No. 22-6242

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

William Burke — PETITIONER
(Your Name)

vs.

Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the 11th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William Burke GDC # 1001415051
(Your Name)

Dooly State Prison PO Box 750
(Address)

Unadilla, GA 31091
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Did the 11th Circuit Court of Appeals, and all previous courts, fail to adhere to the 'required' standard of review set forth in *Strickland v. Washington* by not reviewing the the conduct of the trial counsel's 'perspective at the time' and eliminating the 'distorting effects of hindsight' when they applied a direct appeal decision on the trial court's plain error issued four years after the verdict when reviewing of ineffective assistance claim for not objecting to incomplete jury instructions at trial before deliberations?

2. Does the deference clause of the Antiterrorism and Effective Death Penalty Act (AEDPA) supersede the holdings of *Strickland v. Washington* or should the Courts first apply a proper *de novo* review of law and fact as to the trial counsel's ineffectiveness as alleged in the habeas petition before deferring?

3. Was the state court's ruling on habeas petition claims 3 & 9, that were allowed in the COA, unreasonable in light of evidence presented as required under § 2254(d)(2)?

4. Did an *ex parte* ruling on evidence after trial that contradicts the sufficiency of same evidence presented to the jury violate the right to jury trial (U.S. Const. Article III Section 'The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury;') as well as the Sixth Amendment right to counsel and right to be present, and the Fourteenth Amendment due process and fundamental fairness guarantees?

5. Does the same Article III, the Sixth and Fourteenth Amendments insurance of fundamental fairness, due process and trial by jury demand precise and flawless instructions in order to get a reliable verdict, especially when a life sentence hangs in the balance?

6. Did cumulative errors render the trial fundamentally unfair?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Dekalb Superior Court, Trials 1&2, October 3, 2014

Dekalb Superior Court, Motion for New Trial, Denied October 10,2016

Georgia Supreme Court, Direct Appeal,302 Ga. 786, January 2018

United States Supreme Court - Certiorari denied,139 S.Ct 248 (2018)

Dooly Superior Court, Habeas Denied, 18DV-0096,July 2,2019

Georgia Supreme Court, Habeas Denied tacitly, June 1, 2020

U.S. District Court, North Georgia, 1:20-cv-01096, Habeas Denied, COA Issued, March 22, 2021

U.S. Court of Appeals, 11th Circuit, 21-11224, Habeas Denied, July 25,2022, Reconsideration Denied, September 23, 2022

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The Court improperly deferred to the state court's ruling that the issue was *res judicata* on direct appeal, which is not only unreasoned, but was the epitome of the distorting effect of hindsight and no part of trial counsel's perspective at the time of the claim contrary to the holding of *Strickland v. Washington.*

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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 judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix E to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix ____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix ____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix ____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 25, 2022.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 15, 2022, and a copy of the order denying rehearing appears at Appendix F.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ A _____.

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 my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date:

_____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STANDARDS OF REVIEW

Williams v. Lockhart, 849 F.2d 1134, 1138 (CA8 1998) ("We agree with the Eleventh Circuit that when reviewing the sufficiency of a [pro se] habeas corpus petition the standard is less stringent than when it is drafted by trained legal counsel, consequently "not only are the allegations of such petitions to be construed more liberally *** but unincluded allegations of 'apparent facts may be treated as part of the complaint for the purpose of determining whether an issue should be remanded for further investigation". Williams v. Griswald, 743 F.3d 1533, 1542 (11th Cir. 1984)")

Harrington v. Richter 562 U.S. 86, 131 S.Ct. 770 (2011) ("The writ of habeas corpus stands as a safeguard against imprisonment of those held in violation of the law. Judges must be vigilant and independent in reviewing petitions for the writ, a commitment that entails substantial judicial resources. Those resources are diminished and misspent, however, and confidence in the writ and the law it vindicates undermined, if there is judicial disregard for the sound and established principles that inform its proper issuance. That judicial disregard is inherent in the opinion of the Court of Appeals for the Ninth Circuit here under review.")

STATEMENT OF THE CASE

This case calls for the specific application of the standard of reasonable competence required on the part of defense counsel by the Sixth Amendment and the specific application of the *Strickland* standard of fair assessment of ineffective assistance claims, both of which were not applied by any habeas court, which, in turn, calls for an exercise of this Court's supervisory power. *See* Rule 10.

Burke's habeas corpus claim that his counsel was ineffective for not objecting to an incomplete voluntary manslaughter jury instruction when given at trial was denied by state habeas court using the direct appeal Georgia Supreme Court plain error ruling of *Burke v. State* ,809 S.E.2d 765,767 (2018) ("concluding that a voluntary

manslaughter charge was not supported by the evidence — and thus should never have been given at all") that was rendered four years after Burke's second[1] trial, a trial which ended 8 years ago.

> *Harrington v. Richter* 562 U.S. 86, 131 S.Ct. 770 (2011) @ 789 ("Reliance on "the harsh light of hindsight" to cast doubt on a trial that took place now more than 15 years ago is precisely what Strickland and AEDPA seek to prevent. Cone, 535 U.S., at 702, 122 S.Ct. 1843; see also Lockhart, 506 U.S., at 372, 113 S.Ct. 838.")

Burke's trial counsel was unequivocally informed at trial that the evidence did support the charge and it would be given. That was her perspective and all she knew 'at the time' that the ineffective assistance claim refers to. She could not possibly known that ruling would be changed on appeal years later. No one would expect that.

By exhibiting the timing and content of the Georgia Supreme Court decision that the denial of the writ rests upon, Burke has met 'the burden of rebutting the presumption of correctness by clear and convincing evidence'. *See* § 2254(e)(1)

See Attachment E, Eleventh Circuit Court of Appeals panel's opinion where they show deference to the state habeas court ;

> BURKE v. WARDEN, No. 21-11224 CA11 July 25,2022 ("So the question is whether the trial counsel ineffectiveness claim was meritorious. And here, the answer is no. The Georgia Supreme Court held that there was insufficient evidence to support the voluntary manslaughter charge and thus it was not error for the jury to not receive that charge.")

Actually, the reality is the jury did receive that charge, but only for malice murder and not the felony murder charge based on the same transaction, so that opinion was

[1] Burke's first trial was a mistrial when the jury could not reach a unanimous verdict. The lesser included charge of voluntary manslaughter was given that jury when the same court ruled it was supported by evidence with no objections during or after the trial by any party.

built on misstatements of fact and *malum in se.* The Georgia Supreme Court's ruling solely pertains to the trial court's plain error, not trial counsel ineffectiveness. *Strickland* is never mentioned. Those are two distinct issues that are meant to be decided in two different ways, so applying it to the habeas claim makes no sense by logic or law, notwithstanding the contemporaneous issue.

> Rompilla v. Beard 545 U.S. 374@408 (2005) ("Strickland anticipated the temptation "to second-guess counsel's assistance after conviction or adverse sentence" and cautioned that "[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 the time." 466 U. S., at 689. Today, the Court succumbs to the very temptation that Strickland warned against. In the process, the majority imposes on defense attorneys a rigid requirement that finds no support in our cases or common sense.")

The Georgia Supreme Court ruling itself details the charge as read and the faulty verdict form, which petition ground 9 refers to;

> Burke v.State, 809 S.E.2d 765 (2018) @767("The court read that instruction after the malice murder charge but before the felony murder and aggravated assault charges. The verdict form clearly limited the jury's consideration of manslaughter to the malice murder charge, giving the options of "Not Guilty," "Guilty," and "Guilty, of the Lesser Included Charge of Voluntary Manslaughter" under the malice murder count but listing only "Not Guilty" and "Guilty" options under the other counts. During deliberations, the jury asked, "Are voluntary manslaughter and aggravated assault/felony murder mutually exclusive?" The trial court responded, "[N]o. You should consider each count.")

This petition, at it's core, complains of the state and federal habeas courts not properly applying the standards of review for ineffective assistance of counsel ("IAC"), particularly the 'at the time' precedent, set by this Court in Strickland v. Washington, 466 U.S. 668,104 S.Ct. 2052 (1984) and Harrington v. Richter, 562 U.S. 86, 131 S.Ct. 770 (2011) *et al* and which is conventionally accepted.

The state habeas court denied numerous grounds by saying 'As mentioned earlier, the Supreme Court (of Georgia) specifically addressed this issue in its opinion in direct appeal, and the matter will not be re-litigated here'. That is not true, they only addressed one issue, the trial court's plain error. In order to make such a determination the state habeas court would have had to study the arguments presented to the State Supreme Court and the exact wording and scope of the decision, which it evidently did not do.

When the proper 'at the time' parameter is applied it becomes apparent the state habeas court was unreasonable in regards to grounds 3, 5, 7, 8, 9, 10, 13, 14, 16, 24, 31, and 32, all of which were denied using the Georgia Supreme Court's 'one size fits all' decision.

Petitioner Burke clearly and specifically invoked this rule in pleadings to every habeas court from the Georgia Supreme Court through every federal court, and none applied or even acknowledged it in their disposition. For brevity, Burke focuses on the opinion of the Eleventh Circuit Court of Appeals ("CA11"), the last court of review.

Upon the CA11 panel's denial of his appeal concerning his petition for writ of habeas corpus, Burke writes in his **PETITION FOR HEARING EN BANC**[2] (ATTACHMENT A, p.5) to that court :

"The panel decision conflicts with a decision of the United States Supreme Court or of this Court to which the petition is addressed and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions.

The major issue is the panel's, and all previous courts, failure to assess the claim using the 'circumstances at the time' method set in numerous Supreme Court

[2] The petition for en banc reconsideration was denied without being heard and not one judge voted to review it.

decisions, which were all throughout Burke's briefs to this Court and to which the panel unbelievably claims to have given 'careful review'.

> "*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 the time.*" Strickland v. Washington, 466 U.S. 668,104 S.Ct. 2052 (1984) @689"

The key word in *Strickland's* assessment of attorney performance instruction is ***requires***. It is clearly the intention of this Court that those parameters be applied for the assessment to be considered ***fair***.

> Strickland v. Washington, 466 U.S. 668, 697-98,104 S.Ct. 2052 (1984) ("An ineffectiveness claim, however, as our articulation of the standards that govern decision of such claims makes clear, is an attack on the fundamental fairness of the proceeding whose result is challenged. Since fundamental fairness is the central concern of the writ of habeas corpus, see id. Engle v. Isaac, 456 U.S. 107, 126-129 (1982)],at 126, no special standards ought to apply to ineffectiveness claims made in habeas proceedings.")

Burke reminded the CA11 that this Court overturned the Ninth Circuit Court of Appeals expressly for not following that clause, which may or may not be a 'holding' *per se* (Question 1), but certainty carries enough weight to be a decisive and determinative issue of precedent. *See* **REPLY TO BRIEF ON BEHALF OF RESPONDENT/APPELLEE** (ATTACHMENT D, p.13) ;

"If there was any doubt the 'circumstances at the time' standard of appraising ineffective assistance of counsel claims qualifies as federal law as referenced in 28 U.S.C. § 2253(d)(1), the doubt is laid to rest below:

> Harrington v. Richter,562 U.S. 86, 131 S.Ct. 770 @789 (2011)(grant of habeas overturned when "the Court of Appeals failed to "reconstruct the circumstances of counsel's challenged conduct" and "evaluate the conduct from counsel's perspective at the time." Id., [Strickland] at 689, 104 S.Ct. 2052.").
>
> Williams v. Taylor, 529 U.S. 362, 405, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000). (A state court decision is "contrary to" clearly established federal law if the state court arrives at a conclusion opposite to that of the Supreme Court of

> the United States on a question of law, or decides the case differently than the Supreme Court on a set of materially indistinguishable facts.)"

The CA11 denial ignores the Strickland arguments in Burke's briefs, yet in a puzzling dichotomy, two weeks to the day before the CA11 denied Burke's reconsideration request, that same Court used the exact standard of review Burke asked for - using their version - to deny habeas in another case, so it cannot be said they were unaware of it.

> *Presendieu v. United States,* USCA11 Case: 21-12552, Sept. 9, 2022. ("But that information was not available to [trial counsel] at the time of [petitioner's] sentencing. As such, it does not bear on our evaluation of [trial counsel's] performance. See *Chandler v. United States*, 218 F.3d 1305, 1316 (11th Cir. 2000) (holding that we must evaluate the reasonableness of counsel's performance based on their perspective at the time and avoid the "distorting effects of hindsight").

The parallels are the 'information' of the Georgia Supreme Court's decision was not 'available' to Burke's trial counsel at the time the jury instructions on voluntary manslaughter were read. The key word in the holding of CA11 is **'must'**. So much for the necessity 'to secure and maintain uniformity of the court's decisions'. That is not equal protection under the law nor was proper due process applied in Burke's habeas claims. *Fourteenth Amendment, Section 1* ("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.") and the *Fifth Amendment* ("nor be deprived of life, liberty, or property, without due process of law"). They seem to use the *Strickland* standard only against petitioners, not so much where a petition may be granted. It's gone from a being designated tool to becoming more of a weapon.

ARGUMENT WITH CITATIONS

Petitioner Burke's daughter informed him she had just found her mother, his ex-wife, deceased when she went home the evening of November 25, 2012. Burke called Eva Sotus, who he rented a room from and who was out of town, to see if his daughter and her child could stay in an extra room for a few days, if they needed to. Sotus, who at one time was in a relationship with Burke years before, was not receptive and the call became contentious and was terminated. Sotus then told her boyfriend[3] about it and told him not to go to the house both verbally and in a text "DO NOT GO TO MY HOUSE", to which he replied in a text message : 'I can handle it'. He came over and parked a few blocks away (drugs and paraphernalia were found in his truck, suggesting recent use), snuck in the back door and put a loaded .38 pistol, that Sotus had told him where it was, in his waistband to augment the nunchucks and knife he brought with him. Burke heard furniture being moved and other loud noises and finally Daly - the alleged victim - twice yells out 'hey motherf***er, I know you're up there. You better come down or I'm coming up to get your ass'. At that point Burke felt he needed a gun for self-protection. After a period of quiet, Burke decided to get out through the house - there was no other exit from upstairs where he was.

Burke encountered Daly, who was lying in wait blocking the door, as he tried to exit the house. Daly again threatened "I'm going to kill you" while brandishing the nunchucks and, as shown by the evidence[4], the pistol in arm's reach and probably in his other hand when he was shot. Burke's reaction was solely a result of Daly's

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[3] Sotus originally denied her relationship with the alleged victim in her statements to police where she claims 'they were just friends'. Her stories changed continually at trial.

[4] Everything in this statement is supported by evidence and testimony.

provocative aggravated assault. By law Burke was justified when he felt threatened, when there was imminent danger, so he armed himself for protection in his home. [5]

> STATE : "the defendant [Burke] himself may have perceived threat of danger but the fact is, and the case law is very clear, the defendant's subjective fears at the time of the incident are irrelevant....so the perceived fear of the defendant at the time of this offense isn't relevant at all for the court's consideration." [Motion to Dismiss hearing transcript p.151 (8)]

Actually, the relative case law is below and was included in Burke's *Final Brief in Support of Petition*[6]*;*

> "The requisite 'reasonable apprehension' should not equated with subjective fear...". *Lemming v. State* 612 SE2d 495 see Fluellen 284 Ga.App. 584.
>
> 'Because justification is based on the fears of a reasonable person, the subjective fears of the particular defendant are irrelevant in the evaluation of this defense.' *O'Connell v. State* 294 GA 379 (2014).

The downstairs neighbor told police she twice heard the alleged victim twice yell 'Come on, motherf***er' and testified that fearing Burke was being attacked, got her gun. She called 911 at Burke's request.

Burke had every reason to believe, and did believe as anyone would, his life was in jeopardy. That is 'reasonable apprehension' and more than the slight evidence required to give the lesser charge of voluntary manslaughter.

> *McIver v. State,* Ga. Supreme Court S22A0093 :"[W]e must decide only whether there was slight evidence to support the jury instruction. . . . And if

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[5] O.C.G.A. 16-3-21. Use of force in defense of self or others; evidence of belief that force was necessary in murder or manslaughter prosecution (' a person is justified in using force which is intended or likely to cause death or great bodily harm only if he or she reasonably believes that such force is necessary to prevent death or great bodily injury to himself or herself or a third person or to prevent the commission of a forcible felony.')

[6] That document was before the state habeas courts, but not considered by the District Court because Burke incorporated it by reference instead of resubmitting it as an attachment.

there was slight evidence supporting the instruction — and there was — it is irrelevant whether we find that slight evidence persuasive in the face of contrary evidence; that question was reserved exclusively for the jury."

Burke used the following citations for Ground 8 (IAC for not requesting defense of habitation and involuntary manslaughter instructions) in his 'Final Brief in Support of Habeas Petition' presented to the state habeas courts. This demonstrates the inequities of seeking justice using binding precedent.

'It is well established that an instruction is not inapplicable where there is any evidence, however slight, on which to predicate it'. *Bangs v. State* 401 S.E.2d 599 (1991)

'The trial court erred in failing to instruct the jury on the law of defense of habitation. The victim entered the defendant's house by coercion and threatened the defendant repeatedly while in the house, prior to being shot by the defendant....Here, the jury was presented with the narrower affirmative defense of self-defense and was unaware of the defense of defense of habitation which is clearly revealed by the evidence' *Fannin v. State*, 299 SE2d 72 (1983)

The evidence was unequivocally ruled sufficient for the lesser included charge at trial:

STATE : "It is the lesser included charge of malice murder and I think the evidence is sufficient to prove these facts as well"

COURT : "All right, I'm going to give voluntary manslaughter." [Trial Transcript/Respondent's Exhibit 10 p.1791(14)]).

At that point the trial court authorized the voluntary manslaughter charge and gave it to the jury for the malice murder charge only. *Here is where the trial counsel was ineffective for not objecting to the court not following Edge v. State* 261 Ga. 865, *and for not subsequently requesting the charge be given properly for both malice murder and felony murder as plainly stated in Ground 3 of Burke's habeas petition. It was there for the taking at that moment had she asked.*

> *Edge v. State* *supra* @867 ("...when (1) an aggravated assault is perpetrated against the homicide victim "and is an integral part of the killing" and (2) *the evidence authorizes a voluntary manslaughter charge* [emphasis added] "the jury should be admonished that if it finds provocation and passion with respect to the act which caused the killing, it could not find felony murder, but would be authorized to find voluntary manslaughter.")

Considering the above, whether or not the CA11 deferred to the state trial court or did a *de novo* review with the same result is not important. Neither of those decisions could have possibly arrived at their conclusion if the facts were filtered through the *Strickland* standard of fair assessment combined with the holding of *Edge*.

> *Strickland* @698 Although state court findings of fact made in the course of deciding an ineffectiveness claim are subject to the deference requirement of § 2254(d), and although district court findings are subject to the clearly erroneous standard of Federal Rule of Civil Procedure 52(a), *both the performance and prejudice components of the ineffectiveness inquiry are mixed questions of law and fact.* [emphasis added]

THE PETITION CLAIM AND RULING

The state habeas court denial combined Grounds 3 & 8, which were meant to be distinct. Ground 8 claims IAC for not submitting written requests of affirmative charges before trial. Burke, who really didn't understand lesser included charges at trial, later realized it was his attorney's trial strategy from the beginning not to request voluntary manslaughter, so a claim there would be difficult. That's why it's separate from ground 8. Ground 3 refers to that strategy needing to be changed along with the 'circumstances at the time' when the trial court ruled the evidence sufficient and would honor the *state's* pretrial request and give that charge for malice murder only. The IAC claim in Ground 3 is, once that door was opened, trial counsel should have abandoned that strategy and insisted since it was going to happen, that it happen for

felony murder as well, as required by the holding of *Edge v. State, ante*. This would have been in her client's best interest and the benefit would outweigh the risk, had she done so.

Appellate counsel Vo addressed this issue in an October 18, 2016 letter to petitioner Burke [State Habeas Hearing Transcript, Petitioner's Exhibit 1, p. 39] Vo writes:

> " ..and counsel failed to object when the charge was given incorrectly -- i.e., it was incomplete because it failed to cover felony murder. I believe she didn't adapt. If I had handled the case from the beginning, I would have raised an ineffective claim around this.... If you are unsuccessful on direct appeal, I believe that you might have a decent ineffective claim on habeas on Ms. Kuo (and/or on myself possibly) for not raising this claim...But I think the error [he raised on direct appeal] was so bad that the Court will likely side you on appeal."

The following excerpt from Attachment C, p. 8;

"Ground 3 as presented to all Courts in the Petition ;

> GROUND THREE: Appellate attorney was ineffective for not pursuing the trial attorney's failure to object when trial court failed to charge voluntary manslaughter as the lesser included of felony murder.
>
> Had this been properly argued, the proceeding would have been greatly impacted and the outcome most likely would had been different.
>
> SUPPORTING FACTS: Although the trial attorney objected to giving the voluntary manslaughter charge at all, since the objection was overruled it would have necessitated abandoning that strategy and insisting that if the charge be given, it be given correctly for both murder charges. This is more egregious since the petitioner's first trial resulted in hung jury.

The state habeas court denied that ground by stating :

> "...Petitioner argues that counsel should have objected to the trial court not giving a voluntary manslaughter as a lesser-included offense of felony murder. This issue was addressed and decided by the Georgia Supreme Court in it's opinion on direct appeal. It found that there was insufficient evidence to support a manslaughter charge. The matter will not be re-litigated here..."

The IAC issue was not raised nor addressed in the direct appeal, so the state habeas court ruling is errant and unreasonable. *See* Attachment D, p.12.

"Not once do the words 'ineffective assistance' or 'failed to object' appear in that decision of the Georgia Supreme Court or any brief to that court in the direct appeal. As close as that decision[*Burke v. State*, 302 Ga. 786(2018)] comes with any relevance to the claim in ground 3 is :

> "Conceding that he did not object to the trial court's failure to instruct the jury that it also could consider voluntary manslaughter as a lesser charge to felony murder or to its predicate felony of aggravated assault, Burke argues on appeal that we nonetheless should grant him a new trial because the trial court's instructions amounted to plain error."Id@789

The first paragraph of the Georgia Supreme Court's denial of the direct appeal encapsulates both the claims and the decision, so what was 'addressed and decided' in the direct appeal lies within:

> "William Burke appeals his convictions for felony murder and possession of a firearm during the commission of a felony, charges stemming from the death of Andrew Daly. He argues that the trial court improperly limited the jury's consideration of voluntary manslaughter to a lesser offense of only malice murder, both in its oral instructions and on the verdict form, so that the jury had no option to consider the lesser offense in relation to the felony murder charge. *Finding that the trial court committed no plain error in this regard because the evidence did not support a finding of voluntary manslaughter*, we affirm." Id @ 786." [emphasis added]

Questions 2 and 3 are based on the above facts. It seems the CA11 deferred to the state habeas court and if they did any *de novo* analysis, it was weak and avoided this Court's (and their own) review standards. Never once do they consider the trial counsel's perspective at the time nor do they relate how the circumstances at trial influenced their decision. The decision, and all those before it, is 'unreasonable in light of the evidence'.

> *Rompilla v. Beard* 545 U.S. 374@ 380 (2005) ("That is, "the state court's decision must have been [not only] incorrect or erroneous [but] objectively

unreasonable." Wiggins v. Smith, supra, at 520-521 (quoting Williams v. Taylor, supra, at 409 (internal quotation marks omitted)").

Equating the trial court's plain error with counsel's ineffective assistance is inarguably erroneous and objectively unreasonable.

The CA11 panel's opinion states:

> "We need not decide whether AEDPA deference applies to the state court's decision that Burke's allegations were insufficient because Burke has failed to show prejudice under even a de novo standard of review. Berghuis v. Thompkins, 560 U.S. 370, 390 (2010) ("Courts can . . . deny writs of habeas corpus under § 2254 by engaging in de novo review when it is unclear whether AEDPA deference applies, because a habeas petitioner will not be entitled to a writ of habeas corpus if his or her claim is rejected on de novo review."); see also Trepal v. Sec'y, Fla. Dep't of Corr., 684 F.3d 1088, 1109-10 (11th Cir. 2012)."

HARM AND PREJUDICE

A standard of reasonableness applied as if one stood in counsel's shoes spawns few hard-edged rules, and the merits of a number of counsel's choices in this case are subject to fair debate. This is a case in which defense counsel simply ignored their obligation to find best ways for an acquittal or lower sentence. (Borrowing and paraphrasing from *Rompilla, supra*)

> *Strickland*, id @ 688 ("..The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.")
>
> *Beck v. Alabama,* 447 U.S. 633, 100 S.Ct. 2382, 2387 (1980) ("At common law the jury was permitted to find the defendant guilty of any lesser offense necessarily included in the offense charged. This rule developed as an aid to prosecution in cases in which the proof failed to establish some element of the crime charged. But it has long been recognized that it can be beneficial to the defendant because it affords the jury a less drastic alternative than the choice between conviction of the offense charged and acquittal. Moreover, it is no

answer to petitioner's demand for a jury instruction on a lesser offense to argue that a defendant may be better off without such an instruction.'

Beck supra @ 2389 'While we have never held that a defendant is entitled to a lesser included offense instruction as a matter of due process, the nearly universal acceptance of the rule in both state and federal courts establishes the value to the defendant of this procedural safeguard.'

Therefore, that 'universal acceptance' would adhere to the "prevailing professional norms" *Strickland Id* @ 688 , *Wiggins v. Smith*, 539 U.S. 510, 521, 123 S.Ct. 2527, 2535 (2003), satisfying the first prong of *Strickland, supra.*

Flores-Rivera v. United States, 16 F.4th 963 @ 970 (2021) ("This is a daunting hurdle to overcome in order to establish deficient performance under Strickland. But that hurdle is by no means insurmountable. A defendant's appellate counsel performs deficiently by "ignor[ing] issues [that] are clearly stronger than those presented." Smith v. Robbins, 528 U.S. 259, 288, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000) (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)). Forgoing an argument is not a reasonable strategic decision when "there [i]s absolutely no downside" to objecting to an error, Prou v. United States, 199 F.3d 37, 48 (1st Cir. 1999), or when the omitted argument would not "detract[] from" but would "buil[d] upon" another challenge, Cirilo-Muñoz v. United States, 404 F.3d 527, 531 (1st Cir. 2005)."

Insisting the jury charge be given correctly is clearly a stronger option then settling for an incomplete and confusing one. Objecting had no downside and at that point would only benefit Burke, especially considering the jury's questions seem to indicate they likely would have selected voluntary manslaughter had it been an option on the verdict form relative to felony murder. The state did not offer a plea deal, there was no middle ground between a life sentence and outright acquittal.

Flores-Rivera v. United States, 16 F.4th 963 (2021) @ 968 ("The Supreme Court has explained that when a court assesses the "reasonable probability" of a different result, "[t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." Kyles, 514 U.S. 419 @ 434, 115 S.Ct. 1555(1995) ")

Burke received a life sentence, which is really a death sentence without the end date[7], for felony murder based on aggravated assault. Burke supposedly assaulted the alleged victim, according to the State, when he came downstairs, in his residence, with a weapon. Had the trial counsel insisted felony murder be added the lesser included instruction, along with the high probability of the jury selecting it if it been a selectable option on the verdict form, Burke would have gotten 1-20 years and would be past parole eligibility date years ago.

> *U.S. v. Teague* 953 F.2d 1525 (11th Cir. 1992)@1537 ("Effective assistance of counsel involves the lawyer's help to win an acquittal or lower sentence, that is, "vigorous advocacy of the defendant's cause." See *Strickland*, 466 U.S. at 689, 104 S.Ct. at 2065.")
>
> *Glover v. United States*, 531 U.S. 198, 203 (2001) ("In assessing whether counsel's deficient performance prejudiced a defendant, " any amount of actual jail has Sixth Amendment significance.")

Not only did the trial court inform Burke, and the jury by instruction, that the evidence did support the lesser included charge, *ante*, but the incomplete instruction caused confusion among the jury, especially when the verdict form did not list voluntary manslaughter under felony murder. Trial counsel also was ineffective for not objecting to the verdict form when presented for approval. *See* petition Ground 9 and COA.

The jury seemed confused about why voluntary manslaughter only being a lesser of malice murder and twice had questions about voluntary manslaughter as opposed to felony murder/aggravated assault, once by asking for a recharge. *See* Grounds 10,16. This was detailed in Attachments C & D. It cannot be said not objecting to the

[7] Especially in Georgia where a life sentence with the possibility of parole has mandatory 30 years. Burke will not be parole eligible until he is at least 92.

incomplete instruction had no affect on the outcome of the trial, especially since Burke was acquitted of malice murder.

> *McIver v. State, id*:" See Davidson v. State, 304 Ga. 460, 471 (4) (819 S.E.2d 452) (2018) (concluding constitutional error was not harmless, in part because the jury asked for recharge on issues implicated by error); Bracewell v. State, 243 Ga.App. 792, 796 (2) (534 S.E.2d 494) (2000) (concluding error in charge was harmful, in part because the jury asked twice for recharges and "[c]larity in this portion of the charge was critical to an issue of defense" (citation and punctuation omitted)). Indeed, the jury ultimately found McIver not guilty of malice murder.
>
> The State asserts that the error is harmless because the jury rejected the lesser included offense of unlawful act involuntary manslaughter in finding McIver guilty of felony murder based on aggravated assault, which means that the jury found that McIver intended to shoot Diane, thereby causing a violent injury, but did not intend to kill her, given that the jury acquitted him of malice murder. Even assuming that is a correct interpretation of what the jury's verdicts signified, the jury reached its verdicts without a complete instruction on the grades of culpability between accident and felony murder, thus "depriv[ing] the jury of the necessary tools to evaluate the charges against [McIver] and to reach a verdict." Henry v. State, 307 Ga. 140, 146 (2) (c) (834 S.E.2d 861) (2019)... In light of all these circumstances, we cannot say it is highly probable that the trial court's error in refusing the requested instruction did not contribute to the jury's verdicts, and reversal therefore is required."

There is little doubt Burke's jury was considering voluntary manslaughter as an alternative to felony murder as their questions indicted.

Question - 'Are felony murder / aggravated assault and voluntary manslaughter mutually exclusive?
Answer - 'No. You must consider each count'.

> *United States v. Powell* 469 US 57,64 fn 8 ("verdicts are mutually exclusive where a guilty verdict on one count logically excludes a finding of guilt on the other.'

Not only was the answer wrong and confusing about mutual exclusivity (See *Edge, ante*), but the admonishment to consider each charge was impossible since both charges weren't listed in count 2 on the verdict form. The answer would lead the jury

to believe the charges were similar enough that they didn't require separate choices on Count 2 on the verdict form. They were never told the different levels of intent associated with voluntary manslaughter, felony murder and most importantly, the required intent in underlying felony of aggravated assault.

> *Bollenbach v. United States*, 326 U.S. 607,613 ("when a jury expresses confusion and difficulty over an issue the trial court has an obligation to "clear them away with concrete accuracy"'.)

The 11CA ruled there was no harm since the jury didn't select voluntary manslaughter as the lesser included of malice murder, it was likely they wouldn't on felony murder had that been an option. That assumes the jury considered the lesser before they considered malice murder.

> "The naïve assumption that prejudicial effects can be overcome by instructions to the jury . . . all practicing lawyers know to be unmitigated fiction." *Krulewitch v. United States*, 336 U.S. 440, 453 (1949) (Jackson, J., concurring), quoted in, e.g., *Bruton v. United States,* 391 U.S. 123, 129 (1968); *Jackson v. Denno*, 378 U.S. 368, 388 n.15 (1964). Juries are "presumed" to follow evidentiary instructions not because we believe that they really do, but because trusting them to do so is a practical necessity. See, e.g., *Richardson v. Marsh*, 481 U.S. 200, 206-207 (1987).

It is more likely the jury found no malicious intent in the transaction the indicted charges rest upon, and so marked not guilty on count 1(this is not multiple choice, *see* verdict form) and went on to debate felony murder and voluntary manslaughter.

The panel cites the trial court for Motion for New Trial [which in reality is ADA Lenny Krick, who wrote the order and signed it as such] who unsurprisingly said, 'because the facts remained the same for both murder charges then the jury's rejection of voluntary manslaughter under malice murder meant the jury would have likely rejected voluntary manslaughter as an alternative for felony murder." The exemplifies the DA's misunderstanding of law. The murder charges are unique when considering

intent and it's more likely the jury understood that. Each murder charge read to the jury have different intent levels and different penalties that they weren't aware of, so the intent omission renders the verdict unreliable.

> *Edge v. State* 261 Ga. 865, 414 SE2d 463 (1992) @465 n2 ('We are aware that O.C.G.A. §16-5-1(c) authorizes a felony murder conviction "irrespective of malice". That is, in fact, what distinguishes felony murder from malice murder. Nonetheless, we recognize that the fundamental justification for felony murder - a murder without the element of malice - was the level of malicious intent associated with the felony, especially a dangerous felony.')

The jury found no malicious intent in the transaction as shown by the acquittal of malice murder. The underlying felony of felony murder requires malicious intent, so that combined with their questions that makes a stronger argument that had voluntary manslaughter been selectable on count 2 the jury would have chosen it.

Also, notably absent from the recharge were: duty to acquit if any reasonable doubt, the (incomplete) *Edge* instructions and accident. See Ground 16.

> 'Not only failed to repeat affirmative defenses, it was fundamentally unfair not to remind jury of burden of proof.' see *Bottom* 587 SE2d 3, *Hobson* 469 SE2d 188 (1996)

> 'When a jury requests additional instructions on a point of law, the trial court in its discretion can recharge in full or limit it's recharge to the scope of the jury's request.' *Terry v State,* 291 Ga. 508

QUESTION 4 - EX PARTE COMMUNICATIONS

State and court reviewing the evidence and adjusting the charges after trial trespasses on the Sixth Amendment right to counsel.

There is little doubt the *ex parte* conversations and request for draft of denial of motion for new trial took place. Burke's appellate attorney was not notified that DA was drawing up that document. *See* Petition [Doc. 1] Grounds 31,32.

Here the District Attorney was the driving force of a decision that reverberates to this day. The state habeas court, who every ensuing court 'defers' to, unreasonably denied this ground saying "The Court finds that Petitioner has not shown that the trial court engaged in any *ex parte* communications, or how this prejudiced him in this case if the communications did occur". See Final Order Denying Habeas Corpus Relief/Respondent's Exhibit 7, p. 32. The evidence of *ex parte* collusion stems from the State's Brief of the Appellee By the District Attorney [page 11 fn 5] to the Georgia Supreme Court on direct appeal, where ADA Krick states '....*after the Motion for New Trial hearing was conducted, the State and the trial court changed positions as a closer look at the evidence shows the giving of a voluntary manslaughter charge was not warranted by the evidence.*' and the Denial of the Motion for New Trial document itself where on p.11 where it's signed : 'Lenny Krick - ADA (prepared proposed Order)'. This is 'belated conclusion' the Georgia Supreme Court based their decision on.

> *Jefferson v. Upton*, 560 U.S. 284 , 130 S.Ct. @ 2223 (2010) ("Although we have stated that a court's verbatim adoption of findings of fact prepared by prevailing parties should be treated as findings of the court, we have also criticized that practice [in] *Anderson*, 470 U.S. @ 572, 105 S.Ct. 1504. And we have not considered the lawfulness of, nor the application of the habeas statute to, the use of such practice where (1) a judge solicits the proposed

findings ex parte, (2) where it does not provide the opposing party an opportunity to criticize the findings or to submit it's own, or (3) adopts findings that contain internal evidence that the judge may not have read them. Cf id @ 568, 105 S.Ct. 1504, Georgia Code of Judicial Conduct, Canon 3(A)(4)(1993)(prohibiting ex parte judicial communications.")

Colony Square Co. v. Prudential Ins. Co., 819 F.2d 272 (11th Cir. 1987): "This circuit and other appellate courts have repeatedly condemned the ghostwriting of judicial orders by litigants. The cases admonishing trial courts for the verbatim adoption of proposed orders drafted by litigants are legion. . . . When an interested party is permitted to draft a judicial order without response by or notice to the opposing side, the temptation to overreach and exaggerate is overwhelming. The proposed order or opinion serves as an additional opportunity for a party to brief and argue its case and thus is unfair to the party not accorded an opportunity to respond. The quality of judicial decision making suffers when a judge delegates the drafting of orders to a party; the writing process requires a judge to wrestle with the difficult issues before him and thereby leads to stronger, sounder judicial rulings. In addition, the ex parte communications occasioned by this practice create an obvious potential for abuse. Id @ 275-76."

Appellate Counsel Vo, who was the attorney of record at that time, was never notified or given the chance to review the 'proposal'. The Sixth Amendment right to counsel extends to all 'critical stages'. See Michigan v. Jackson, 475 US 627, 106 S.Ct. 1404(1986). Here the question is, is the motion for new trial hearing a continuation of the trial, sans jury, or is it the first phase of the appeal?

Menefiel v. Borg, 881 F.2d 696 (CA9 1989)("on appeal, both jury conclusions and the factual decisions of the trial court are either immune from review or treated under a highly deferential standard. [Omitted]")

The trial judge should have recused herself because the Motion for New Trial stage is where the rulings of the trial court were put to question.

Marshall v. Jerrico, Inc., 446 U.S. 238, 100 S.Ct. 1610, 1613 (1980) ("The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases.

Isom v. Arkansas ,140 S.Ct 342 (2019) - @343 "Our precedents require recusal where the "probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." Rippo v. Baker, 580

> U. S. ___, ___, 137 S.Ct. 905, 907, 197 L.Ed.2d 167 (2017) (per curiam) (quoting Withrow v. Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975)). The operative inquiry is objective: whether, "considering all the circumstances alleged," Rippo, 580 U. S., at ___, 137 S.Ct., at 907, "the average judge in [the same] position is likely to be neutral, or whether there is an unconstitutional potential for bias," Williams v. Pennsylvania, 579 U. S. ___, ___, 136 S.Ct. 1899, 1905, 195 L.Ed.2d 132 (2016) (internal quotation marks omitted). .... At the same time, the Court has acknowledged that "[a]llowing a decisionmaker to review and evaluate his own prior decisions raises problems," Withrow, 421 U.S. at 58, n. 25, 95 S.Ct. 1456, perhaps because of the risk that a judge might "`be so psychologically wedded to his or her previous position'" that he or she will "`consciously or unconsciously avoid the appearance of having erred or changed position.'" Williams, 579 U. S., at ___, 136 S.Ct., at 1906 (quoting Withrow, 421 U.S. at 57, 95 S.Ct. 1456). And it has warned that a judge's "personal knowledge and impression" of a case may sometimes outweigh the parties' arguments. In re Murchison, 349 U.S. 133, 138, 75 S.Ct. 623, 99 S.Ct. 942 (1955)."

In the Report and Recommendation, the Magistrate denies Ground 13 by stating the appellate counsel [Vo] had the opportunity to address the ruling of his third amendment as to the failure to charge correctly, the *ex parte* decision (which hadn't happened yet), and the sufficiency of evidence for the charge and he failed to do so, when in reality the failure to challenge that ruling was raised in Burke's petition for habeas in Grounds 13[8], 24, 31, 32, the last three supposedly addressed by the Georgia Supreme Court's plain error ruling.

The 'law of the case' may applicable here. The trial court had ruled the evidence supported the lesser included charge at both the first and second trial. The fact they

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[8] Ground 13 in the petition claims "the Supreme Court of Georgia, by allowing the State to adjust the charges and change a previously stated position made to the trial court *after* the appellate process had started, was fundamentally unfair and violated the Constitutional rights of due process and the right to a fair trial and was a miscarriage of justice to the degree it undermines faith in the judicial system". The state habeas court ruled it was procedurally barred for not bringing it up at the earliest opportunity. That would have required complaining about the decision to that court before the decision was rendered.

changed their minds on appeal ostensibly to avoid a giving Burke a third trial would seem to deny Burke the right to trial by a fully informed and impartial jury.

> "As most commonly defined, the [law of case] doctrine posits that when court decides on a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case" *Arizona v. California*, 460 US 605,615 (1983) see *Toney v Courtney* 2017 US Dist Lexis 156554 (2017 11th Cir), *Pepper v United States,* 562 US 476, 131 S. Ct 1229(2011)

Trial court reversing itself *ex parte* on appeal violates due process and fundamental fairness, especially considering they gave voluntary manslaughter at the first trial and had the opportunity to review support for the charge before the second trial began.

> *O'Neal v. McAninch,* 513 U.S. 432, 437, 115 S.Ct. 992, 995, 130 L.Ed.2d 947 (1995) ("Under the Brecht standard, the petitioner should prevail when the record is "so evenly balanced that a conscientious judge is in grave doubt as to the harmlessness of an error.")

Once the trial court authorized the voluntary manslaughter charge, Burke was entitled to it on both murder charges based on the same transaction as clearly stated in *Edge supra*.

> *Lockhart v. Fretwell,* 506 U.S. 364, 372, 113 S.Ct. 838 @ 843 (1993).("The prejudice analysis does not focus solely on mere outcome determination, but looks to whether the result of the proceeding was fundamentally unfair or unreliable, i.e., whether it deprived the defendant of any substantive or procedural right to which the law entitled him.")

QUESTION 5 - CUMULATIVE ERRORS

The state habeas court was unreasonable in light of the evidence as to : Jackson-Denno issues (Grounds 6,20), the failure to investigate letters to Burke in prison from state witness Sotus (Ground 25) , constructive amendment of the indictment

(Ground 27), no 404(b) limiting instructions requested (Ground 19) and impeachment for contradiction (Ground 4).

These grounds, and any others that don't rise to the level of habeas relief, should at the least be considered in the cumulative error claim raised in Ground 30.

The R&R says cumulative errors of *State v. Lane* are not retroactive. *Lane* was decided during the pendency of the CPC in the state court, so that ruling should be applicable here.

State v. Lane 308 Ga. 10, 21 (2020) ("to establish cumulative error the defendant must show that (1) at least two errors were committed during the course of the trial ;(2) considered together with the entire record, the multiple errors so infected the jury's deliberation that they denied the defendant a fundamentally fair trial.... A non-constitutional trial court error is harmless if the State shows the of is highly probable that the error did not contribute to the verdict, an inquiry that involves consideration of the other evidence heard by the jury.')

The federal citation of *Chambers* cited by Burke [CPC p.81] certainly predates the trial.

> 'When the errors and questionable decisions enumerated here are viewed in context throughout the proceedings, the result is a trial that was fundamentally unfair and the outcome of which cannot be said to uninfluenced...The Supreme Court has clearly established that the combined effect of multiple trial court errors violates due process where it renders the resulting criminal trial fundamentally unfair.' *Chambers v. Mississippi,*410 U.S. 284, at 298,302-03, 93 S.Ct. 1038(1973).
>
> 'The cumulative effect of multiple errors can violate due process even where no single error rises to the level of a constitutional violation or would independently warrant reversal.' *Chambers* 410 U.S. at 290 n.3, 93 S.Ct.
>
> *United States v. Reeves*, 742 F.3d 487, 505 (11th Cir. 2014). (The cumulative-error doctrine calls for reversal of a conviction if, in total, the non-reversible errors result in a denial of the constitutional right to a fair trial.)

REASONS FOR GRANTING THE WRIT

Strickland and the AEDPA are meant to be guides, not impediments to petitions for habeas corpus. This is an opportunity to clarify review of IAC claims, which most habeas petitions are based on. *Strickland* doesn't set a sequential review order and it's counterintuitive suggest a claim had no bearing on verdict without first the proper analysis of the claim and all it's parameters.

A Prosecutor's duty is not to convict, but to try a case according to law. Judges are presumed to know the law and rule accordingly. The supreme law of the land is the United States Constitution, which is a guarantee of equal justice and fundamental fairness. If any person be found guilty by jury, that jury should be properly instructed, and fully informed. When a court gives an errant instruction remotely related to the indicted charge a new trial should be ordered. To speculate what a jury may have done circumvents Article III, Section 2 (Trial of all crimes shall be by jury) and the appellate courts then become the 'thirteenth juror'.

By granting the writ, this Court will signal all laws as well as the precedent of this Court must be adhered to and equally applied. No person will be imprisoned unless every 'i' dotted, every 't' crossed to the letter of the law.

CONCLUSION

*McIver, supra ("*The trial court's refusal to give the requested instruction [on a lesser charge] deprived McIver of the opportunity to argue an alternative theory of defense that may have been stronger than those permitted by the trial court, and to offer to the jury an opportunity to convict him of a lesser offense without entirely exonerating him from criminal responsibility for a tragic and deadly event."

That case was reversed.

The state had two years to review the evidence before trial, so how can the jury, who had a twenty minute crash course on the different aspects of a murder prosecution, be any more capable of a reliable verdict when the prosecutor and the court - the same parties who said 'the perceived fear of the defendant at the time of this offense isn't relevant at all for the court's consideration' for justification - weren't so sure of the evidence until two years after trial. The court's uncertainty in that four-year span later belies the jury's reliability. If the court doesn't know the law, how can they explain it to a jury?

> *Strickland* supra @685 ("Thus, a fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding.")

A confluence of Article III and the Sixth Amendment's right to trial by jury combined with the Fourteenth Amendment's fundamental fairness would suggest perfection as much as humanly possible in jury instructions. Anything less would not produce the certain results required before depriving "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". The constant thread throughout *Strickland* is fundamental fairness. The severity of sentence should amplify the necessary precision at trial.

Considering all the arguments presented, the Petitioner prays the Court will issue a Writ of Habeas Corpus so he be discharged from his unconstitutional confinement and restraint or that the Court to grant such other relief as may be appropriate and to depose of the matter as law and justice require.

Respectfully Submitted,

William Burke

William Burke, pro se

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