Application No.: 22-6509
(To Be Assigned)

IN THE
SUPREME COURT OF THE UNITED STATES

ROOSEVELT MONDESIR – PETITIONER

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS; and
ATTORNEY GENERAL, STATE OF FLORIDA – RESPONDENTS

On Petition for Writ of Certiorari to
The United States Court of Appeals for the 11th Circuit

PETITION FOR WRIT OF CERTIORARI

Submitted by:

Roosevelt Mondesir, Pro Se
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Tel. No. : None Available

QUESTION PRESENTED

1. **Did the 11th U.S. Circuit Court err when it interpreted your holding in *Wilson v. Sellers*, 138 S.Ct. 1188 (2018) to mean that "in assessing the reasonableness of a State court's ultimate decision, federal habeas court is not required to strictly limit its review to particular justifications that the State court provided" and may turn to justifications that the State court never even hinted at to affirm a denial of a §2254 petition?**

LIST OF PARTIES

____ All parties appear in the caption of the case on the cover page.

X 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:

Anderson, Hon. R. Lanier	**11th U.S. Circuit Court of Appeals Senior Judge**
Bretton, Naomi	**Victim**
Carres, Louis G.	**Direct Appeal Appellate Counsel (Reg. Conflict)**
Conner, Hon. Burton C.	**4th District Court of Appeal Judge (9.141(d) Petition)**
Cox, Alexcia	**Trial Prosecutor (Asst. State Attorney)**
Ellis, Adrienne	**Trial Prosecutor (Asst. State Attorney)**
Fisher, Laura	**3.850 Postconviction Motion Asst. State Atty.**
Forst, Hon. Alan O.	**4th District Court of Appeal Judge (Direct Appeal)**
Gerber, Hon. Jonathan D.	**4th District Court of Appeal Judge (3.850 App/9.141d)**
Griffin, Ade	**Trial Defense Counsel (Off. of Reg. Conflict)**
Gross, Hon. Robert M.	**4th District Court of Appeal Judge (Direct Appeal)**
Johnson, Hon. Laura	**3.850 Postconviction Motion Judge**
Jordan, Hon. Adalberto J.	**11th U.S. Circuit Court of Appeals Judge**
Kuntz, Hon. Jeffrey T.	**4th District Court of Appeal Judge (3.850 Appeal)**
May, Hon. Melanie G.	**4th District Court of Appeal Judge (9.141(d) Petition)**
Ocksrider, Matthew S.	**Asst. Atty General (Dir App/Fed Habe Resp)**
Rapp, Hon. Stephen A.	**Trial Judge**
Reid, Hon. Lisette	**U.S. District Court Magistrate Judge**
Rosenberg, Hon. Robin	**U.S. District Court Judge**
Taylor, Hon. Carole Y.	**4th District Court of Appeal Judge (3.850 Appeal)**
Warner, Hon. Martha C.	**4th District Court of Appeal Judge (Dir App/3.850 App)**
Weiss, Thomas	**Trial Defense Counsel (Off. of Reg. Conflict)**
Wilson, Hon. Charles R.	**11th U.S. Circuit Court of Appeals Judge**

RELATED CASES

- *Mondesir v. State of Florida*, No. 2012-CF-006456-A, 15th Judicial Circuit Court, in and for Palm Beach County, Florida. Trial occurred June 19, 2013 and sentencing occurred on August 23, 2013 (Hon. Stephen A. Rapp).

- *Mondesir v. State of Florida*, 166 So.3d 897 (Fla. 4th DCA 2015), Case No. 4D13-3154, Fourth District Court of Appeal, West Palm Beach, Florida (Direct Appeal). Written Opinion entered June 3, 2015 changing judgment to "with a weapon" per jury verdict versus a deadly weapon. Mandate issued July 6, 2015.

- *Mondesir v. State of Florida*, (No LEXIS Citation) Case No. 4D15-3196, Fourth District Court of Appeal, West Palm Beach, Florida. 9.141(d) Petition Alleging Ineffective Assistance of Appellate Counsel filed August 13, 2015. Denied without written opinion on October 29, 2015.

- *Mondesir v. State of Florida*, No. 2012-CF-006456-A, 15th Judicial Circuit Court, in and for Palm Beach County, Florida. 3.850 Motion for Postconviction Relief filed on May 27, 2016 and denied by Hon. Laura Johnson on June 20, 2017.

- *Mondesir v. State of Florida*, 236 So.3d 430 (Fla. 4th DCA 2017), Case No. 4D17-2219, Fourth District Court of Appeal, West Palm Beach, Florida (3.850 Motion Appeal). Per Curiam Affirmed Opinion entered November 9, 2017. Mandate issued January 26, 2018.

- *Mondesir v. Ricky D. Dixon, Secretary, Fla. Dept. of Corrections*, Case No. 9:18-cv-80513-RLR-LR, U.S. District Court, Southern District of Florida, Miami Division. 28 U.S.C. §2254 Petition filed April 13, 2018 and denied on January 22, 2021 by Hon. Robin L. Rosenberg. Rehearing Rule 59(e) Motion denied on February 23, 2021. COA issued by 11th U.S. Circuit Court of Appeals.

- *Mondesir v. Secretary, Dept. of Corrections*, Appeal Case No. 21-10868, 11th U.S. Circuit Court of Appeals, Atlanta, GA. Appeal of 28 U.S.C. §2254 Petition Denial Order. Written Opinion denying Petition entered on October 11, 2022.

- *William James Pye v. Warden, Georgia Diagnostic Prison*, Appeal Case No. 18-12147, 11th U.S. Circuit Court of Appeals, Atlanta, GA. Same issue as Mondesir's COA. Written Opinion on Rehearing en Banc denying appeal entered on October 4, 2022. *Pye v. Warden*, 29 Fla.L.Weekly Fed. C1802 (11th Cir. Oct. 4, 2022).

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

The opinion of the 11th U.S. Circuit Court of Appeals appears at **Appendix A** to the petition and is:

[**X**] reported at *Mondesir v. Secretary, Dept. of Corrections*, 2022 U.S. App. LEXIS 28221 (11th Cir. Oct. 11, 2022); or

[ ] has been designated for publication but is not yet reported; or

[ ] is unpublished.

The opinion of the United States District Court appears at **Appendix C, D, and E** to the petition and is:

[ ] reported at _____; or

[ ] has been designated for publication but is not yet reported; or

[**X**] 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 _____; 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 11th U.S. Circuit Court of Appeals decided my case was October 11, 2022. A copy of that decision appears at **Appendix A**.

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

[ ] A timely Petition for Rehearing was denied by the U.S. Circuit Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix ____.

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

[**X**] 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 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Issues Involved

The Fourteenth Amendment of the U.S. Constitution provides, in pertinent part, as follows:

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

The Sixth Amendment of the U.S. Constitution provides as follows:

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

STATEMENT OF THE CASE

Roosevelt Mondesir, presently an incarcerated individual in the State of Florida, was originally charged by Information on June 25, 2012 with Count 1 Attempted First-Degree Murder with a Deadly Weapon (Gasoline), and Count 2 Domestic Aggravated Assault with a Deadly Weapon (Knife) (**State Resp. Exh. 1**).[1] The Information charged Mondesir with attempting to kill his estranged spouse (Naomi Bretton) by dousing her with gasoline and setting her on fire.

On June 18, 2013, a two-day trial was conducted whereby the jury returned a verdict of guilty as charged as to both Count 1 and Count 2 (**State Resp. Exh. 2**).

On August 23, 2013, the Petitioner was issued a Life sentence as to Count 1, and a 5-year prison sentence in Count 2, to run concurrently with each other (**State Resp. Exhs. 3, 4, 5**). A timely notice of appeal was filed.

On February 14, 2014, Appellate Counsel filed their initial brief on direct appeal that raised the following three issues: (1) The trial court erred when it allowed hearsay testimony from a State witness regarding contents of a phone message allegedly made by the Petitioner prior to the incident; (2) Trial court erred in denying Petitioner's motion for Judgment of Acquittal ("JOA") on Count 1 due to the insufficiency of evidence regarding premeditation and intent to kill; and (3) The judgment should be corrected in Count 1 to reflect the jury finding of a "weapon," and not a deadly weapon as charged (**State Resp. Exh. 7**).

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[1] The Petitioner will refer to the relevant documents as contained within the State Appendix to their Response to Mondesir's federal habeas corpus petition filed under 28 USC §2254.

On June 3, 2015, the Fourth District Court of Appeal ("4th DCA affirmed the judgment with a written opinion (see *Mondesir v. State*, 166 So.3d 897 (Fla. 4th DCA 2015)) **(State Resp. Exh. 9)**. The written opinion remanded the judgment back to the trial court to delete the reference to a "deadly weapon" in Count 1 and make it simply "a weapon" as reflected of the jury verdict form **(State Resp. Exh. 9)**. The 4th DCA affirmed the other two issues without opinion.

On August 13, 2015, the Petitioner filed a Fla.R.App.P. Rule 9.141(d) petition alleging ineffective assistance of appellant counsel **(State Resp. Exh. 12)**. The Petitioner raised the claim that Appellate Counsel was ineffective for failing to brief an issue involving the trial court's admission into evidence of two videos of the alleged incident that were cumulative and prejudicial **(State Resp. Exh. 12)**.

On October 29, 2015, the 4th DCA denied the petition on the merits but without written explanation **(State Resp. Exh. 13)**.

On May 23, 2016, the Petitioner filed a 5-ground Fla.R.Crim.P. Rule 3.850 motion for postconviction relief claiming ineffective assistance of counsel ("IAC") as follows: (1) IAC for misadvising and interfering with Petitioner's right to testify in his defense at trial; (2) IAC for failing to assert the defense theories against 1st-degree murder of "heat of passion" and "voluntary abandonment;" (3) IAC for failing to investigate Petitioner's mental health issues for use as a potential insanity defense theory or for use as a mitigating factor at sentencing; (4) IAC for failing to convey a favorable 15-year plea offer from the State prior to trial; and (5) IAC for failing to object to the sentence as vindictive because the Petitioner exercised his right to trial **(State Resp. Exh. 14)**.

On February 28, 2017, and per Court Order, the Assistant State Attorney ("ASA") Laura Fisher filed a "Response to Defendant's Pro Se Motion for Postconviction Relief" (**State Resp. Exh. 15**).

On March 13, 2017, the Petitioner filed a "Reply to State's Response to Motion for Postconviction Relief" (**State Resp. Exh. 16**).

On June 20, 2017, Hon. Judge Laura Johnson issued her final summary "Order Denying Defendant's Motion for Postconviction Relief" (**Appendix G**). A timely notice of appeal was filed.

On November 9, 2017, the Fourth District Court of Appeal ("4th DCA") per curiam affirmed the postconviction court's denial order without a written opinion (see *Mondesir v. State*, 236 So.3d 430 (Fla. 4th DCA 2017)) (**Appendix F**).

On November 22, 2017, the Petitioner filed a "Motion for Rehearing/Rehearing en Banc" (**State Resp. Exh. 20**).

On January 23, 2018, the 4th DCA denied the Motion for Rehearing without written reasons (**Appendix F**).

On January 26, 2018, the 4th DCA issued its mandate, making the State postconviction court's Rule 3.850 motion denial order final (**Appendix F**).

On April 13, 2018, the Petitioner filed his timely Petition for Writ of Federal Habeas Corpus pursuant to 28 U.S.C. §2254. The Petition raised the same five ineffective assistance of trial counsel claims presented in the Petitioner's State motion for postconviction relief.

On September 23, 2020, U.S. District Court Magistrate Judge Hon. Lisette Reid filed her Report recommending that the Petition be denied and that a Certificate of Appealability ("COA") not be issued (**Appendix E**).

On January 22, 2021, U.S. District Court Hon. Judge Robin L. Rosenberg issued a 2-page "Order Adopting Magistrate Judge's Report" denying the Petition and declining to issue a Certificate of Appealability (**Appendix D**).

On February 18, 2021, the Petitioner filed his timely "Motion to Alter or Amend a Judgment" under Fed.R.Civ.P. Rule 59(e). In that filing, the Petitioner argued that it was clear error for the U.S. District Court to "look through" postconviction Judge Hon. Laura Johnson's denial order and present its own reasons for denying Mondesir's petition for habeas corpus. The 11th U.S. Circuit Court of Appeals granted the Petitioner a COA on this issue.

On February 23, 2021, U.S. District Court Hon. Judge Robin L. Rosenberg issued an order denying the Petitioner's Rule 59(e) motion and denying Mondesir's renewed request for a Certificate of Appealability ("COA") (**Appendix C**).

On March 10, 2021, the Petitioner filed his "Notice of Appeal" requesting an appeal of: (1) the January 22, 2021 order of the U.S. District Court denying a Petition for Writ of Habeas Corpus (§ 2254) and declining to issue a Certificate of Appealability; and (2) the February 23, 2021 order of the U.S. District Court denying Mondesir's Motion to Alter Judgment

On July 15, 2021, the Petitioner filed his Request for Certificate of Appealability with the 11th U.S. Circuit Court of Appeals that was granted on April 1, 2022 (**Appendix B**).

On October 11, 2022, the 11th U.S. Circuit Court of Appeals issued its Final Order finding the U.S. District Court's Wilson error harmless and applying a de novo review of the State Court's decision using new justifications to support denial of postconviction relief (**Appendix A**). Accordingly, this Petition is timely if handed to a prison official for mailing **on or before Monday, January 9, 2023**.

REASONS FOR GRANTING THE PETITION

Did the 11th U.S. Circuit Court err when it interpreted your holding in *Wilson v. Sellers*, 138 S.Ct. 1188 (2018) to mean that "in assessing the reasonableness of a State court's ultimate decision, federal habeas court is not required to strictly limit its review to particular justifications that the State court provided" and may turn to justifications that the State court never even hinted at to affirm a denial of a §2254 petition?

On April 13, 2018, the Petitioner filed his timely Petition for Writ of Federal Habeas Corpus pursuant to 28 U.S.C. §2254. The Petition raised the same five ineffective assistance of trial counsel claims presented in the Petitioner's State motion for postconviction relief.

On September 23, 2020, U.S. District Court Magistrate Judge Hon. Lisette Reid filed her Report recommending that the Petition be denied and that a Certificate of Appealability ("COA") not be issued (**Appendix E**).

On January 22, 2021, U.S. District Court Hon. Judge Robin L. Rosenberg issued a 2-page "Order Adopting Magistrate Judge's Report" denying the Petition and declining to issue a Certificate of Appealability (**Appendix D**).

On February 18, 2021, the Petitioner filed his timely "Motion to Alter or Amend a Judgment" under Fed.R.Civ.P. Rule 59(e). In that motion, Mondesir argued that it was clear error for the U.S. District Court to insert its own reasons for denying his Petition under the "look-through" provision stated in both *Harrington v. Richter*, 562 U.S. 86, 99-100 (2011) and *Wilson v. Sellers*, 138 S.Ct. 1188, 1195-97 (2018) when State postconviction court Hon. Laura Johnson provided explanations for her merits-based decision in a reasoned opinion.

On July 15, 2021, the Petitioner filed his Request for Certificate of Appealability with the 11th U.S. Circuit Court of Appeals on this issue that it granted on April 1, 2022 (**Appendix B**).

On October 11, 2022, the 11th U.S. Circuit Court of Appeals issued its Final Order and agreed with Mondesir that the U.S. District Court's denial order was clear error under *Wilson v. Sellers, id.* (**Appendix A, Page 4 of 8**). However, when assessing the reasonableness of State postconviction court Hon. Laura Johnson's June 20, 2017 "Order Denying Defendant's Motion for Postconviction Relief" (**Appendix G**), the 11th U.S. Circuit Court of Appeals conducted a *de novo* review of Mondesir's Federal Petition and inserted justifications to affirm the denial of it that the State court never even hinted at.

When denying Ground 1 of the Federal Petition, State Postconviction Judge Johnson denied this claim by arguing that there was no per se rule of ineffectiveness when a defendant claims that trial counsel interfered with his right to testify (citing to *Oisorio v. State*, 676 So.2d 1363, 1364 (Fla. 1996)) (**Appx. G, Page 3**). Judge Johnson found Mondesir's claims that the outcome of his trial would have been different with his testimony "when he saw the victim he was sent into a 'blind unreasoning fury' caused by her (past) infidelity and abuse" conclusive (**Appx. G, Page 4**). Finally, Judge Johnson determined that since there was no reasonable probability that Mondesir's testimony would have changed the outcome of the trial, the Petitioner failed to meet the *Strickland* [2] prejudice prong. However, while the 11th U.S. Circuit Court of Appeals determined that the *reasons* for Judge Johnson's denial of Ground 1 were reasonable, it used its own *justifications* to support that decision (**Appendix A, Page 5 of 8**). The 11th Circuit held, "At trial, the victim testified to an acrimonious breakup leading up to the offense, and (to) Mr. Mondesir luring her to the gas station under false pretenses and exiting his vehicle with a machete and a gas can. Surveillance footage of the entire incident was played for

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[2] *Strickland v. Washington*, 466 U.S. 668 (1984).

the jury. The victim's uncle testified that, on the day before the offense, Mr. Mondesir left him a voicemail saying, 'your niece is playing with fire.' Additionally, had Mr. Mondesir testified, he would have been subject to cross-examination. On this record, the State trial court's denial of Mr. Mondesir's first ineffectiveness claim was reasonable" (**Appendix A, Page 5 of 8**).

When denying Ground 2 of the Federal Petition, State Postconviction Judge Johnson wrote only a short paragraph, concluded that the defense theories of "heat of passion "and" voluntary abandonment are inconsistent with each other, and were not supported by the evidence presented at trial (**Appx. G, Page 4**). The 11th U.S. Circuit Court of Appeals determined that the *reasons* for Judge Johnson's denial of Ground 2 were reasonable, and inserted its own justification via the decision in *Paz v. State*, 777 So.2d 983, 984 (Fla. 3rd DCA 2000) (heat of passion defense); and *Smith v. State*, 424 So.2d 726, 732 (Fla. 1983)" (**Appendix A, Page 6 of 8**).

When denying Ground 3 of the Federal Petition regarding Mondesir's claim that Counsel was ineffective for failing to investigate an insanity defense for use at trial, Postconviction Judge Hon. Laura Johnson denied this claim as mere speculation on the part of Mondesir (**Appx. G, Pages 5-6**). Judge Johnson argued the Petitioner failed to claim any prejudice from Counsel's alleged error or omission (**Appx. G, Page 5**). Judge Johnson held that the Petitioner did not affirmatively state, "Had counsel investigated an insanity defense, a viable insanity defense would have been presented at trial and the outcome of the proceedings would have been different" (**Appx. G, Page 5**). As for any error at the sentencing hearing, Judge Johnson held that the record reflects that Counsel did argue for leniency because "the defendant suffered a brain injury years prior in Haiti" (citing her attached Sentencing Transcript Pages 423-426) (**Appx. G, Page 5**). The 11th U.S. Circuit Court of Appeals denied this claim, holding that given

the strength of the State's evidence, "[C]ounsel could have reasonably believed that he could not meet his burden to show that Mondesir 'did not know what he ... was doing or its consequences...[or even if he did], that what he ... was doing was wrong' (citing to Fla. Stat. §775.027 and *Harrington v. Richter*, 562 U.S. 86, 105 (2011)) (**Appendix A, Page 6 of 8**). Using its own *justifications*, the 11th U.S. Circuit Court determined that the State postconviction court's denial of Ground 3 was reasonable.

When denying Ground 4 of the Federal Petition regarding Mondesir's claim that Counsel was ineffective for failing to convey a favorable 15-year plea offer from the State prior to trial, Judge Johnson held, "[C]ounsel stated at sentencing that the defendant rejected the fifteen year plea offer made by the State prior to trial" (citing to attached Sentencing Transcript Page 439) (**Appx. G, Page 6**). Accordingly, Judge Johnson ruled that there was no evidence contained within Mondesir's 3.850 motion to support his argument that he met the requirements necessary for a facially sufficient claim (**Appx. G, Page 6**). The 11th U.S. Circuit Court of Appeals denied this claim, holding that the record established that Mondesir had previously rejected two plea offers from the State of 20 years prison and 15 years prison, thereby making his current claim he would have accepted another 15-year State offer incredible (**Appendix A, Page 7 of 8**).

Finally, in Ground 5 of the Federal Petition, Mondesir argued, "The sentence imposed in the instant cause is vindictive in nature and in response to Defendant exercising his constitutional right to trial" (**3.850, Pages 11-12**). The Petitioner argued he was a 52 year-old man with no history of criminal conduct prior to these charged offenses (**3.850, Page 11**). At sentencing, the victim testified for leniency because the Petitioner needed psychiatric care and was a good person and a good father to his children (**3.850, Page 11**). The State had made a pre-trial plea offer of 15 years prison, substantially less than the Life sentence Mondesir is now serving (**3.850,**

Page 11). The Petitioner was gainfully employed, at times working two jobs to support his family (**3.850, Page 11**). The Petitioner concluded there could be no reason for the maximum Life sentence imposed in this case except for Mondesir electing to exercise his right to a jury trial (**3.850, Pages 11-12**). In her June 20, 2017 Order, Postconviction Judge Hon. Laura Johnson denied relief holding that because this involved a claim of trial court error, it should have been raised on direct appeal (**Appx. G, Page 7**). In any event, Judge Johnson held that if the Petitioner was claiming counsel should have objected to the sentence, there was no legal basis to have argued that the sentence was vindictive (**Appx. G, Page 7**). The U.S. Circuit Court concluded that since Judge Johnson declared this claim as procedurally barred from Rule 3.850 review, there could be no Federal habeas review on the merits (**Appendix A, Page 7 of 8**).

A. The 11th U.S. Circuit Court opinion has 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.

In this instant Petition, Mondesir is arguing that the 11th Circuit Court was required to strictly limit its review to the particular justifications that the State court provided and was not free to provide its own de novo review and insert its own justifications to support the denial of postconviction relief for Mondesir. This Honorable Court holds that the role of a federal review court is not to substitute its judgment over that of the trier of the fact unless "[t]he State court decision (is) 'so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fair-minded disagreement" (see *Woods v. Etherton*, 136 S.Ct. 1149, 1151, 194 L. Ed. 2d 333 (2016)). Further, "a reviewing federal court may not substitute its judgment for the State court's even if the federal court, in its own

independent judgment, disagrees with the State court's decision" (see *Lockyer v. Andrade*, 538 U.S. 63, 76, 123 S.Ct. 1166, 155 L.Ed.2d 144 (2003)).

On October 4, 2022, the 11th U.S. Circuit Court of Appeals addressed this exact issue in a detailed written opinion in *Pye v. Warden, Georgia Diagnostic Prison,* 29 Fla.L.Weekly Fed. C1802 (11th Cir. Oct. 4, 2022). There, the 11th U.S. Circuit Court held, "[I]n assessing the reasonableness of a State court's ultimate decision, federal habeas court is not required to strictly limit its review to particular justifications that the State court provided" and may turn to justifications that the State court never even hinted at to affirm a denial of a §2254 petition. This decision by the 11th Circuit was far from unanimous, as it fractured its own 9-judge panel that considered the *Pye* case en banc. Five judges agreed with the opinion, two justices agreed in judgment only, and 2 justices dissented.

In her written dissenting opinion, which Mondesir soundly agrees with, Hon. Jill Pryor put forth solid reasons for this Court to grant certiorari review of this issue. First, "The majority's first move is to declare that federal courts may find that a reasoned State court decision withstands AEDPA deference by turning to justifications the State court never even hinted at. This is opposite of what the Supreme has instructed...." *Id.* 29 Fla.L.Weekly Fed. at C1813. Second, "[T]he holding creates a practically impossible path to relief for habeas petitioners. If federal courts can bury unreasonable (State) findings under an avalanche of new reasons the State court never gave, then unreasonable findings will virtually never be important enough to satisfy the majority's test" *Id.* 29 Fla.L.Weekly Fed. at C1813-C1814. Mondesir personally argues a third reason – that the 11th Circuit Court opinion denied him due process of law. The Petitioner argues that if the last Federal review court available to habeas Petitioners (i.e. the 11th Circuit) conducts a de novo review and issues new reasons for denying a Petition, the Petitioner

never gets a chance to reply to the new arguments, and never gets to have that Court's new reasons reviewed for reasonableness. Such practice also negates the role of the U.S. District Court, since their opinions become meaningless when and if the U.S. Circuit Court decides to insert itself as the trier of the fact. Mondesir now finds himself denied postconviction relief based on new justifications for denial given by the 11th Circuit Court that he has no mechanism to argue against or have reviewed by another court. Mondesir kindly asks this Court to grant this writ of certiorari to remind the 11th Circuit that the role of the Federal courts is to grant habeas relief if the State court's adjudication of the claim was contrary to, or an unreasonable application of clearly established federal law with a high degree of deference given to the State court's reasoning. It is not to substitute itself as the court of first impression by giving its own reasons for denying relief in cases where the State court's holdings are reasonable.

Judge Pryor faults the 11th Circuit majority for categorizing a State court decision into two separate parts: "reasons" and "justifications" *Id.* 29 Fla.L.Weekly Fed. at C1815. The majority argued that reasons are "high level determinations like "the petitioner wasn't prejudiced by his counsel's deficient performance." Justifications, the majority holds, are the specifics of why the petitioner was not prejudiced. The majority concluded that the Circuit Court is only limited to examine the State court's "reasons" for its decision, and may insert its own justifications as to why the end-result is correct. *Id.* 29 Fla.L.Weekly Fed. at C1815. As Hon. Pryor submits, and as both *Black's Law Dictionary* and *Miriam-Webster Dictionary* support, "Justifications are not different from reasons, they *are* reasons" *Id.* 29 Fla.L.Weekly Fed. at C1815. Judge Pryor concludes that under the majority's opinion, "*Wilson's* look-through rule doesn't work" because we could always skip examining a State court's decision "and start making reasons to support the State court's decision" *Id.* 29 Fla.L.Weekly Fed. at C1816. In

short, the majority errs by holding that only a State court's resulting decision should receive deference regardless of any flaws in the decision's stated reasoning. *Id.* 29 Fla.L.Weekly Fed. at C1816.

As a last request, Mondesir asks this Court to state your opinion on exactly what the remedy is when a reviewing Federal court finds the State court end-result right but finds the State Court's rationale wrong or not constitutionally sound. Does it reverse back to the State court for a new trial anyway? Does the U.S. Circuit reverse back to the U.S. District Court to issue a new opinion? This question is not limited to the 11th Circuit, as Mondesir cites conflicting answers to this issue across all of the U.S. Circuit Courts (see below).

B. The 11th U.S. Circuit Court's interpretation and application of *Wilson v. Sellers*, 138 S.Ct. 1188 (2018) is in conflict with holdings of other U.S. Circuit Courts that demand strict deference to the last State court's written opinion – without inserting the Circuit Court's own justifications to support the State court result.

In her dissenting opinion, Hon. Pryor concluded, "*Wilson* holds true: as a federal court constrained by AEDPA, we must focus exclusively on the reasons actually given by the State habeas court and defer to those reasons, and those reasons alone. If those reasons are *that* wrong, then the decision is unworthy of AEDPA deference" *Id.* 29 Fla.L.Weekly Fed. at C1816.

Judge Pryor cites the following decisions by the sister U.S. Circuit Courts issued post-*Wilson* that support her dissenting 11th Circuit Court opinion.

Sixth Circuit: *Coleman v. Bradshaw*, 974 F.3d 710, 719 (6th Cir. 2020) (citing *Wilson* and stating that "AEDPA requires this court to review the actual grounds on which the State court relied").

First Circuit: *Porter v. Coyne-Fague*, 35 F.4th 68, 74-75 (1st Cir. 2022) (citing *Wilson's* requirement that federal courts defer to the "specific reasons" given by the State court, examining those reasons, concluding they do not withstand AEDPA deference, and applying *de novo* review).

Ninth Circuit: *Kipp v. Davis*, 971 F.3d 939, 948-60 (9th Cir. 2020) (reviewing whether the stated reasons of a State habeas court were reasonable, concluding they were not, applying de novo review, and granting petitioner relief) (emphasis added).

A Working Example of the Conflict Between the U.S. Circuit Courts involving your holding in *Wilson v. Sellers*, 138 S.Ct. 1188 (2018)

Example: A Petitioner files a Habeas Corpus Petition under 28 U.S.C. §2254. The issues presented contain a reasoned decision for denying postconviction relief from the State court. However, the Federal Court holds that while the reasons the State gave for denying the Petition are "reasonable," but they are arguably in violation of clearly established Federal law. A quandary originates in front of the Federal court judge because it believes that while the State opinion requires habeas corpus relief, the federal court believes strongly that other reasons exist to deny postconviction relief that are valid under established Federal law. Does the Petitioner get relief in the form of a new trial or plea reversal because the Federal court is constrained to consider only the last reasoned decision from the State court? Or does the Federal court deny relief based on its own "could have supported" reasons for the State's denial?

Mondesir believes the answer depends on what U.S. Circuit Court decides this issue. If you are in the First U.S. Circuit or the Ninth U.S. Circuit, you will get relief because if the State court decision is in violation of clearly established Federal law, those courts constrain their

review to just the last State court reasoned decision. See *Kellogg-Roe v. Warden, NH State Prison*, 2020 U.S. Dist. LEXIS 51228 *LEXIS 10-11 ((D- N.H.) Mar. 25, 2020) ("The mode of analysis under 28 U.S.C. 2254(d) depends on whether a State court's decision is accompanied by reasoning. See *Wilson v. Sellers*, 138 S. Ct. 1188, 1192, 200 L. Ed. 2d 530 (2018). If no reasoning accompanies the decision, the federal habeas court must "determine what arguments or theories . . . could have supported, the State court's decision." *Harrington v. Richter*, 562 U.S. 86, 102, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011). But if there is a reasoned decision, either from the last State court to decide a prisoner's federal claim or a lower State court, the "federal habeas court simply reviews the specific reasons given by the State court and defers to those reasons if they are reasonable." *Wilson*, 138 S. Ct. at 1192. In other words, 2254(d) "requires the federal habeas court to train its attention on the particular reasons - both legal and factual - why State courts rejected a State prisoner's federal claims, and to give appropriate deference to that decision." *Id.* at 1191-92"). See *Orozco v. Diaz*, 2020 U.S. Dist. LEXIS 158439 *LEXIS 10 (N.D. (Calif.) Aug. 31, 2020) ("As the last reasoned decision from a State court, the Santa Clara Superior Court's decision is the decision to which 2254(d) is applied. *See Wilson*, 138 S. Ct. at 1192. Mr. Orozco is entitled to habeas relief only if the Santa Clara Superior Court's decision was contrary to, or an unreasonable application of, clearly established federal law from the U.S. Supreme Court, or was based on an unreasonable determination of the facts in light of the evidence presented").

If you are in the Seventh U.S. Circuit or the Eleventh U.S. Circuit, you will not get relief because those Courts will elect to by-pass the State's reasoning and perform an independent analysis of what other grounds could have supported the State Court's decision. See *Myers v. Superintendent, Indiana State Prison*, 410 F. Supp. 3d 958. 991 (S.D. (Ind.) 2019) ("Given that

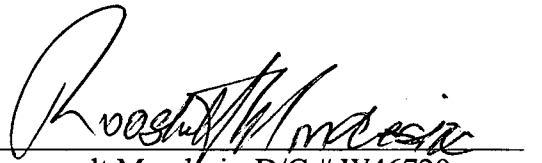
the Indiana Court of Appeals' decision was based on an unreasonable application of *Strickland* and *Wiggins*, the Court must turn next to whether the Court's own *de novo* review governs or whether the Court must consider what other grounds could have supported the Indiana Court of Appeals' decision. Although the Supreme Court's decision in *Wilson* suggests this Court should simply review this allegation of deficient performance *de novo*, the Court applies currently controlling Seventh Circuit precedent requiring an analysis of what other grounds could have supported the Indiana Court of Appeals' decision"). See *Pye v. Warden, Georgia Diagnostic Prison,* 29 Fla.L.Weekly Fed. C1802 (11th Cir. Oct. 4, 2022) ("[I]n assessing the reasonableness of a State court's ultimate decision, federal habeas court is not required to strictly limit its review to particular justifications that the State court provided" and may turn to justifications that the State court never even hinted at to affirm a denial of a §2254 petition).

CONCLUSION

This Court should grant the instant writ of certiorari for the reasons stated above.

OATH

Under penalty of perjury, I certify that all of the facts and statements contained in this document are true and correct and that on the 5th day of January 2023, I handed this document and exhibits to a prison official for mailing out to this Court and the appropriate Respondents for mailing out U.S. mail.

/s/ 

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