 17 as legally insufficient and giving the Petitioner 60 days to file an amended motion. (App. EE) After Petitioner filed an amended motion, the trial court summarily denied grounds 15 and 18 and ordered the State to file a response to the claims raised in grounds 1-9, 11-17, and 19.

The state filed its response, (App. HH) and the court entered an order summarily denying all remaining grounds except ground 3, which of granted for the purpose of holding an evidentiary hearing on the issue. (App. II). The court held an evidentiary hearing on ground 3 on December 18th, 2018. After the evidentiary hearing, the trial court entered an order denying the motion (App. KK) none of the claim brought here in were given an evidentiary hearing. Under case # 4D19-99 Petitioner represented by counsel filed an intial Brief. (App. MM). And the state filed a response in accordance with the Fourth district court of Appeal order to show cause why the order denying the motion should not be reversed and remanded to trial court to hold an evidentiary hearing in the claims. (App. NN). After petition filed a reply brief, (App. OO) the Fourth District per curiam affirmed the order denying post conviction relief on April 30th, 2020 (App. PP) Mandate was then issued on June 26, 2020 (App. RR) Petitioner next filed a 2254 writ of Habeas Corpus on Oct 22, 2020 (App QQ) raising 5 grounds. The State of Florida filed a Response December 18th, 2020. On July 31, 2021 the U.S. D.C. Southern District of

Florida entered an order denying pro se litigation Taj Collins petition for a Writ of Habeas Corpus Relief (App. WW), the petition next files a Motion to Alter of Amend Judgment and a Motion to EXPAND THE RECORD (App. YY). The final order denying both was issued on November 5th, 2021 (App. BBB). Petitioner filed a Notice of Appeal on November 19, 2021 (App. DDD. The Court's order denying the Application for a Certificate of Appealability was issued on May 2nd, 2022. (App. HHH) On May 18, 2022 Petitioner filed a Motion for Extension of Time (App. III) petitioner then file a Motion for reconsideration, vacate, or modify pursuant to (App. MMM) FRAP 27-2 21-14087 which was denied (App. NNN)

REASONS FOR GRANTING THE PETITION

I. WHERE THE PETITION FOR HABEAS CORPUS ALLEGES A DEPRIVATION OF A CONSTITUTIONAL RIGHT NOT CONCLUSIVELY REFUTED BY THE RECORD IF PROVEN TRUE WOULD ENTITLE RELIEF, WHETHER THE DISTRICT COURT WAS REQUIRED TO HOLD A HEARING TO ASCERTAIN THE FACTS WHICH ARE A NECESSARY PREDICATE TO A DECISION OF THE ULTIMATE CONSTITUTIONAL QUESTION? (Pg. 11)

II. IN FLORIDA AN UNELABORATED ORDER ON AN EXTRAORDINARY WRIT IS NOT AN ADJUDICATION ON THE MERITS THUS, NOT APPLICABLE TO RESTRICTIONS UNDER 2254 PROHIBITING STATE PRISONER'S WRIT OF HABEAS CORPUS REVIEW ON ANY CLAIM THAT HAD BEEN ADJUDICATED ON THE MERITS IN A STATE COURT PROCEEDING. (Pg. 19)

III. THE QUESTIONS PRESENTED OF WHETHER THIS COURT SHOULD CONSIDER, IF RULING ON A PETITION FOR HABEAS CORPUS RELIEF FILED BY A STATE PRISONER, A CLAIM THAT EVIDENCE OBTAINED BY AN UNCONSTITUTIONAL SEARCH AND SEIZURE WAS INTRODUCED AT HIS TRIAL, WHERE HE HAS NOT BEEN AFFORDED THE OPPORTUNITY OF A MEANINGFUL APPELLATE REVIEW BY A HIGHER STATE COURT. IS AN ISSUE OF CONSIDERABLE IMPORTANCE TO THE ADMINISTRATION OF CRIMINAL JUSTICE. (Pg. 21)

IV. THE TRIAL COURT'S DECISION WHERE RESULTS BASED UPON AN UNREASONABLE DETERMINATION OF FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDINGS. (Pg. 27)

V. THE DECISION HERE IS PARAMOUNT BECAUSE THE ARBITRARY, INCONSISTENT, AND CAPRICIOUS METHODS USED IN WHICH THE STATE POSTCONVICTION AND FEDERAL PROCEEDINGS WERE CONDUCTED VIOLATES THE PETITIONER'S RIGHTS TO DUE PROCESS AND THE EQUAL PROTECTION CLAUSE. (Pg. 31)

I.

WHERE THE PETITION FOR HABEAS CORPUS ALLEGES A DEPRIVATION OF A CONSTITUTIONAL RIGHT NOT CONCLUSIVELY REFUTED BY THE RECORD IF PROVEN TRUE WOULD ENTITLE RELIEF, WHETHER THE DISTRICT COURT WAS REQUIRED TO HOLD A HEARING TO ASCERTAIN THE FACTS WHICH ARE A NECESSARY PREDICATE TO A DECISION OF THE ULTIMATE CONSTITUTIONAL QUESTION?

Petitioner respectfully requests the Court invoke its judicial discretion and consider granting certiorari review because the Florida District Courts of Appeals are not evaluating the deficient and prejudice question by applying the proper inquiry to the facts of his case as to whether Petitioner's appellate attorney's deficient performance was prejudicial under *Strickland v. Washington,* 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Under 28 U.S.C. 2254(d), the availability of federal habeas relief is limited with respect to claims previously "adjudicated on the merits" in state-court proceedings. The first inquiry this case presents is whether that provision applies when state-court relief is denied without an accompanying statement of reasons. If it does, the question turns on whether the Eleventh Circuit adhered to the statutes terms, with regard to this case as it relates to ineffective assistance of appellate counsel judged by the standard set forth in *Strickland.*

To support the foregoing, Petitioner states appointed appellate counsel, Ms. Karen E. Ehrlich, A.P.D. (Ms. Ehrlich) rendered ineffective assistance when she unreasonably chose to forego exhausting the pre-trial suppression order during the

initial direct review of his judgment and conviction ultimately obtained by the use of evidence and testimony gained pursuant to the unconstitutional search and seizure resulting from the illegal and unlawful investigatory stop. The Federal Court is of the opinion that under the principles of *Stone v. Powell*, 428 U.S. 465, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976), federal habeas review of Petitioner's illegal search and seizure claim is not cognizable in this proceeding because Petitioner had a full and fair opportunity to litigate his Fourth Amendment issue in state court.

[W]hen "the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search and seizure was introduced at his trial." *Stone v. Powell*, 428 U.S. 465, 494, 96 S. Ct. 3037, 3052, 49 L. Ed. 2d 1067 (1976) (footnotes omitted).

Petitioner must demonstrate that the state courts deprived him of a full and fair opportunity to litigate the claim.

Petitioner asserts that he received ineffective assistance of appellate counsel. In *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), the United States Supreme Court articulated a two-pronged test for determining whether a defendant was denied constitutionally adequate assistance of counsel. "The same standard applies whether [a court is] examining the performance of counsel at the trial or appellate level." *Eagle v. Linahan*, 279 F.3d 926, 938 (11th Cir. 2001) (citing Matire v. Wainwright, 811 F.2d 1430, 1435 (11th Cir. 1987)).

To demonstrate that his appellate counsel's performance was deficient, Petitioner must show that his attorney's performance "fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 687. "In considering the reasonableness of an attorney's decision not to raise a particular claim, [a court] must consider 'all the circumstances, applying a heavy measure of deference to counsel's judgments.'" *Eagle*, 279 F.3d at 940 (quoting Strickland, 466 U.S. at 691). "Thus, ' [a] fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at that time.'" *Id.* (quoting Strickland, 466 U.S. at 689). The reasonableness of counsel's assistance is reviewed in light of both the facts and law that existed at the time of the challenged conduct. *Chateloin v. Singletary*, 89 F.3d 749, 753 (11th Cir. 1996); see also *Jones v. United States*, 224 F.3d 1251, 1257-58 (11th Cir. 2000) (noting that counsel's "failure to divine" a change in unsettled law did not constitute ineffective assistance of appellate counsel) (quoting Sullivan v. Wainwright, 695 F.2d 1306, 1309 (11th Cir. 1983)).

To determine whether Petitioner was prejudiced by his attorney's failure to raise a particular issue, the Court "must decide whether the arguments the [Petitioner] alleges his counsel failed to raise were significant enough to have affected the outcome of his appeal." *United States v. Nyhuis*, 211 F.3d 1340, 1344 (11th Cir. 2000) (citing Miller v. Dugger, 858 F.2d 1536, 1538 (11th Cir. 1988)), cert. denied, 531 U.S. 1131, 121 S. Ct. 892, 148 L. Ed. 2d 799 (2001). "If [a court]

conclude[s] that the omitted claim would have had a reasonable probability of success, then counsel's performance was necessarily prejudicial because it affected the outcome of the appeal." *Eagle,* 279 F.3d at 943 (citing Cross v. United States, 893 F.2d 1287, 1290 (11th Cir. 1990)).

Here, Petitioner asserts that he received ineffective assistance of appellate counsel because counsel failed to raise the pre-trial suppression order during direct appeal, instead raised three points of law that either were not properly preserved or fell short of the appropriate standard of review and subject to the harmless error rule.

With respect to appellate counsel's performance, the Federal Habeas Court held that because petitioner's appellate attorney, Ms. Ehrlich, had no duty to raise every non-frivolous issue and may reasonably weed out weaker (albeit meritorious) arguments, her decision to forego the exhaustion requirement did not constitute deficient performance. The federal court order further concluded:

> "[G]enerally, only when ignored issues are clearly stronger than those presented will the presumption of effective assistance of counsel be overcome."
>
> "Here, the issue of the denial of the motion to suppress was not "clearly stronger" than the arguments appellate counsel made. Appellate counsel challenged rulings made during the trial itself. The basis of petitioner's motion to suppress in the trial court was that the police lacked a well founded, reasonable articulable suspicion to conduct an investigatory stop of his vehicle. The facts, as established at the evidentiary hearing on the motion and described in detail in the facts section above, belied this claim. It is reasonable if not certain that

the Fourth DCA would have agreed with the trial court's decision to deny the motion to suppress. Counsel's performance cannot be deemed deficient for failing to raise a no-meritorious issue."

"Petitioner also fails to establish prejudice where the argument omitted by appellate counsel lacked merit. Because there is no merit to the arguments raised under claims 2 and 5, the rejection of the claim in the state forum was neither contrary to nor an unreasonable application of Strickland and should not be disturbed here." (The Court's referenced citations have been omitted) [Appendix WW pg. 19].

Petitioner avers that this conclusion was erroneous and refuted by the State court record.

There are two errors in the Attorney General's analysis of Petitioner's Sixth Amendment claim. First, Ms. Surber's show cause response curtailed a more probing prejudice inquiry because it placed undue reliance on the assumed reasonableness of where the argument omitted by appellate counsel lacked merit and as a result the Fourth DCA would have agreed with the trial court's decision to deny the motion to suppress. Although Ms. Surber appears to have stated the proper prejudice standard, she did not correctly conceptualize how that standard applies to the circumstances of this case.

The second, and even more fundamental, is the factual determination of the rule 9.141 proceeding where the state court's fact-finding process from the court's order to show cause directed to the Attorney General as to why Petitioner's ineffective assistance of appellate counsel claim should not be granted was inadequate because the record before the state court raised conflicting inferences

relative to the mixed question of law and fact in the context of Petitioner's motion to suppress, where the trial court's determination of historical facts are accorded a presumption of correctness, which the appellate court reviews under a standard of competent, substantial evidence, interpreting the evidence and reasonable inferences in a manner most favorable to sustaining the trial court's ruling. *Nelson v. State*, 850 so. 2d 514, 521 (Fla. 2003); *Pagan v. State*, 830 so. 2d 792, 806 (Fla. 2002).

By contrast, appellate courts review de novo the trial court's determination of whether those historical facts constitute probable cause. *Ornelas v. United States*, 517 U.S. 690, 696-97, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996); *Pagan*, 830 so. 2d at 806. Moreover, the concept of probable cause is grounded upon a standard of objective reasonableness. *Ornelas,* 517 U. S. at 696 (noting that "[t]he principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause") Therefore, a police officer's subjective belief regarding the existence of probable cause for a warrantless arrest is neither dispositive of, nor generally relevant to, this issue.

With this context in mind, a proper analysis of prejudice under *Strickland* would have taken into account the fact that Ms. Surber was also the assistant attorney general who responded in opposition to petitioner's direct appeal

advancing assertions there that appear to conflict with her arguments presented in opposing Petitioner's Rule 9.141. For example, Ms. Surber stated in her show cause response to the Rule 9.141 that the suppression hearing argument was essentially non-meritorious and that appellate counsel had no duty to raise weaker points on appeal where the appellate court would have most likely denied the issue had it been raised. [Appendix K]. However, when reviewed in conjunction with her answer brief during direct appeal it seems Ms. Surber is straddling the fence of contradiction. To be certain, the direct appeal answer brief states that Point 1, as a preliminary matter, was not properly preserved as it was not objected to pursuant to the rule and even if the admission of the hearsay testimony was error, any error was harmless in light of [Petitioners] own admission that he became involved in prescription fraud to support his own addiction. Basically Ms. Surber argued the obvious where it is well-settled in Florida that to preserve an issue for appeal, the specific legal ground upon which a claim is based must be raised at trial and a claim different than that will not be heard on appeal. *Chamberlain v. State*, 881 So.2d 1087, 1100 (Fla. 2004) (per curiam), *cert. denied*, 125 S. Ct. 1669, 544 U.S. 930, 161 L. Ed. 2d 495 (2005).

Ms. Surber also argued as to Point 2 that the trial court did not abuse its discretion in admitting evidence regarding the ongoing investigation regarding the conspiracy to traffic charge. This issue only dealt with one of the charges petitioner was charge with. The suppression hearing dealt with the unlawful seizure and

submission of all of the evidence obtained and statements made being used as evidence to support the States theory in securing a conviction.

It is obvious that neither points 1, 2, or 3 had anymore merit independently or even cumulatively than the suppression hearing order of denial.

Petitioner claims that he should have been accorded an evidentiary hearing at the very point Ms. Surber incorporated conflicting inferences between her answer in opposition on direct appeal and her contrary presentation in response during the Rule 9.141 proceeding as outlined above.

Petitioner avers that he simply was not provided full and fair consideration of his Fourth Amendment claim or his Sixth Amendment claim to the effective assistance of counsel during the Rule 9.141 proceeding.

To further support his contentions, Petitioner relies on *Tukes v. Dugger*, 911 F.2d 508, 513-14 (11th Cir. 1990), [the Eleventh Circuit Court of Appeals] said this in applying *Stone*: "For a claim to be fully and fairly considered by the state courts, where there are facts in dispute, full and fair consideration requires consideration by the fact-finding court, and at least the availability of meaningful appellate review by a higher state court."*Peoples*, 377 F.3d at 1224. The Eleventh Circuit has "construed *Stone v. Powell* to bar consideration of a Fourth Amendment claim if the state has provided an opportunity for full and fair litigation of the claim 'whether or not the defendant employs those processes.'" *Huynh v. King*, 95 F.3d 1052, 1058 (11th Cir. 1996) (citing *Caver v. Alabama*, 577 F.2d 1188, 1192 (5th Cir. 1978)) (footnote omitted).

II.

IN FLORIDA AN UNELABORATED ORDER ON AN EXTRAORDINARY WRIT IS NOT AN ADJUDICATION ON THE MERITS THUS, NOT APPLICABLE TO RESTRICTIONS UNDER 2254 PROHIBITING STATE PRISONER'S WRIT OF HABEAS CORPUS REVIEW ON ANY CLAIM THAT HAD BEEN ADJUDICATED ON THE MERITS IN A STATE COURT PROCEEDING

As noted previously, the illegal search and seizure claim was raised in a pretrial motion to suppress, (App. A) and the court heard testimony on the motion. (App. B) The trial judge allowed both parties to present argument on the motion. (App. C) The court subsequently provided a written order on the motion. Based on this information, the Federal Habeas Court conducted an independent review of the record evaluating the suppression hearing and finds Petitioner had a full and fair opportunity to argue his Fourth Amendment claim in state court.

However, this is an unreasonable determination of the facts because there was never a decision rendered in the Fourth District Court of Appeals [Appendix L] adjudicating Petitioner's appellate counsel claim especially when there still remains disputed issues of fact relative to both the suppression hearing ruling itself and the sworn allegations of ineffective assistance of appellate counsel presented in the Rule 9.141 proceeding.

So, the question, still unanswered, is why did appellate counsel forego this particular issue knowing the procedural context is positioned in a different light respectively when presented at both state and federal court levels for review?

According to the federal habeas court, the last state court decision rejected the claim that appellate counsel was ineffective in failing to challenge the trial court's denial of the motion to suppress on direct appeal, however, that denial was not rendered as being on the merits pursuant to *Topps v. State*, 865 So. 2d 1253 (Fla. 2004) or 28 U.S.C. § 2254(d). See also, section 924.051, Florida Statutes (2007); Criminal Appeals Litigation Reform Act.

Furthermore, the federal habeas court is relying that determination on Ms. Surber's response from a show cause order arguing essentially that Appellate counsel made a tactical and/or strategic decision to forego raising the suppression hearing based on Ms. Surber's review of the record and transcript she advanced the premise that it is clear to her that had Appellate counsel raised this issue all relief would have "likely" been denied. The important distinction here is the fact that the Appellate Court never indicated that the unelaborated summary denial was actually based on an independent judicial review of the record and transcripts in relation to the mixed question of law and fact activating the substantial effect of the deficient and prejudice prongs of *Strickland* being assessed in light of the reasonable determination of the facts.

Emphasis should be placed on the position advanced and held relative to Ms. Surber's response from the Appellate Courts show cause order to Petitioner's appellate counsel claim because her legal arguments not only create disputed issue of fact, as outlined above, but more so, she invites herself to the character roll of the appellate judge when she claimed that had appellate counsel raised this issue all

relief would have likely been denied, based on the standard of review "typically" applicable to a motion to suppress evidence of which requires that an appellate court defer to the trial court's factual findings but review legal conclusions de novo. Furthermore, Ms. Surber rightly states that the burden is on Petitioner to show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the appeal would have been different. However, she goes on to state her own assumption that Petitioner cannot meet that burden.

Petitioner avers that at the point in this proceeding Ms. Surber relied on the posture of procedural facts presented in his sworn state habeas petition in order to assess the deficiency and prejudice standards.

Finally, Petitioner asserts that without a judicial determination specifically assessing both the record and transcripts relied on in the State's response in relation to the mixed questions of law and fact defining the deficient and prejudicial standards that substantiate the ineffective assistance of appellate counsel claim and assessing actually being rendered by the Appellate Court relative to the underlying claim alleging ineffective assistance of appellate counsel, there still remains a disputed issue of fact in relation to the deficient and prejudice standards of *Strickland*, a dispute that requires an evidentiary hearing.

III.

THE QUESTIONS PRESENTED OF WHETHER THIS COURT SHOULD CONSIDER, IF RULING ON A PETITION FOR HABEAS CORPUS RELIEF FILED BY A STATE PRISONER, A CLAIM THAT EVIDENCE OBTAINED BY AN UNCONSTITUTIONAL SEARCH AND SEIZURE WAS INTRODUCED AT HIS TRIAL, WHERE HE HAS NOT BEEN AFFORDED THE OPPORTUNITY OF A MEANINGFUL APPELLATE REVIEW BY A HIGHER STATE COURT. IS AN ISSUE OF CONSIDERABLE IMPORTANCE TO THE ADMINISTRATION OF CRIMINAL JUSTICE.

In the pursuit of justice on an issue that certainly reaches the level of constitutional magnitude, it is imperative that the Court grant certiorari review of a 4th Amendment violation that is encapsulated by the 5th, 6th, and 14th, which wasn't afforded a state appellate review and thereafter unreasonably deprived habeas corpus relief.

Where a state has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial. But, this Court has had occasions fully to examine the validity of the assumption made in Kaufman v. United States, 394 U.S. 217, 22 L.Ed. 2d 227, 89 S.Ct. 1068, that the effectuation of the Fourth Amendment, as applied to the State's through the Fourteenth, requires the granting of habeas corpus relief when a prisoner has been convicted in State court on the basis of evidence obtained in an illegal search or seizure, where prisoner has not been given

the opportunity for full and fair consideration of his search – and – seizure claim on direct review.

The petitioner requests this Honorable Court to examine if this is the case where the Trial Court making an unreasonable determination of the facts in light of the evidence fits the requirement of the substantive scope of federal habeas jurisdiction and limited collateral review of search and seizure claims where the petitioner was deprived a full and fair opportunity to raise the claims on direct review and have them adjudicated in the State courts. Access to meaningful review is an abatement measure to prevent constitutional violations to which the Petitioner has been deprived.

If proof of the necessity of federal habeas jurisdiction is required, on the disposition by the state courts of an underlying Fourth and Fifth Amendment issues, this case supplies it. "Exception" for bringing a Fourth Amendment claim on habeas in situations with state prisoners are vividly pronounced herein.

Fourth Amendment violations in conjunction with the Fifth, bar against compelled self-incrimination and a constitutional basis emerges for requiring exclusion, 367 U.S. at 661, 6 L. Ed. 2d 1081, S. Ct. 1684, 84 ALR 2d.

The questions presented here is pertinent to whether a federal court should, in ruling on a petition for habeas corpus relief filed by a state prisoner, review a claim that evidence obtained by an unconstitutional search or seizure was introduced at his trial, when he has previously not been afforded an opportunity for

full and fair litigation of his claims in a state forum. Did the police's conduct in approaching Petitioner's vehicle constitute an arrest or was it merely an investigatory detention within the meaning of Terry v. Ohio? Because the issue of probable cause was never made. If there was probable cause to arrest, the mode of the arrest, that is, surrounding the automobile and approaching with drawn firearms was it appropriate under all the circumstances disclosed by the evidence? Was his arrest unlawful because the arresting officer lacked probable cause and thus barring admission of the fruit of a search incident to it? Is petitioner's incarceration unlawful because the evidence underlying his conviction was discovered as the result of an illegal search and seizure? All these are questions that remain unresolved here. Surely, Petitioner's arrest, if in error, is harmful beyond any reasonable doubt.

In this case Ab initio we are confronted with a 4th Amendment factual dispute issue of when an investigatory stop has exceeded the permissible limits and becomes a de facto arrest and whether that was done in this instance. When faced with such an issue as we have here, it is sine qua non for the trial court to first make a determination of what level of police/citizen encounter took place, based upon the evidence presented before it. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968) sets forth the precedence in regards to the three levels of classifying a citizen/police encounter. On each level of encounter there are factors and prerequisites that distinguish them from one another. Such as, in order for an investigatory stop not to exceed its boundaries and become a de facto arrest, certain

criteria must be met in determining whether the actions of law enforcement were reasonable. Florida v. Roper, 460 U.S. 491, 75 L. Ed. 2d 229. If the action taken by law enforcement is determined to be unreasonable then all evidence obtained as a result of its illegality becomes "fruit of the poisonous tree" and cannot be used in the prosecution of the defendant. Wong Sun. v. U.S., 371 U.S. 471 (1963). Once such evidence that was illegally obtained is used against a defendant in a trial it compromises the fundamental elements of fairness in the proceeding violating the Due Process Clause safeguards. Rivera v. ILLINOIS, 556 U.S. 148, 173 L. Ed. 2d 320, 129 S. Ct. 1446 (2009).

This Court has recognized that the distinctions between a Terry stop from that of an arrest may in some instances create perimeters that are difficult to identify. So, an analysis has been formulated to help in distinguishing one from the other in matters of law, which is to be applied on a case by case basis, being specific to the particulars of each case. Florida v. Roper, 460 U.S. 491. In every case where the Court's have had to make a determination of whether the actions of law enforcement were either permissible for a Terry stop, or elevated to the level of an arrest which lacked probable cause, an evaluation of the reasonableness of their conduct was taken into account. Riley v. California, 573 U.S. 373, 189 L. Ed. 2d 430, 134 S. Ct. 2473 (2014). "Ultimate touchstone of the Fourth Amendment is reasonableness." The evaluation of reasonableness is a "two-fold" inquiry. Whether

action was justified at its inception, and whether it was reasonable related in scope to the circumstances which justified the interference in the first place.

Precisely, when an arrest has occurred is a question of facts which depends upon an evaluation of all the surrounding circumstances. Peter v. New York, 446 U.S. 544; United States v. Hastoamorir, 392 U.S. 40; United States v. Hammock, 860 F. 2d 390; Et. Al..

Hence, despite the fact that "there is no bright – line test for determining what police action is admissible in an investigatory stop." United States v. Sharpe, 105 S. Ct. 1565, 1575 (1985), there certainly are demarcated boundaries set forth within legal precedents making it clear that the allowance for use of especially intrusive means of effecting an investigatory stop, as was done to the petitioner in this case, are only reserved for special circumstances expressed in Washington v. Lambert, 98 F. 3d 1181" 1) Where the suspect is uncooperative or takes action at the scene that raises a reasonable possibility of danger or flight; 2) Where the stop closely follows a violent crime; 3) Where the police have information that a crime that may involve violence is about to occur; 4) Where the police have information that the suspect is currently armed."

The record in this case is completely devoid of any evidence in the least that would have or could have supported a finding where law enforcement possessed the knowledge of exigent circumstances to warrant actions of surrounding the

petitioners vehicle with their cars, blocking the road, lights flashing, ordering the defendant out of his vehicle at gunpoint, and hand-cuffing him [Appendix B]. In regards to this issue, the Petitioner has thus far not received the same treatment by the courts as those who have been similarly situated. Village of WillowBrook v. OLECH, 528 U.S. 562, 564, 145 L. Ed. 2d 1060, 120 S. Ct. 1073 (2000); City of CLEBURNE V. CLEBURNE LIVING CENTER, 473 U.S. 432, 87 L. Ed. 2d 313, 105 S. Ct. 3249 (1985).

The prosecution of the Petitioner in this instance, was heavily hinged upon evidence and statements that were obtained as a result of the detention in question and only with which by use of, was he then convicted at trial of Count one conspiracy to traffic in oxycodone between 28 grams and 30 kg and Count two trafficking in oxycodone between 14 grams and 28 grams.

Case law clearly establishes that where the facts are in dispute, the federal court in habeas corpus must hold an evidentiary hearing if the habeas applicant did not receive a full and fair evidentiary hearing in a state court... [A] federal evidentiary hearing is required unless the state court trier of fact has after a full hearing reliably found the relevant facts. Townsend v. Sain, 372 U.S. 293, 312-13, 9 L. Ed. 2d 770, 83 S. Ct. 745 (1963).

Because the record on its face supports the petitioners allegations, an evidentiary hearing is essentially the only way to resolve these issues. Since, no hearing was held in State courts, such must be completed in the federal District Court.

IV.

THE TRIAL COURT'S DECISION WHERE RESULTS BASED UPON AN UNREASONABLE DETERMINATION OF FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDINGS.

In this case, the State made no showing whatsoever that the facts observed by the officer's or that they possessed any knowledge of exigent circumstances to create an objective reasonable suspicion that the defendant was dangerous. There were no evidence that the defendant attempted to flee or drive away. Furthermore, the officers who initially conducted the stop failed to testify and the state produced no evidence indicating the defendant had made any furtive gestures or suspicious movements that would have made the arresting officers think that the defendants were not complying with their commands or presented a danger [Appendix B]. All the above are facts the courts thus far have inexplicably overlooked or, failed to consider. On this record the government has failed to carry its burden of proving that the force used against the defendant was reasonably necessary to effectuate an investigatory stop. Any argument that the actions of the peace officers would have been necessary to effectuate an investigatory stop if the officer's had reasonable suspicion that the defendant was involved in a prescription fraud scheme also is unavailing. The fact that a defendant is suspected of illegal drug activity may authorize certain minimal displays of force and precautions that are otherwise not part of an investigatory stop when justified. However, there's no support for the idea that reasonable suspicion that a defendant is in violation of drug enforcement laws standing alone, authorizes measures that are synonymous with an arrest.

DelVizo, 918 F.2d at 825 (officers suspicions that defendant was involved in narcotics trafficking did not authorize officers to draw weapons, order suspect to get out of the car and lie on the ground, and handcuff him). Ceballos, 654 F. 2d at 184 (fact that officer suspected defendant, of being involved in narcotics trafficking did not justify blocking progress of car and approaching car with guns drawn). To prevent law enforcement intrusions that are indistinguishable from those associated with an arrest on mere reasonable suspicion that a suspect is involved in illegal narcotics, would effectively authorize arrest upon reasonable suspicion for any crime involving narcotics. Ceballos, 654 F.2d at 184 such a rule cannot be tolerated as it would threaten to swallow the general rule that Fourth Amendment seizures are "reasonable" only if based on probable cause. Dunaway, 442 U.S. at 213.

Forcible street encounters may be initiated by the police if "reasonable" within the meaning of the Fourth Amendment. The Supreme Court, however, also made if clear that the propriety of some forms of police conduct, even though they might be labeled "stops" or "investigatory detentions" by the police, would continue to be evaluated under a probable cause standard. See Adams v. Williams, 407 U.S. at 145-46, 32 L.Ed. 2d 612, 92 S. Ct. 1921 (1972) to decide the case at bench, we need not prescribe precisely the point at which police action which detain a suspect ceases to be non-arrest seizure and becomes an arrest; for we simply can not equate an armed approach to a surrounded vehicle whose occupants were removed and handcuffed with the "brief stop of a suspicious individual in order to determine his

identity or to maintain the status quo momentarily while obtaining more information" which was authorized in Williams, 407 U.S. at 1461. The restriction of the Petitioner "liberty of movement" was complete when he was encircled by police and confronted with official orders made at gunpoint. See Henry v. United States, 361 U.S. 98, 103, 4 L.Ed.2d 134, 80 S. Ct. 168. The Court has, therefore, repeatedly repudiated the notion that peace officers can assume danger merely from the nature of a crime, the area in which the confrontation occurred or the likelihood of danger in a situation. These pronouncements similarly mandate that this Court reject the idea that the peace officers can assume danger merely because many, or even most drug dealers are armed and dangerous. Long, 463 U.S. 1032, 77 L. Ed. 2d 1201, 103 S.Ct. 3469, requires an individualized belief that an individual is dangerous before peace officers are permitted to use especially intrusive means of effecting an investigatory stop as was done in this case to the defendant. This rule recognizes that because the mannerism of the stop is substantial, some specific showing of its necessity is required. In addition, the requirement of a particularizes belief acknowledges that trained peace officers are fully capable of making accurate judgments about the danger of an individual based on the particular circumstances of each situation. Consequently, it is concluded that reasonable suspicion that a defendant is involved in illegal drugs can not standing alone justify an investigatory stop that exceeded the limits of a reasonable necessity. Thus, Trial courts order on motion to suppress reflects an unreasonable determination of the facts in light of evidence presented in the motion to suppress evidentiary proceedings in accordance

with 28 U.S.C. 2254 (d)(2). The Petitioner then sought to exhaust his state remedies by presenting this 4th Amendment issue before the State's Appellate Court on a 9.141 [Appendix J] seeking a belated appeal from which he was denied thereby which nullifying the Petitioner's right to Due process and Equal protection [Appendix. L] under the (Topps v. State, 865 So. 2d 1253) impeding the Petitioner from receiving a "full" and "fair" appellate proceedings on the merits of his constitutional violations claims. The Petitioner has exhausted his state remedies on this claim where in Florida the last Court of resort is the District Court of Appeals (*Gonzalez v. THALER*, 565 U.S. 134, 132 S.Ct. 641, 188 L. Ed. 2d 619 (2012)). Thereafter the Petitioner attempted to gain federal relief through a writ of habeas corpus in the United States District Court Southern District of Florida. The Federal District Courts conclusion on page 13 of [Appendix L] of the order concerning officer's actions are unsupported by the record overstepping its judiciary boundaries presuming prerequisite intention not expressed therein. There the Court decided to bar the petitioner's claim resulted in what is an unreasonable application of the AEDPA of 1996 provision (28 U.S.C.S. §2254) under which a state prisoner's application to a federal court for a habeas corpus will not be granted with respect to any claim that was adjudicated on the merits in a state court proceeding stemming from the fact that in Florida under, Topps the petitioner's claim was never adjudicated on the merits.

V.

THE DECISION HERE IS PARAMOUNT BECAUSE THE ARBITRARY, INCONSISTENT, AND CAPRICIOUS METHODS USED IN WHICH THE STATE POSTCONVICTION AND FEDERAL PROCEEDINGS WERE CONDUCTED VIOLATES THE PETITIONER'S RIGHTS TO DUE PROCESS AND THE EQUAL PROTECTION CLAUSE.

Whether the District court reasonably determined that there was a strategic decision under 2254(d)(2) is a different question from whether the strategic decision itself was a reasonable exercise of professional judgment under Strickland or whether the application of Strickland was reasonable under 2254 (d) (1). The question of whether a state court erred in determining facts is a different question from whether if erred in applying the fact. These latter two questions are centrally related the claims that the Petitioner presents and complementary to the claim he presents. The resolution of this case may also turn on the questions of how and when 2254 (e) (1) applies in challenging a state courts factual determination under 2254 (d) (2) of ineffective assistance of counsel. In this case the record of the motion to suppress evidentiary proceedings underscores the petitioner claim regarding the unreasonableness of his trial counsel's conduct by alleging that she prejudiced the "Defendant by consolidating the Defendant's motion to suppress search and seizure with those of his co-defendants whose particulars and specific issues surrounding their arrest, search and seizure were very different and distinguishable from those of the Defendant's factual circumstances etc..." [Appendix FF. Pgs. 4-6], also depriving the Petitioner of an independent consideration and review of his lawful detention claim. Petitioner argued that his attorney should have filed an entirely

separate motion that she did. The Petitioner's suppression motion alleged the same grounds as his co-defendants where the facts in relations to when, where, why and how the defendant was initially detained were not inextricably intertwined, consideration of the prejudice regarding his actual argument was never taken into account by the trial court. The trial courts failure to dispose of this specific ineffective assistance of counsel claim violated the *Clisby v. Jones*, 960 F.2d 925 rule by resolving only one part of the Petitioner's ineffective assistance of counsel claim for failure to seek a severance in the motion to suppress hearing from that of his co-defendant's but neglected to address the incompetence of his counsel for failure to tailor a separate motion to suppress addressing the factual circumstances surrounding his individual arrest. Where the elements or schemes behind the crimes for which the petitioner and his co-defendants were arrested and charged without a doubt may have been intricately intertwined, the specifics and circumstances surrounding the facts in relationship of each individuals actual search and seizure could not have been more different when examined by the light of the record (App. B). The Petitioner used every available vehicle at his disposal to clarify this issue with the Court's, where this claim may have been inadvertently misconstrued by the Trial Court because of the State's misrepresentation of this issue taking it out of its proper context in which it then raised and distorted it in its response to the courts. Given every opportunity to rectify this issue the courts still failed to do so. [Appendix JJ pages 1-4; Appendix MM pages 11-17; Appendix OO pages 1-2].

Clearly the omission of these essential facts pertaining to the petitions search and seizure by his counsel in said motion to suppress virtually left the illegalities of his arrest uncontested, allowing evidence which was the produce of a fruit of the poisonous tree to thereby be admitted into his trial creating the actual prejudice there in which it absolutely compromised the integrity of the outcome of his trial. Counsel had an obligation to examine the legality of petitioner's detention where they exceeded the limits of an investigatory stop, which she apparently failed to do to ensure that the petitioner received a full and fair opportunity to litigate his Fourth Amendment violation claim where the record supports, rather than refutes appellant's claim that the law enforcement executed what amounts to a de facto arrest without probable cause. Here where the State court made an evidentiary finding without holding a hearing and giving the petitioner an opportunity to present evidence, "such findings clearly result in an unreasonable determination of the facts." *Taylor v. Maddox*, 366 F.3d 992, 2002 (9th Cir.), cert. denied, 543 U.S. 1038 (2004), abrogated in parts on other grounds by *Cullen v. Pinholster*, 563 U.S. 170, 210-12. "[W]hen a state court denies a request for an evidentiary hearing can, in limited circumstances, renders the court's subsequent factual find unreasonable." See *Smith*, 904 F.3d at 882-83 (citing *Brumfield v. Cain*, 135 S. Ct. 2269, 2277 (2015). See [Appendix WW pg. 19] Federal Court order, where the Courts overstepped its judicial boundaries presuming intent not expressed on the record.

It was then improper for the District Court to then inject its independent factual determinations in to the § 2254 (d) *Strickland* analysis because those

finding's were not made by or relied upon by the state court and could only have been made after holding an evidentiary hearing. In reviewing the state court's decision, the analysis under 28 U.S.C. § 2254 (d) is limited to the "specific reasons" expressed in the state court's decision. *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018). Moreover as expressed Petitioner was entitled to a de novo review of the deficiency prong of the *Strickland* test. See *Wiggins v. Smith*, 539 U.S. 510, 534 (2003)(reviewing de novo the question of whether petitioner had suffered prejudice where the State court's reasoned decision rejecting claim under *Strickland*, was premised solely on conclusion that attorney's performance had not been constitutionally deficient.) The District Court did not afford the Petitioner the de novo standard to which he was entitled and instead found the State court decision reasonable on grounds that were not relied upon by the postconviction court. The District Court's conclusion that the police's stop of Petitioner was no an arrest is not supported by the record. The District was not a witness to the event and could not possible know the thought process and intentions of the officer's involved not being expressed in the record. There is no evidence to support that their actions were justifiably warranted due to exigent circumstances. Nor was the District Court's conclusion that the Petitioner's counsel made a strategic decision not to challenge his illegal detention as a de facto arrest or to have the arresting officer's accounts within her motion to suppress was an unreasonable determination of facts in light of the evidence within the record. The only reasonable factual conclusion that can be deduced from the record as is, is that counsel's decision not to do so was the

results of her apparent inattention and neglect of the facts which are the antithesis of a strategic choice.

Petitioner prays this Court grant this petition for writ of certiorari.

Respectfully submitted,

Date:

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

TAJ COLLIER – Petitioner

vs.

RICKY DIXON – SECRETARY
FLORIDA DEPT. CORRECTIONS – Respondent

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains **9209** words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.19d).

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

Executed on Nov, 16, 2022.

Sign your name here.