

22-6159

SUPREME COURT OF THE UNITED STATES

JEFFREY TODD MORRIS

PETITIONER

VS.

STATE OF FLORIDA

RESPONDENT

Supreme Court of the U.S.
FILED
OCT 11 2022
OFFICE OF THE CLERK

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
CASE No.: 21-13692-J

PETITION FOR WRIT OF CERTIORARI

JEFFREY TODD MORRIS / DC# P11188
GRACEVILLE CORRECTIONAL FACILITY
5162 EZELL ROAD
GRACEVILLE, FLORIDA 32440
TEL: (850) 263-5500

RECEIVED
OCT 21 2022
OFFICE OF THE CLERK SUPREME COURT, U.S.

QUESTIONS PRESENTED

QUESTION ONE

DOES THE STATE OF FLORIDA VIOLATE A
DEFENDANT'S DUE PROCESS AND/OR CONSTITUTIONAL
RIGHTS WHEN THEY FAIL TO AFFORD A DEFENDANT
EVIDENTIARY PROCEEDINGS FOR FURTHER DEVELOPMENT
OF HIS POST CONVICTION CLAIM(S), AFTER HAVING MET
THE CONSTITUTIONAL REQUIREMENTS / CRITERIA FOR
POST CONVICTION CHALLENGES AND ENTITLEMENT TO
RELIEF THEREIN?

QUESTION TWO

DOES THE STATE OF FLORIDA VIOLATE A
DEFENDANT'S RIGHT TO PRESENT DEFENSE WITNESSES,
WHEN AN UNREASONABLY BIAS DETERMINATION IS
RENDERED WITHOUT FIRST AFFORDING THE DEFENDANT
HIS DUE PROCESS AND/OR CONSTITUTIONAL RIGHT TO
PRESENT WITNESSES IN A POST CONVICTION PROCEEDING;
WHEREBY, WITNESS TESTIMONY

COULD/WOULD HAVE PRODUCED A VACATING OF, OR
SETTING ASIDE OF HIS CONVICTION, AND WHERE
WITNESS TESTIMONIES WOULD HAVE ULTIMATELY
PRODUCED AN ACQUITTAL?

QUESTION THREE

DOES A STATE COURT AND/OR A FEDERAL
COURT VIOLATE A DEFENDANT'S [PETITIONER'S] DUE
PROCESS AND CONSTITUTIONAL RIGHTS WHEN THEY
FAIL TO HEAR A NEWLY DISCOVERED EVIDENCE
CLAIM, IN THE FORM OF RECANTATION AND
CORROBORATIVE DEFENSE TESTIMONY, BASED UPON
LANGUAGE REFERENCING ACTUAL INNOCENCE?

— INSERT QUESTION FOUR HERE —

LIST OF PARTIES

ALL PARTIES APPEAR IN THE CAPTION OF THE
CASE ON THE COVER PAGE.

QUESTION FOUR

DOES THE STATE OF FLORIDA VIOLATE A
DEFENDANT'S DUE PROCESS AND/OR CONSTITUTIONAL
RIGHTS WHEN THEY DENY RELIEF ON A CLAIM ESTABLISHING
THAT THE DEFENDANT WAS DEPRIVED OF HIS CONSTITUTIONAL
RIGHT TO PARTICIPATE IN THE PREPARATION AND PRESENTATION
OF HIS OWN DEFENSE; WHICH, INCLUDES REVIEWING THE
~~PROSECUTION'S~~ PROSECUTION'S CASE (DISCOVERY MATERIAL)
WITH DEFENSE COUNSEL PRETRIAL.

RELATED CASES

STATE DIRECT APPEAL:

MORRIS V. STATE, 139 So.3d 304 (FLA. 1ST DCA 2014).

STATE COLLATERAL PROCEEDING:

MORRIS V. STATE, 275 So.3d 230 (FLA. 1ST DCA 2019).

FEDERAL COLLATERAL PROCEEDING:

MORRIS V. SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
CASE NO: 3:19-CV-4819-LC-MJF (N.D. FLA. SEPTEMBER
20TH, 2021).

FEDERAL COLLATERAL PROCEEDING APPEAL:

MORRIS V. SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
CASE NO: 21-13692-J (11TH CIR. APPEAL, 2022);
REHEARING DENIED ON JUNE 14TH, 2022.

TABLE OF CONTENTS

TITLE

PAGE NUMBERS

OPINIONS BELOW

JURISDICTION

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

REASONS FOR GRANTING THE PETITION

CONCLUSION

INDEX TO APPENDICES

APPENDIX A OPINION OF THE UNITED STATES COURT OF APPEALS

APPENDIX B OPINION OF THE UNITED STATES DISTRICT COURT

APPENDIX C OPINION OF THE STATE'S HIGHEST COURT

APPENDIX D REHEARING DENIAL OF THE UNITED STATES

~~APPENDIX E~~ COURT OF APPEALS

TABLE OF AUTHORITIES CITED

Page(s)

Baker v. Yates, 339 Fed. Appx. 690, 692 (9th Cir. 2009). 29

Barber v. Elg, 231 F.3d 1025, 1029 (6th Cir. 2000). 15

Buttani v. State, 941 So.2d 531, 533 (Fla. 4th DCA 2006). 15

Caroiger v. Stewart, 132 F.3d 463, 476 (9th Cir. 1997). 30

Crisp v. Duckworth, 743 F.2d 580, 584 (7th Cir. 1984). 15

Cruz v. Sec'y Fla. Dept of Corr., 2019 WL 4602371 at *4

(M.D. Fla. Sept. 23, 2019). 27

Dist. Attorney's Office v. Osborne, 557 U.S. 52, 71,

129 S.Ct. 2308, 2321 (2009). 31

Harris v. Collins, 506 U.S. 390, 417, 113 S.Ct. 853,

869 (1993). 31

House v. Bell, 547 U.S. 518, 554-555 [126 S.Ct. 2064,

2086-2087] (2006). 30

In re Davis, 2010 WL 3385081 at *43 (S.D. Ga. 2010). 31

Jackson v. Calderon, 211 F.3d 1148, 1164 (9th Cir. 2000). 31

McQuiggin v. Perkins, 569 U.S. 383, 392, 1335 S.Ct. 1924,

1931 (2013).

30

Morris v. State, 139 So.3d 304 (Fla.1st DCA 2014).

6

Morris v. State, 275 So.3d 230 (Fla.1st DCA 2019).

1, 7

Morris, 275 So.3d at 236

27

Osborne v. Dist. Atty's Office for Third Judicial

Dist., 521 F.3d 1118, 1130-1131 (9th Cir. 2008).

30

Strickland v. Washington, 466 U.S. 668, 80 L.Ed.

2d 674, 104 S.Ct. 2052 (1984).

16

White v. Keane, 51 F.Supp.2d 495, 504 (S.D.N.Y. 1999).

31

Wright v. Smear, No. 08-2073, 2009 WL 5033967 at

*9-10 (E.D.Ga. Dec. 23, 2009).

31

Florida Rule of Criminal Procedure 3.850

6

28 U.S.C. § 1254 (1)

3

28 U.S.C. § 1257

3

28 U.S.C. § 2254

8, 11

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

PETITIONER RESPECTFULLY PRAYS THAT A WRIT OF
CERTIORARI ISSUE TO REVIEW THE JUDGEMENT BELOW.

OPINIONS BELOW

FOR CASES FROM FEDERAL COURTS:

THE OPINION OF THE UNITED STATES COURT OF
APPEALS APPEARS AT APPENDIX A TO THE PETITION
AND IS UNPUBLISHED AT THIS TIME.

THE OPINION OF THE UNITED STATES DISTRICT
COURT APPEARS AT APPENDIX B TO THE PETITION AND
IS UNPUBLISHED.

FOR CASES FROM STATE COURTS:

THE OPINION OF THE STATE'S HIGHEST COURT TO
REVIEW THE MERITS APPEARS AT APPENDIX C TO THE
PETITION AND IS REPORTED AT:

MORRIS V. STATE, 275 So.3d 230 (FLA. 1ST DCA 2019)

JURISDICTION

FOR CASES FROM FEDERAL COURTS:

THE DATE ON WHICH THE UNITED STATES
COURT OF APPEALS DECIDED PETITIONER'S CASE WAS
APRIL 21, 2022.

A TIMELY PETITION FOR REHEARING WAS
DENIED BY THE UNITED STATES COURT OF APPEALS
ON JUNE 14, 2022, AND A COPY OF THE ORDER
DENYING REHEARING APPEARS AT APPENDIX D

AN EXTENSION OF TIME TO FILE THE PETITION
FOR A WRIT OF CERTIORARI WAS GRANTED TO AND
INCLUDING OCTOBER 12, 2022, ON SEPTEMBER 9, 2022
IN APPLICATION NO. 22A209.

THE JURISDICTION OF THIS COURT IS
INVOKED UNDER 28 U.S.C. § 1254 (1).

FOR CASES FROM STATE COURTS:

THE DATE ON WHICH THE HIGHEST STATE
COURT DECIDED THE PETITIONER'S CASE WAS JUNE 28, 2019.
A COPY OF THAT DECISION APPEARS AT APPENDIX C.

AN EXTENSION OF TIME TO FILE THE
PETITION FOR A WRIT OF CERTIORARI WAS GRANTED TO
INCLUDING OCTOBER 12, 2022, ON SEPTEMBER 9, 2022
IN APPLICATION NO. 22A209.

THE JURISDICTION OF THIS COURT IS
INVOKED UNDER 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A DEFENDANT HAS A SUBSTANTIVE DUE PROCESS AND CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE, WHICH INCLUDES THE CONSTITUTIONAL RIGHT TO PRESENT DEFENSE WITNESSES AND EVIDENCE AT ALL STAGES OF HIS CRIMINAL PROCEEDINGS.

A CRIMINAL DEFENDANT HAS A SUBSTANTIVE DUE PROCESS CONSTITUTIONAL RIGHT TO PARTICIPATE IN THE PREPARATION AND PRESENTATION OF HIS OWN DEFENSE FOR TRIAL PURPOSES; WHICH INCLUDES, A DEFENDANT'S ENTITLEMENT TO REVIEW THE STATE'S DISCOVERY MATERIAL WITH HIS COUNSEL PRETRIAL AND TO MAKE STRATEGIC DECISIONS THEREBY.

A POST CONVICTION COURT IS REQUIRED TO HOLD AN EVIDENTIARY HEARING ON TESTIMONY RECANITATION ISSUES PRESENTED THEREIN, TO PROPERLY EVALUATE CREDIBILITY AND ASSESS THE COMPLETE TESTIMONY OF THE RECANITOR, WHILE CONSIDERING THE RECORDS FROM TRIAL FOR POTENTIAL ACQUITTAL PROBABILITIES.

THE CORE GUARANTEE OF THE SIXTH AMENDMENT AND

DUE PROCESS RIGHTS ESTABLISHED IN ~~CONSTITUTIONAL~~ LAW, TO
RELIEVE EFFECTIVE ASSISTANCE OF COUNSEL; WHICH, INCLUDES A
PROHIBITION OF A TRIAL COURT'S DETERMINATION OF COUNSEL'S
STRATEGIC OR TACTICAL DECISION MAKING WITHOUT CONDUCTING
EVIDENTIARY PROCEEDINGS.

A POST CONVICTION SUMMARY DENIAL IS CONSTITUTIONALLY
UNACCEPTABLE WITHOUT PROVIDING CONCLUSIVE, (ABSOLUTE)
REFUTATIONAL, DOCUMENTED EVIDENCE.

A DEFENDANT MUST BE AFFORDED THE CONSTITUTIONAL
RIGHT TO EXERCISE A FULL ARRAY OF HIS DUE PROCESS RIGHTS, WHICH
INCLUDES A COMPLETE SOUND AND PROPER RECORD TO BE GENERATED
AND FULLY DEVELOPED AT ALL STAGES OF HIS CRIMINAL PROCEEDINGS,
PRODUCING PERTINENT FACTS OF THE CASE.

STATEMENT OF THE CASE

PETITIONER MORRIS IS A STATE PRISONER IN FLORIDA. IN 2013, MR. MORRIS WAS CONVICTED OF SEXUAL BATTERY BY A PERSON IN FAMILIAL CUSTODY (TWO COUNTS) AND LEWD OR LASCIVIOUS MOLESTATION (ONE COUNT). THE TRIAL COURT SENTENCED MR. MORRIS TO THIRTY YEARS' IMPRISONMENT. MR. MORRIS APPEALED THE JUDGMENT AND THE FLORIDA FIRST DISTRICT COURT OF APPEAL AFFIRMED THE CONVICTIONS AND SENTENCE.

SEE MORRIS V. STATE, 139 So.3d 304 (FLA. 1ST DCA 2014).

FOLLOWING THE DIRECT APPEAL, MR. MORRIS TIMELY FILED A FLORIDA RULE OF CRIMINAL PROCEDURE 3.850 MOTION. IN THE STATE POSTCONVICTION MOTION, MR. MORRIS RAISED FIVE GROUNDS. (1) DEFENSE COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO PRESENT DEFENSE WITNESSES AT TRIAL.

(2) DEFENSE COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO GO OVER THE TEXT MESSAGES IN THIS CASE WITH MR. MORRIS PRIOR TO TRIAL AND FAILING TO PROPERLY UTILIZE THE TEXT MESSAGES DURING THE TRIAL; (3) DEFENSE COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO PRESENT AN EXHIBIT TO REFUTE AN ARGUMENT PRESENTED BY THE STATE AT TRIAL; (4) NEWLY DISCOVERED EVIDENCE ESTABLISHING MR. MORRIS' ACTUAL INNOCENCE; AND (5) ILLEGAL SENTENCE.

THEREAFTER, THE STATE POST CONVICTION COURT SUMMARILY DENIED GROUNDS (1) THROUGH (4) WITHOUT AN EVIDENTIARY HEARING. ON APPEAL, THE FLORIDA FIRST DISTRICT COURT OF APPEAL AFFIRMED THE DENIAL OF MR. MORRIS' RULE 3.850 MOTION.

230
SEE MORRIS V. STATE, 275 So.3d 320 (FLA. 1ST DCA 2019).

MR. MORRIS DID SEEK JURISDICTION IN THE
FLORIDA SUPREME COURT, AND WAS DENIED WITHOUT REVIEWING
THE MERIT OF HIS CLAIM ON NOVEMBER 22, 2019.

MR. MORRIS SUBSEQUENTLY FILED A PETITION
PURSUANT TO 28 U.S.C. § 2254. IN HIS § 2254 PETITION,
MR. MORRIS RAISED THE SAME CLAIMS THAT HE PREVIOUSLY
PRESENTED IN HIS STATE POST CONVICTION MOTION. ON
JULY 31, 2021, THE MAGISTRATE JUDGE ISSUED A REPORT AND
RECOMMENDATION, RECOMMENDING THAT MR. MORRIS' § 2254
PETITION BE DENIED. THEN ON SEPTEMBER 20, 2021, THE
DISTRICT COURT ADOPTED THE MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION AND DENIED MR. MORRIS' § 2254 PETITION.

FINALLY, MR. MORRIS FILED AN APPLICATION FOR A
CERTIFICATE OF APPEALABILITY (COA) IN THE ELEVENTH CIRCUIT
AND WAS DENIED C.O.A. ON JULY 21, 2021. ~~THIS~~ PETITION FOR
WRIT OF CERTIORARI FOLLOWS.

REASONS FOR GRANTING THE PETITION

WHEN PETITIONER MORRIS' DIRECT APPEAL BECAME FINAL, HE RETAINED MICHAEL UFFERMAN, PRIVATE ATTORNEY, FOR HIS POST CONVICTION RELIEF PROCESS; WHEREBY, MR. UFFERMAN PREPARED A FLORIDA RULE OF CRIMINAL PROCEDURE 3.850 MOTION FOR POST CONVICTION RELIEF IN COMPLIANCE WITH THE RULES GOVERNING THE NECESSITY FOR CONCISE POINTS OF ARGUMENT ON EACH GROUND RAISED THEREIN. THAT PROCEDURE IS ALSO COMPLIED WITH FOR THE SAKE OF COURTESY.

ON MAY 19, 2017, THE FIRST JUDICIAL CIRCUIT COURT ISSUED AN "ORDER ALLOWING DEFENDANT TO AMEND INSUFFICIENT CLAIMS FOR POST-CONVICTION RELIEF"; WHEREIN, THE COURT INFORMED COUNSEL REGARDING THE SPECIFIC NATURE OF THE INSUFFICIENT PLEADINGS PRESENTED IN HIS POST CONVICTION RELIEF MOTION.

MR. UFFERMAN COMPLIED WITH THE COURT'S INSTRUCTION / ORDER, AND FILED HIS AMENDED MOTION ON JULY 18, 2017; WHEREIN, SUFFICIENT ARGUMENT WAS PRESENTED CONCISELY, WITH THE EXPECTATION OF FURTHER DEVELOPMENT OF HIS CLAIMS AT EVIDENTIARY PROCEEDINGS. EVEN THOUGH THE CONCISE ARGUMENT WAS SUFFICIENT TO WARRANT EVIDENTIARY PROCEEDINGS, THIS PETITIONER WAS DEPRIVED OF HIS OPPORTUNITY TO FURTHER DEVELOP HIS CLAIMS.

MR. UFFERMAN RAISED SEVEN (7) GROUNDS FOR RELIEF IN BEHALF OF PETITIONER MORRIS. GROUND ONE (1) WAS GRANTED, AS IT REFERENCED ILLEGAL SENTENCING. GROUND TWO (2) WAS RENDERED "MOOT" AS IT ALSO REFERENCED ILLEGAL SENTENCING THAT WAS CORRECTED UNDER GROUND ONE (1). IN THIS PETITION, THE REMAINING FIVE (5) GROUNDS ARE THE SUBJECT OF THE DENIAL OF THE PETITIONER'S DUE PROCESS AND CONSTITUTIONAL RIGHTS, AND WILL BE ADDRESSED HEREIN

ACCORDING TO THE ORDER OF PRESENTATION FROM PETITIONER'S
28 U.S.C. § 2254 CLAIMS.

IN CLAIM NUMBER ONE (1), MR. UFFERMAN PRESENTED
A SUFFICIENTLY CONCISE PRESENTATION THAT DEFENSE COUNSEL
RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO
PRESENT DEFENSE WITNESSES AT TRIAL. PRIOR TO TRIAL, PETITIONER
MORRIS TOLD DEFENSE COUNSEL TO PRESENT HIS FATHER, HIS
MOTHER, AND AMI MORRIS AS DEFENSE WITNESSES AT TRIAL.
EACH OF THESE WITNESSES WERE AVAILABLE AND WILLING TO
TESTIFY AT TRIAL. THESE WITNESSES WOULD HAVE TESTIFIED
THAT THEY WERE AROUND THE ALLEGED VICTIM AND PETITIONER
MORRIS DURING THE TIME PERIOD OF THE ALLEGATIONS IN THIS CASE
AND THAT THEY NEVER WITNESSED ANY IMPROPER BEHAVIOR BY
PETITIONER MORRIS TOWARDS THE ALLEGED VICTIM (AND THEY
WOULD HAVE REFUTED THE STATE'S ASSERTION THAT PETITIONER MORRIS
GAVE PREFERENTIAL TREATMENT TO THE ALLEGED VICTIM).

PETITIONER MORRIS WAS PREJUDICED BY THE FAILURE TO PRESENT THESE WITNESSES - HAD THESE WITNESSES BEEN PRESENTED, THERE IS A REASONABLE PROBABILITY THAT THE JURY WOULD HAVE RETURNED A NOT GUILTY VERDICT.

IN ITS ORDER DENYING THIS CLAIM, THE STATE POST CONVICTION COURT ASSERTED THAT THE WITNESSES WERE "BIASED" BECAUSE THEY WERE PETITIONER MORRIS' FAMILY MEMBERS. NOTABLY, THE STATE POST CONVICTION COURT DID NOT CITE A SINGLE CASE TO SUPPORT THE ASSERTION THAT A LAWYER IS NOT DEEMED INEFFECTIVE FOR FAILING TO CALL A VIABLE DEFENSE WITNESS SIMPLY BECAUSE THE WITNESS IN QUESTION IS A FAMILY MEMBER OF THE DEFENDANT. OBVIOUSLY, DEPENDING ON THE PARTICULAR CASE, THE BEST/MOST EFFECTIVE WITNESS MAY BE A FAMILY MEMBER, AND IT WOULD NOT BE REASONABLE TO FAIL TO PRESENT THE WITNESS BECAUSE THE WITNESS IS A FAMILY MEMBER.

IT MUST BE NOTED, THAT THE STATE ATTORNEY DID
PRESENT PROSECUTION WITNESSES WHO WERE THE ALLEGED
VICTIM'S FAMILY MEMBERS, WHO DID NOT WITNESS A CRIME,
BUT TESTIFIED CHARACTERISTICALLY AGAINST PETITIONER MORRIS,
WHO IS ALSO THEIR FAMILY MEMBER;¹ HOWEVER, AT LEAST ONE OF
THOSE WITNESSES HAS SINCE RECANTED THEIR TESTIMONY.
SEE CLAIM NUMBER FOUR (4) HEREIN.

FOR EXAMPLE; PETITIONER MORRIS' FATHER WOULD
HAVE TESTIFIED THAT PETITIONER MORRIS WAS A TRUCK DRIVER
DURING THE TIME FRAME OF THE ALLEGED CRIMINAL CONDUCT,
PETITIONER MORRIS' ROUTE WAS ON THE WEST COAST OF THE UNITED
STATES, AND THUS, WHEN PETITIONER MORRIS WAS IN FLORIDA,
HE WAS HOME FOR SHORT PERIODS OF TIME (I.E., IT WAS NOT POSSIBLE
FOR PETITIONER MORRIS TO HAVE ABUSED THE ALLEGED VICTIM
"TWO OR THREE TIMES A WEEK"¹) AS SHE HAD ALLEGED.

THE STATE POST CONVICTION COURT, AND THE STATE APPELLATE COURT, UNREASONABLY UTILIZED THE TESTIMONY OF THE WITNESSES FOR THE PROSECUTION, (FAMILY MEMBERS) WHOSE TESTIMONY WAS THE CHALLENGED SUBJECT OF THIS CLAIM, IN ORDER TO ERRONEOUSLY DENY RELIEF WITHOUT AFFORDING FURTHER DEVELOPMENT IN THE EVIDENTIARY PROCESS, AND WITHOUT WEIGHING THE TESTIMONIES OF THE PROPOSED DEFENSE WITNESSES (FAMILY MEMBERS) AGAINST THE PROSECUTION WITNESSES. THIS WAS ALSO AN UNREASONABLE AND ERRONEOUS ASSESSMENT SINCE THE COURTS WERE ALSO FULLY AWARE THAT ONE (1) OF THE PROSECUTION WITNESSES HAD RECANTED.

NEVERTHELESS, THE FEDERAL DISTRICT COURT ALSO REITERATED AND/OR REUTILIZED THE SAME ARGUMENTS/FINDINGS FROM THE STATE PROSECUTION, AND STATE COURTS ERRONEOUS APPLICATIONS OF THE CONSTITUTIONAL PREREQUISITES FOR MAKING THEIR DETERMINATIONS IN THIS PRESENT CASE.

ULTIMATELY, THE STATE POSTCONVICTION COURT SEEMINGLY CONCLUDED THAT DEFENSE COUNSEL'S FAILURE TO PRESENT THE WITNESSES IN QUESTION WAS STRATEGIC. FIRST, "AN ATTORNEY WHO FAILS EVEN TO INTERVIEW A READILY AVAILABLE WITNESS WHOSE NONCUMULATIVE TESTIMONY MAY POTENTIALLY AID THE DEFENSE SHOULD NOT BE ALLOWED AUTOMATICALLY TO DEFEND HIS OMISSION SIMPLY BY RAISING THE SHIELD OF TRIAL STRATEGY AND TACTICS."

~~CRISP~~ CRISP V. DUCKWORTH, 743 F.2d 580, 584 (7TH CIR. 1984).

SECOND, "[A POSTCONVICTION] COURT CANNOT DENY A MOTION FOR POST-CONVICTION RELIEF BY FINDING THAT DEFENSE COUNSEL'S DECISION WAS TACTICAL OR TRIAL STRATEGY WITHOUT FIRST HOLDING AN EVIDENTIARY HEARING," BUTTON V. STATE, 941 So.2d 531, 533 (FLA. 4TH DCA 2006) (emphasis added) (citation omitted).

AS EXPLAINED BY THE SIXTH CIRCUIT COURT OF APPEALS IN BARNES V. ELO, 231 F.3d 1025, 1029 (6TH CIR. 2000). WITHOUT CONDUCTING AN EVIDENTIARY HEARING, IT IS IMPOSSIBLE TO DETERMINE

WHETHER COUNSEL'S ACTIONS WERE STRATEGIC.

"STRATEGIC CHOICES MADE BY CRIMINAL DEFENSE COUNSEL AFTER THOROUGH INVESTIGATION OF LAW AND FACTS RELEVANT TO PLAUSIBLE OPTIONS ARE VIRTUALLY UNCHALLENGABLE. WHILE STRATEGIC CHOICES MADE AFTER LESS THAN COMPLETE INVESTIGATION ARE REASONABLE PRECISELY TO THE EXTENT THAT REASONABLE PROFESSIONAL JUDGMENTS SUPPORT THE LIMITATIONS ON INVESTIGATIONS; IN OTHER WORDS, COUNSEL HAS A DUTY TO MAKE REASONABLE INVESTIGATIONS OR TO MAKE A REASONABLE DECISION THAT MAKES PARTICULAR INVESTIGATIONS UNNECESSARY, AND A PARTICULAR DECISION NOT TO INVESTIGATE MUST BE DIRECTLY ASSESSED FOR REASONABLENESS IN ALL CIRCUMSTANCES, APPLYING A HEAVY MEASURE OF DEFERENCE TO COUNSEL'S JUDGMENTS."

STRICKLAND V. WASHINGTON, 466 U.S. 668, 80 L. Ed 2d 674, 104 S.Ct 2052. (emphasis added)

"INQUIRY INTO CRIMINAL DEFENSE COUNSEL'S CONVERSATIONS WITH THE DEFENDANT MAY BE CRITICAL TO A PROPER ASSESSMENT OF COUNSEL'S INVESTIGATION DECISIONS, SINCE WHEN THE FACTS THAT SUPPORT A CERTAIN POTENTIAL LINE OF DEFENSE ARE GENERALLY KNOWN TO COUNSEL BECAUSE OF WHAT THE DEFENDANT HAS SAID, . . . Id. (emphasis added)

APPARENTLY, THE ABOVE STRICKLAND ANALYSIS CAN ONLY BE MADE THROUGH EVIDENTIARY PROCEEDINGS, IN ORDER FOR THE COURT TO ESTABLISH A SOUND AND PROPER RECORD OF COUNSEL'S DECISION MAKING PROCESS, BY "INQUIRY," AND/OR "DIRECTLY ASSESSING."

SAID ~~CONVERSATIONS~~ DECISIONS FOR REASONABLENESS. TO DO
OTHERWISE, (MAKING A STRATEGIC DETERMINATION WITHOUT
INQUIRY) WOULD BE CONTRARY TO, AND/OR AN
UNREASONABLE APPLICATION OF, CONSTITUTIONAL LAWS
ESTABLISHED IN THE UNITED STATES SUPREME COURT.

AT THE LEAST, THE ABOVE CONISE PRESENTATION OF
AVAILABLE DEFENSE WITNESSES SHOULD HAVE WARRANTED
EVIDENTIARY PROCEEDINGS TO BE CONDUCTED; WHEREIN, MR. UFFERMAN WOULD
HAVE ELICITED MORE DETAILED TESTIMONY, WITH ADDITIONAL TESTIMONY
NOT PRESENTED IN HIS MOTION DUE TO CONCISIVENESS REQUIREMENTS,
WHILE ALSO GENERATING THE FULLY DEVELOPED FACTS THROUGH A
SOUND AND PROPER RECORD.

THEREAFTER, IF POST-CONVICTION RELIEF WAS NOT
WARRANTED IN THE TRIAL COURT, THEN PETITIONER MORRIS'
CONSTITUTIONAL / SUBSTANTIVE PROCESS RIGHTS FOR PRESERVING
FULLY DEVELOPED FACTS FOR THE STATE APPELLATE PHASE, AND / OR
THE FEDERAL REVIEW PHASE OF HIS CRIMINAL PROCEEDINGS,
WOULD HAVE BEEN EXERCISED AND PROTECTED. IN THIS CASE, THEY
WERE NOT CONSTITUTIONALLY EXERCISED OR PROTECTED.

IN CLAIM NUMBER TWO (2), MR. UFFERMAN
PRESENTED A SUFFICIENTLY CONCISE PRESENTATION THAT DEFENSE
COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING
TO GO OVER THE TEXT MESSAGES IN THIS WITH MR. MORRIS
PRIOR TO TRIAL AND FAILING TO PROPERLY UTILIZE THE TEXT
MESSAGES DURING THE TRIAL.

FOR CONCISENESS HEREIN, A PARTIAL EXAMPLE OF
WHAT MR. UFFERMAN PROVIDED THE POST CONVICTION COURT WITH
WILL BE PRESENTED.

THERE WERE NUMEROUS TEXT MESSAGES (T.M.) IN
THIS CASE BETWEEN PETITIONER MORRIS AND THE ALLEGED VICTIM,
THE ALLEGED VICTIM AND HER MOTHER, AND THE ALLEGED VICTIM'S
MOTHER AND PETITIONER MORRIS. MANY OF THESE TEXT MESSAGES
WERE DISCLOSED BY THE STATE IN DISCOVERY. HOWEVER, PRIOR
TO TRIAL, DEFENSE COUNSEL FAILED TO GO OVER THE TEXT
MESSAGES WITH PETITIONER MORRIS. HAD DEFENSE COUNSEL GONE
OVER THE TEXT MESSAGES WITH PETITIONER MORRIS, THEN PETITIONER

MORRIS WOULD HAVE BEEN ABLE TO UTILIZE THE TEXT MESSAGES IN THE FOLLOWING WAYS: (1) PETITIONER MORRIS WOULD HAVE BEEN ABLE TO POINT OUT THAT SEVERAL TEXT MESSAGES WERE MISSING, WHICH WOULD HAVE DEMONSTRATED THAT THE ALLEGED VICTIM DELETED TEXTS AND WAS TRYING TO COVER UP EXCULPATORY TEXTS (i.e., THERE ARE TWO DAYS WORTH OF TEXTS MISSING BETWEEN TM #13 AND TM #14); (2) PETITIONER MORRIS WOULD HAVE BEEN ABLE TO POINT OUT THE ACTUAL LANGUAGE IN THE TEXTS, WHICH IN SOME CASES WAS CONTRARY TO THE LANGUAGE PORTRAYED BY THE STATE AND THE STATE WITNESSES DURING THE TRIAL (AND/OR IN SOME CASES THE STATE ONLY REFERENCED PARTIAL TEXTS - LEAVING OUT OTHER PARTS OF THE TEXT THAT WERE EXCULPATORY); (3) PETITIONER MORRIS WOULD HAVE BEEN ABLE TO POINT OUT THE TEXTS THAT DEFENSE COUNSEL COULD HAVE USED TO IMPEACH THE STATE WITNESSES; (4) PETITIONER MORRIS WOULD HAVE REQUESTED DEFENSE COUNSEL TO INTRODUCE / FOCUS ON SEVERAL EXCULPATORY TEXTS THAT DEFENSE COUNSEL FAILED TO HIGHLIGHT

DURING THE TRIAL; AND (5) PETITIONER MORRIS WOULD HAVE REQUESTED DEFENSE COUNSEL TO SUBPOENA THE MISSING TEXTS FROM AT&T FOR ALL THREE PHONES. THE LAW ENFORCEMENT "SERVICE RETURN"/POLICE REPORT CLEARLY ESTABLISHES THAT ALTHOUGH THE ALLEGED VICTIM'S PHONE WAS INITIALLY VIEWED BY LAW ENFORCEMENT OFFICIALS ON JULY 7, 2012, LAW ENFORCEMENT OFFICIALS DID NOT COLLECT HER PHONE DURING THIS INITIAL ENCOUNTER AND INSTEAD ALLOWED HER TO KEEP HER PHONE UNTIL JULY 9, 2012 (AT WHICH TIME HER PHONE WAS COLLECTED AND THE TEXTS WERE COPIED AND PRINTED).

A REVIEW OF TEXTS QUOTED IN THE POLICE REPORT AND THE TEXTS SUBSEQUENTLY DISCLOSED BY THE STATE IN DISCOVERY ~~REVEALS~~ THAT THREE OF THE TEXTS QUOTED IN THE WARRANT/POLICE REPORT (I.E., THE TEXTS FROM 6/18/12, 6/19/12, AND 6/22/12) WERE NOT INCLUDED IN THE TEXTS DISCLOSED BY THE STATE DISCOVERY - AND PETITIONER MORRIS ASSERTS THAT THE ALLEGED VICTIM DELETED THESE TEXTS BETWEEN THE TIME THAT HER PHONE WAS INITIALLY VIEWED BY LAW ENFORCEMENT AS WELL AS MANY OTHER TEXT DELETED BETWEEN THESE DAYS.

OFFICIALS AND WHEN SHE PROVIDED HER PHONE TO LAW ENFORCEMENT OFFICIALS TWO DAYS LATER. THE RECORD IS CLEAR THAT THE STATE RELIED SUBSTANTIALLY ON THE TEXT MESSAGES AT TRIAL. IT WOULD HAVE BEEN EXTREMELY DAMAGING TO THE STATE'S CASE IF DEFENSE COUNSEL HAD PROPERLY EXPOSED THAT THE TEXT MESSAGES WERE INCOMPLETE AND/OR ALTERED, OR THAT THE ALLEGED VICTIM HAD ACTUALLY DELETED TEXTS PRIOR TO GIVING HER PHONE TO LAW ENFORCEMENT OFFICIALS - EVIDENCE THAT WOULD CREATE A PRESUMPTION THAT THE ALLEGED VICTIM WAS NOT TELLING THE TRUTH, HAD SOMETHING TO HIDE, AND/OR THAT THE DELETED TEXTS WERE EXCULPATORY.

CONTRARY TO THE EVIDENCE (POLICE REPORT), THE STATE POST CONVICTION ASSERTED THAT THIS CLAIM WAS CONCLUSORY, AND THE FEDERAL DISTRICT COURT ERRONEOUSLY ASSERTED THAT THE TEXT MESSAGES ^{did not} PLAY A SUBSTANTIAL ROLE IN THIS CASE; HOWEVER, THE EVIDENCE/RECORDS ESTABLISHES THAT THE STATE PROSECUTION RELIED SUBSTANTIALLY ON THE TEXT MESSAGES IN AN EFFORT TO CONVINCE THE

JURY TO RETURN A GUILTY VERDICT.

MR. UFFERMAN'S COMPLETE PRESENTATION OF THIS CLAIM

AT THE LEAST
SHOULD HAVE, ~~AT THE LEAST~~, REQUIRED EVIDENTIARY PROCEEDINGS FOR

FURTHER DEVELOPMENT, EVEN THOUGH THE PHYSICAL EVIDENCE

PRESENTED [POLICE REPORT AND RESULTING "INCOMPLETE" TEXT MESSAGES

RECORDS PRESENTED AT TRIAL] WAS SUFFICIENT TO WARRANT A VACATING

OF, OR SETTING ASIDE OF THE CONVICTION AND SENTENCE IN THIS CASE.

IN CLAIM NUMBER THREE (3), MR. UFFERMAN PRESENTED A

SUFFICIENTLY CONCISE PRESENTATION THAT "DEFENSE COUNSEL

RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING

TO PRESENT AN EXHIBIT TO REFUTE AN ARGUMENT PRESENTED

BY THE STATE AT TRIAL."

DURING THE TRIAL, THE PROSECUTOR REPEATEDLY ASSERTED

THAT PRIOR TO LEARNING THAT THE ALLEGED VICTIM WAS PREGNANT,

PETITIONER MORRIS HAD DENIED HAVING A SEXUAL RELATIONSHIP

WITH THE ALLEGED VICTIM AFTER SHE TURNED EIGHTEEN YEARS OLD.

CONTRARY TO THIS ARGUMENT, PETITIONER MORRIS SENT A LETTER TO HIS FATHER, WHEREIN HE ACKNOWLEDGED THAT AFTER THE ALLEGED VICTIM TURNED EIGHTEEN, HE AND THE ALLEGED VICTIM BEGAN HAVING A CONSENSUAL SEXUAL RELATIONSHIP. THE CONFESSION LETTER THAT PETITIONER MORRIS SENT TO HIS FATHER IS DATED JULY 25, 2012, AND WAS WRITTEN WHILE PETITIONER MORRIS WAS IN JAIL.

NOTABLY, THE RECORD ESTABLISHES THAT THE STATE DID NOT FILE A MOTION TO COMPEL A BUCCAL SWAB UNTIL DECEMBER OF 2012. PETITIONER MORRIS WROTE THE LETTER TO HIS FATHER FIVE MONTHS EARLIER IN JULY OF 2012. THUS, ALTHOUGH PETITIONER MORRIS MAY HAVE INITIALLY DENIED ANY INVOLVEMENT DURING HIS INITIAL INTERVIEW - SOMETHING THAT IS COMMON FOR MANY SUSPECTS WHEN FIRST CONFRONTED WITH CRIMINAL ALLEGATIONS - HE LATER CONFESSED TO HIS FATHER IN JULY OF 2012 THAT HE HAD A CONSENSUAL SEXUAL RELATIONSHIP WITH THE ALLEGED VICTIM AFTER SHE TURNED EIGHTEEN YEARS OLD (BUT HE MAINTAINED THAT THE SEXUAL

ACTIVITY OCCURRED ONLY AFTER SHE TURNED EIGHTEEN). PETITIONER

MORRIS' LETTER PROVES THAT HE DID NOT CHANGE HIS STORY SIMPLY

BECAUSE HE FOUND OUT THAT THE ALLEGED VICTIM WAS PREGNANT;

RATHER, THE LETTER PROVES THAT WELL BEFORE PETITIONER MORRIS

KNEW ANYTHING ABOUT A PREGNANCY ALLEGATION, HE CHANGED HIS

STORY BECAUSE IT WAS THE TRUTH - HE HAD, IN FACT, ENGAGED IN

SEXUAL ACTIVITY WITH THE ALLEGED VICTIM AFTER SHE TURNED

EIGHTEEN, BUT HE DID NOT ENGAGE IN ANY SEXUAL ACTIVITY WITH

HER WHEN SHE WAS A MINOR.

PRIOR TO TRIAL, THE STATE ISSUED A SUBPOENA TO PETITIONER

MORRIS' FATHER REQUESTING ALL LETTERS THAT HAD BEEN WRITTEN BY

PETITIONER MORRIS TO HIS FATHER. PETITIONER MORRIS' FATHER COMPLIED

WITH THIS SUBPOENA AND DELIVERED THE LETTER TO THE STATE ON

SEPTEMBER 7, 2012 - PRIOR TO TRIAL. THUS, PRIOR TO TRIAL, THE

STATE AND DEFENSE COUNSEL WERE AWARE THAT PETITIONER MORRIS

HAD ACKNOWLEDGED - BEFORE THE TRIAL BEGAN - HAVING A SEXUAL

RELATIONSHIP WITH THE ALLEGED VICTIM AFTER SHE TURNED EIGHTEEN YEARS OLD. DURING THE TRIAL, DEFENSE COUNSEL SHOULD HAVE INTRODUCED THIS LETTER - WHICH WOULD HAVE PREVENTED THE STATE FROM ARGUING AT TRIAL THAT UP UNTIL THE POINT OF THE TRIAL, PETITIONER MORRIS HAD DENIED HAVING A SEXUAL RELATIONSHIP WITH THE ALLEGED VICTIM AFTER SHE TURNED EIGHTEEN YEARS OLD.

IN ITS ORDER DENYING THIS CLAIM, THE STATE POSTCONVICTION COURT HELD THAT THE LETTER IN QUESTION WOULD HAVE BEEN INADMISSIBLE.

CONTRARY TO THE STATE POSTCONVICTION COURT'S CONCLUSION, THE LETTER WOULD HAVE BEEN ADMISSIBLE AT TRIAL. THE LETTER WOULD NOT HAVE BEEN HEARSAY BECAUSE IT WOULD NOT HAVE BEEN ADMITTED/INTRODUCED FOR THE TRUTH OF THE MATTER ASSERTED THEREIN - RATHER, THE PURPOSE FOR INTRODUCING THE LETTER WOULD HAVE BEEN TO REFUTE THE STATE'S ASSERTION AT TRIAL THAT UP UNTIL THE POINT OF THE TRIAL, PETITIONER HAD DENIED HAVING A SEXUAL RELATIONSHIP WITH THE ALLEGED VICTIM (AND REFUTE THE STATE'S ASSERTION AT TRIAL THAT PETITIONER MORRIS'

TESTIMONY AT TRIAL WAS THE FIRST TIME THAT HE WAS ADMITTING
TO THE SEXUAL RELATIONSHIP).

IN ITS APPELLATE DECISION ADDRESSING THIS CLAIM, THE
STATE APPELLATE COURT AGAIN HELD THAT PETITIONER MORRIS COULD NOT
SHOW PREJUDICE. SEE MORRIS, 275 So.3d AT 236. CONTRARY TO
THE STATE APPELLATE COURT'S ASSERTION, HAD THE LETTER
REFERENCED ABOVE BEEN INTRODUCED AT TRIAL, THERE IS A REASONABLE
PROBABILITY THAT THE JURY WOULD HAVE RETURNED A NOT GUILTY VERDICT.

HAD PREJUDICE ~~THAT~~ FINDING IS CONTRARY TO CRUZ V. SEC'Y, FLA. DEPT OF CORR.,
2019 WL 4600371 AT *4 (11th Cir. FLA. SEPT. 23, 2019).

IN CLAIM NUMBER FOUR (4), MR. UFFERMAN PRESENTED A
SUFFICIENTLY CONCISE PRESENTATION OF A "NEWLY DISCOVERED
EVIDENCE" CLAIM, IN THE FORM OF RECANTED TESTIMONY.

MR. UFFERMAN'S PRESENTATION OF THIS CLAIM INCLUDED THE
ADDITIONAL STATEMENT THAT THE CLAIM INVOLVED NEWLY
DISCOVERED EVIDENCE AND "ACTUAL INNOCENCE", WHEREBY,

HE ARGUED THE FOLLOWING: DURING ~~THE~~ TRIAL, THE STATE

PRESENTED THE TESTIMONY OF ALYSSA MORRIS. ALYSSA MORRIS ~~HAD~~ HAS

NCE THEN SIGNED AN AFFIDAVIT, RECANTED HER TESTIMONY, AND EXPLAINED

THAT SHE WAS "COACHED" TO TESTIFY THE WAY THAT SHE DID

AT TRIAL.

ALYSSA MORRIS' TRIAL TESTIMONY WAS DETRIMENTAL

TO PETITIONER MORRIS IN THAT HER "COACHED" TESTIMONY

PRESENTED THE JURY WITH A VIEW OF A DAUGHTER WHOSE BIOLOGICAL

FATHER GAVE PREFERENTIAL TREATMENT TO HER STEP-SISTER; PAID

LITTLE OR NO ATTENTION TO HER BIOLOGICAL BROTHER AND/OR HERSELF;

AND WHOSE TESTIMONY WOULD CLEARLY LEAD A JURY TO CONCLUDE

THAT SHE (ALYSSA) BELIEVED HER FATHER TO BE GUILTY OF THE CHARGES

AGAINST HIM. DUE TO THE HIGH LEVEL OF EMOTIONAL STRESS ^{FOURTEEN}-

YEAR-OLD ALYSSA MORRIS WAS UNDER AT THE TIME OF HER TESTIMONY,

IT IS VERY POSSIBLE SHE ^{COULD} ~~WOULD~~ ~~BEEN~~ HAVE BEEN "COACHED" BY OTHERS;

AND THEREAFTER, WHEN COMING TO THE REALIZATION OF WHAT

ACTUALLY TRANSPIRED BY THOSE INVOLVED, SHE WROTE THE
AFOREMENTIONED AFFIDAVIT TO REVEAL THE TRUTH OF THE MATTER
(i.e., "FEELING BRAIN WASHED," "WRONGFULLY TAKING HER MOTHER'S
AND SISTER'S SIDE OVER HER FATHER'S ACTUAL INNOCENCE,"
"HER MOTHER PUTTING THINGS IN HER HEAD," "HER ACTUAL
MEMORY OF PAST ATTENTIVENESS' OF HER FATHER," AND, "HER ACTUAL
GREAT DOUBT AS TO THE DEFENDANT'S COMMISSION OF THE OFFENSES."

WITHOUT HER TESTIMONY FOR THE PROSECUTION, THE STATE'S
CASE AGAINST PETITIONER MORRIS WOULD HAVE BEEN GREATLY
DIMINISHED. IN CONTRAST, HER CORROBORATIVE DEFENSE TESTIMONY
SUPPORTING PETITIONER MORRIS' OWN TRIAL TESTIMONY, WOULD HAVE
PROBABLY PRODUCED AN ACQUITTAL.

MR. LEFFERMAN ASSERTED THAT ALYSSA MORRIS'
RECATANTION AMOUNTS TO A "FREESTANDING" CLAIM OF ACTUAL
INNOCENCE", AND CITED *BAKER V. YATES*, 339 FED. APPX. 690,
692 (9TH CIR. 2009), WHEREIN, BAKER REFERENCED

CONSTITUTIONAL PRECEDENT FOUND IN HOUSE V. BELL, 547 U.S.

518, 554-555 [126 S.Ct. 2064, 2086-2087] (2006).

THE NINTH CIRCUIT COURT OF APPEALS STATED:

"BAKER ASSERTS A FREESTANDING CLAIM OF ACTUAL INNOCENCE. THE SUPREME COURT HAS LEFT OPEN THE QUESTION OF WHETHER SUCH A CLAIM IS COGNIZABLE UNDER FEDERAL LAW AND, IF SO, WHETHER THE CLAIM MAY BE RAISED IN A NON-CAPITAL CASE. SEE HOUSE V. BELL, 547 U.S. 518, 554-555 [126 S.Ct. 2064, 2086-2087] (2006). WE HAVE ASSUMED THAT FREESTANDING INNOCENCE CLAIMS ARE COGNIZABLE AND HAVE HELD THAT "A HABEAS ~~CORPUS~~ PETITIONER ASSERTING A FREESTANDING INNOCENCE CLAIM MUST GO BEYOND DEMONSTRATING DOUBT ABOUT HIS GUILT, AND MUST AFFIRMATELY PROVE THAT HE IS PROBABLY INNOCENT." OSBORNE V. DISTRICT ATTY'S OFFICE FOR THIRD JUDICIAL DIST., 521 F.3d 1118, 1130-1131 (9TH CIR. 2008) (QUOTING CARRIGER V. STEWART, 132 F.3d 463, 476 (9TH CIR. 1997) (en banc))." (EMPHASIS ADDED).

MORE RECENTLY, THE SUPREME COURT HAS STATED THAT

IT HAS "NOT RESOLVED WHETHER A PRISONER MAY BE ENTITLED TO

HABEAS RELIEF BASED ON A FREESTANDING CLAIM OF ACTUAL

INNOCENCE." MCQUIGGIN V. PERKINS, 569 U.S. 383, 392, 133

S.Ct. 1924, 1931 (2013). IN MCQUIGGIN, THE SUPREME COURT HELD

THAT A PETITIONER WHO SATISFIES THE ACTUAL INNOCENCE

GATEWAY STANDARD MAY HAVE OTHERWISE TIME-BARRED CLAIMS

HEARD ON THE MERITS², SEE ALSO DIST. ATTORNEY'S OFFICE V.

OSBORNE, 557 U.S. 52, 71, 129 S.Ct. 2308, 2321 (2009) ("WHETHER SUCH A FEDERAL RIGHT EXISTS IS AN OPEN QUESTION. WE HAVE STRUGGLED WITH IT OVER THE YEARS, IN SOME CASES ASSUMING, ARGUENDO, THAT IT EXISTS WHILE ALSO NOTING THE DIFFICULT QUESTIONS SUCH A RIGHT WOULD POSE AND THE HIGH STANDARD ANY CLAIMANT WOULD HAVE TO MEET.") (CITATIONS OMITTED).

IN HERRERA V. COLLINS, 506 U.S. 390, 417, 113 S.Ct. 853, 869 (1993), THE SUPREME COURT ASSUMED, WITHOUT DECIDING, THAT "IN A CAPITAL CASE A TRULY PERSUASIVE DEMONSTRATION OF 'ACTUAL INNOCENCE' MADE AFTER TRIAL WOULD RENDER THE EXECUTION OF A DEFENDANT UNCONSTITUTIONAL, AND WARRANT FEDERAL HABEAS RELIEF IF THERE WERE NO STATE AVENUE OPEN TO PROCESS SUCH A CLAIM." SEE ALSO JACKSON V. CALDERON, 211 F.3d 1148, 1164 (9TH CIR. 2000) (NOTING THAT "A MAJORITY OF THE JUSTICES IN HERRERA WOULD HAVE SUPPORTED A CLAIM OF FREE-STANDING ACTUAL INNOCENCE."); WHITE V. KEANE, 51 F. Supp. 2d 495, 504 (S.D.N.Y. 1999) (SUGGESTING THAT A LIBERAL READING OF HERRERA EXTENDS ACTUAL INNOCENCE CLAIMS TO NON-CAPITAL CASES); WRIGHT V. Smeal, No. 08-2073, 2009 WL 5033967 AT *9-10 (E.D. Pa. Dec. 23, 2009) (ADDRESSING PETITIONER'S FREESTANDING ACTUAL INNOCENCE CLAIM IN A NON-CAPITAL CASE ON THE MERITS). SEE ALSO IN RE DAVIS, 2010 WL 3385081 AT *43 (S.D. GA. 2010) (CONCLUDING THAT "EXECUTING THE 'ACTUALLY INNOCENT VIOLATES THE CRUEL AND UNUSUAL PUNISHMENT CLAUSE OF THE EIGHTH AMENDMENT").

MR. UFFERMAN DID PRESERVE THE "ACTUAL INNOCENCE" PORTION OF HIS "NEWLY DISCOVERED EVIDENCE CLAIM", FOR FURTHER REVIEW IN THE UNITED STATES SUPREME COURT, REGARDING THE VIABILITY OF A FREESTANDING CLAIM OF ACTUAL INNOCENCE.

THEREFORE, PETITIONER MORRIS REQUESTS THIS HONORABLE SUPREME COURT TO FOLLOW THE LEAD OF THE NINTH CIRCUIT AND CONCLUDE/ASSUME THAT A FREE-STANDING CLAIM OF ACTUAL INNOCENCE CAN BE RAISED IN A § 2254 PROCEEDING. IT IS COUNTERINTUITIVE TO ALLOW "GATEWAY" ACTUAL INNOCENCE CLAIMS BUT PROHIBIT "FREESTANDING" ACTUAL INNOCENCE CLAIMS.

CONCLUSION

IN CONCLUSION, PETITIONER MORRIS ASSERTS THAT HE HAS PRESENTED THIS HONORABLE COURT WITH FOUR (4) QUESTIONS INVOLVING CONSTITUTIONAL DIMENSIONS; WHICH,

SHOULD BE ANSWERED BY THIS COURT IN THE AFFIRMATIVE.

THE EXAMPLES AND/OR EXCERPTS PRESENTED IN THIS
PETITION ESTABLISHES THAT, AT THE LEAST, PETITIONER MORRIS'
CONSTITUTIONAL CHALLENGES DESERVE CONSIDERATION FOR
FUTHERANCE, AND EVIDENTIARY PROCEEDINGS, OR OTHERWISE
(BRIEFING AND ORAL ARGUMENT), SHOULD BE CONDUCTED IN
THIS HONORABLE SUPREME COURT.

RESPECTFULLY SUBMITTED,


JEFFREY TODD MORRIS / DC# P11188

GRACEVILLE CORRECTIONAL FACILITY

5168 EZELL ROAD

GRACEVILLE, FLORIDA 32440