22-7225

No. 22-_____

IN THE SUPREME COURT OF THE UNITED STATES

ANDREW MICHAEL GOMEZ,

Petitioner,

vs.

MARK INCH, SEC'Y., FLA. DEP'T. OF CORR., et. al.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

Andrew M. Gomez, *pro se*
DC# 134164
Martin Correctional Inst.
1150 S.W. Allapattah Road
Indiantown, FL 34956

QUESTIONS PRESENTED

1.) Whether a trial court is constitutionally required to conduct an extensive inquiry into, and make a judicial finding of, the factual basis of a guilty plea once the accused has proclaimed his innocence.

2.) Whether a court evaluating a claim of ineffective assistance of trial counsel for failure to file a motion to suppress can deny that claim without deciding whether or not the motion to suppress would have been granted.

3.) Whether trial counsel's decision to advise a defendant to plead guilty is reasonable when the totality of the evidence tends to prove that the defendant has committed no crime at all.

PARTIES TO THE PROCEEDINGS

Petitioner Andrew M. Gomez was petitioner in the district court and petitioner-appellant in the Eleventh Circuit. Respondents Sec'y., Fla. Dep't. of Corrections, *et. al.* were respondents below in the district court and respondents-appellees in the Eleventh Circuit.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of of S. Ct. R. 14.1(b)(iii):

- *State v. Gomez*, Case No. 16-2009-CF-009186-AXXX-MA, Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida. Judgment entered on June 24, 2011.

- *Gomez v. State*, No. 1D11-3814, First District Court of Appeals of the State of Florida. Judgment and sentence affirmed April 17, 2012.

- *State v. Gomez*, Case No. 16-2009-CF-009186-AXXX-MA, Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida. Judgment entered on August 05, 2016.
- *Gomez v. State*, No. 1D16-3851, First District Court of Appeals of the State of Florida. Denial of motion for postconviction relief affirmed October 05, 2017.

- *State v. Gomez*, Case No. 16-2009-CF-009186-AXXX-MA, Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida. Petition for writ of habeas corpus denied March 16, 2018.

- *Gomez v. State*, No. 1D18-1853, First District Court of Appeal of the State of Florida. Opinion entered on July

22, 2019. (on motion for clarification).

- *Gomez v. State*, Case No. SC19-1774, Supreme Court of Florida. Petition for discretionary review denied on February 25, 2020.

- *Gomez v. Sec'y., Fla. Dep't. of Corrections, et. al.,* Case No. 3:17-cv-1172-BJD-MCR, U.S. District Court for the Middle District of Florida. Order denying petition for writ of habeas corpus entered on March 10, 2021.

- *Gomez v. Sec'y., Fla. Dep't. of Corrections, et. al.,* No. 21-12154-J, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered on October 19, 2021.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

CONSTITUTIONAL PROVISIONS

PETITION FOR WRIT OF CERTIORARI

Petitioner, Andrew M. Gomez, does petition this Honorable Court to issue a writ of certiorari directing the United States Court of Appeals for the Eleventh Circuit to grant a certificate of appealability in the above styled cause or alternatively to provide any and all other relief deemed appropriate.

OPINIONS BELOW

The order of the Eleventh Circuit denying Petitioner's certificate of appealabilty (COA) is unpublished and attached as Appendix A. The District Court's Order denying Petitioner's Petition for Writ of Habeas Corpus Under 28 U.S.C. §2254(d) is unpublished and attached as Appendix B. The Opinion of the First District Court of Appeal of the State of Florida affirming the judgment of the Fourth Judicial Circuit Court in and for Duval County, Florida is reported at *Gomez v. State*, 309 So.3d 691 (Fla. 1st DCA 2019) and is attached as Appendix C. The order denying Petitioner's Motion for Postconviction Relief in the Fourth Judicial Circuit Court in and for Duval County, Florida is unpublished and attached as Appendix D.

JURISDICTION

The Eleventh Circuit entered its Order denying COA on October 19, 2021. Petitioner's timely motion for rehearing was denied by the Eleventh Circuit on December 08, 2021 and is attached as Appendix E. Justice Thomas granted an extension to May 07, 2022 to file this petition for writ of certiorari. Dkt. No. 21A538. This court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the U.S. Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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

> 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 defence.

Finally, the Fourteenth Amendment of the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On July 08, 2009, Petitioner was found naked, defecating on himself and ingesting water in a community pool which contained the deceased bodies of two individuals. Petitioner remained standing in the pool, unresponsive to lay witnesses and law enforcement until he was forcibly removed. He was transferred to a local hospital, placed under involuntary psychiatric commitment (Baker Act), and involuntarily administered Haldol and Risperidone, two antipsychotic medications. He was admitted to the hospital for Altered Mental State and suffered three seizures due to a reaction to the antipsychotic medications. He spent two days intubated

and sedated in the intensive care unit and was then transferred to a general floor, albeit still under the Baker Act, where a mental health practitioner deemed his "insight and judgment unreliable" and recommended that the Baker Act be continued. On July 11, 2009, under the above circumstances, Petitioner was interviewed by law enforcement. Transcripts of the interview reveal that dialogue was exchanged between Petitioner and the officers prior to their utilization of a tape recorder. Petitioner struggled to remember the events surrounding the deaths of his best friend since childhood, Tiffany Cecconi, and her daughter, Kaylani. He repeatedly expressed that the Haldol was affecting his ability to recall. Ultimately, Petitioner agreed to the narrative of events proposed by law enforcement as to what might have transpired in the pool. On July 12, 2009, he was taken into police custody.

Petitioner was charged on July 24, 2009 with two counts of second degree murder. The arrest report indicated that the autopsies of both victims revealed that they died by drowning. As to the adult victim, she was found to have Carbamazepine (Tegretol), an anticonvulsant, in her system at the time of her death; she was found at the bottom of the pool in an area that was approximately three feet deep. There was no mention of any eyewitnesses, forensic or physical evidence. In fact, the report reveals that law enforcement pursued two separate leads until finally relying on Petitioner's statements to law enforcement as proof of his guilt. On August 20, 2009, a grand jury returned an indictment for first degree murder and second degree murder as to counts one and two respectively.

On May 26, 2011, Petitioner entered a plea of guilty to the lesser included offense of second degree murder as to count one and two as charged. The State proffered the following factual basis:

State Attorney: Yes, Your Honor,

were this case to proceed to trial the State of Florida would establish beyond and to the exclusion of all reasonable doubt that on July 08, 2009, this Defendant, Mr. Gomez, did unlawfully take the human lives of two individuals, Tiffany [Cecconi] and daughter Ka[ylani], Ka[ylani] being a child under the age of 18.

Your Honor, the facts of this case if it were to proceed to trial would be that this defendant did effect the death of both these individuals by drowning. Both of these victims were found deceased in a community pool[.] The defendant was located in the same pool...[and] taken into custody....I'd also put on the record that...the defendant has been interviewed by detectives [and] he provided facts indicating the he was in fact responsible for the deaths of these two individuals. Their deaths was a result of drowning and [the] Medical Examiner determined that as to both individuals.

Plea Colloquy, May 26, 2011, *State of Florida v. Andrew M. Gomez*, Case No. 16-2009-009186-AXXX-MA, Fourth Judicial Circuit Court in and for Duval County, Florida.

The trial court proceeded with the plea colloquy when the following exchange occurred:

> **THE COURT:** Are you pleading guilty to these charges because you are guilty of those offenses?
>
> **THE DEFENDANT:** No ma'am, not that I feel that way.
>
> *Id.*

The trial court made no further inquiry into the factual basis for the plea and accepted the same as voluntarily entered. The court did not make a finding that a factual basis existed.

On June 24, 2011, a sentencing hearing was held. The lead homicide detective, Mark Romano, testified that the bodies of both victims bore no bruises, marks or signs of trauma. His testimony even seemed to concede that Petitioner's conduct fell short of murder:

> **Q(State Attorney):** At any point in time during this hour long interaction post-*Miranda* as you met with this defendant did he ever give you any indication as to literally, physically, how the act took place that Tiffany was killed, how she – how it was that she drowned?
>
> **A(Detective Romano):** Other than saying he just kept pushing her, that was it. He would not tell me specifically what he did for her to

drown.

...

Q: Now, in your training and experience as a long time homicide detective and now sergeant with the Sheriff's Office, am I correct in saying that a person of Tiffany's stature and age and ability to swim; she could swim, is that correct?

A: Absolutely.

Q: That just pushing her is not going to result in her drowning?

A: That's correct.

Q: Did you press Mr. Gomez on that fact and ask him to try and explain it in any way, shape or form?

A: I did.

Q: Did he ever give you any indication of what happened?

A: That was it, just that he pushed her.

...

Q: And as to Kaylani, the one year old child, outside of saying I must have dropped her, did he ever give you any indication as to why it was that he did not seek aid or attempt to rescue her or attempt to get her out of the pool,

> anything along those lines?
>
> **A:** No, he never did.
>
> Sentencing hearing, June 24, 2011, *State of Florida v. Andrew M. Gomez*, Case No. 16-2009-009186-AXXX-MA, Fourth Judicial Circuit Court in and for Duval County, Florida.

Detective Romano testified that there was no hostility or pre-existing enmity ever found between Petitioner and either victim. On cross examination, trial counsel elicited from Detective Romano that he in fact placed Petitioner on the Baker Act, later interviewing him while still under the Baker Act after waking from unconsciousness.

Dr. Meadows, the State's forensic psychologist testified that in his opinion, Petitioner was legally sane at the time of the offenses. Dr. Harry Krop, a forensic psychologist appointed by the defense, testified that he was leaning towards on opinion that Petitioner was likely insane but stopped pursuit of the issue when he learned of Petitioner's guilty plea. Dr. Krop testified that Petitioner's mental state was severely impacted at the time of the offenses and based his conclusions on the deposition testimony of several lay witnesses who observed Petitioner exhibiting bizarre behavior after being involved in a car accident a week prior to the incident. Dr. Krop described Petitioner as having a "preoccupation with religious issues, his beliefs, that we call magical beliefs." *Id.* He discussed Petitioner's demeanor at the scene, how "[e]very one of the witnesses, to a T, talked about how he just stood there and stared, had this blank look, was nonresponsive until basically they dragged him out and took him to the hospital." *Id.* Dr. Krop also testified that he believed

Petitioner was manipulated by law enforcement into agreeing with law enforcement's suggestions of what likely happened to the victims during his interview.

Grace Bosse testified that she was with Petitioner two days prior to the incident and that he had a lot of religious questions asking her "if it was possible that he was the reincarnation of the apostle Andrew." *Id.* She testified that Petitioner described to her his perceived possession of "superhuman strength from God" and his belief that God nay have given him "powers" or "superhuman abilities." *Id.* She was aware of Petitioner's car accident a few days prior and testified that she had never seen Petitioner act so strange. Christopher Lecuyer, who was an assistant manager at the Wal-Mart where Petitioner worked, noticed Petitioner's work product decreased after the car accident and that he tended to "lose focus." Jean Minchew testified that Petitioner had pulled into her yard in a beat up vehicle after apparently getting in a car accident. She testified that Petitioner had complained of a headache and expressed that he hit his head; he was also "rambling on and on" about God. Other witnesses testified to Petitioner's platonically loving relationship with both victims.

Ultimately, Petitioner was adjudicated guilty and sentenced to life imprisonment as to each count with both sentences to run consecutively. His judgment and sentence were affirmed on direct appeal. *See Gomez v. State*, 83 So.3d 713 (Fla. 1st DCA 2012).

Petitioner filed his "Second Amended Motion for Postconviction Relief" on March 18, 2015. A limited evidentiary hearing was granted as to claim three of that motion on January 08, 2016. Petitioner testified concerning the events surrounding his arrest including his hospitalization and delusions he experienced after the car accident but prior to the incident. Trial counsel testified

that he advised Petitioner to abandon his insanity defense and pursue plea negotiations solely due to the difference of opinions between Dr. Krop and Dr. Meadows. A second evidentiary hearing concerning claims one, two and four of the postconviction motion was held on February 11, 2016. Trial counsel testified that he had concerns about filing a motion to suppress Petitioner's statements because he and Petitioner would "have to weigh the...probability that we would win the motion with losing [plea] negotiations and going to trial."[1] He reiterated that the decision to abandon a trial rested entirely on the difference of opinions between Dr. Krop and Dr. Meadows. He stated that he was aware Petitioner was under a Baker Act and possibly under the effects of psychotropic medications however he decided "that it would be in the best interest strategically to hold off [filing a motion to suppress] until we could exhaust our [plea] negotiations with the state[.]" He testified that he did not believe Petitioner's statements to be "dispositive of the case" and that "[t]here was a lot of evidence that had nothing to do with those statements." *Id.*

On August 04, 2016, the state postconviction court entered its "Order Denying Defendant's Second Amended and Third Amended Motions for Postconviction Relief." The Postconviction Order did not address the likelihood of whether the insanity defense would have succeeded had Petitioner gone to trial, whether trial counsel advised Petitioner of the strength of the insanity defense outside of the differing psychologists' opinions or whether or not a motion to suppress would have been granted. The Postconviction Order was affirmed on August 01, 2017. *See Gomez v. State*, 228 So.3d 555 (Fla. 1st DCA 2017).

Petitioner filed his initial "Petition Under 28 U.S.C.

---

[1] Evidentiary Hearing, February 11, 2016, *State of Florida v. Andrew M. Gomez*, Case No. 16-2009-CF-009186-AXXX-MA, Fourth Judicial Circuit Court in and for Duval County, Florida.

§2254 for writ of Habeas Corpus" with the District Court on October 16, 2017. A stay of the petition pending exhaustion of grounds four and five was granted on March 22, 2019.

Petitioner sought exhaustion of ground four of his §2254 by filing a "Petition for Writ of Habeas Corpus" in the state trial court on February 13, 2017. It was dismissed on March 16, 2018. The denial was affirmed, with a written opinion, on July 22, 2019. *See Gomez v. State,* 309 So.3d 691 (Fla. 1st DCA 2019), Appendix C. The opinion made no mention of Petitioner's *Alford* claim or protestation of innocence. The Florida Supreme Court declined to accept discretionary jurisdiction on February 25, 2020.

Petitioner filed a "Second Amended Petition Under §2254" on June 19, 2020 which was ultimately denied by the District Court on March 10, 2021. Petitioner filed a "Petition for Permission to Appeal" on July 21, 2021 with the U.S. Court of Appeals for the Eleventh Circuit. That petition was denied on October 19, 2021. ("COA Denial"). The Eleventh Circuit found that reasonable jurists would not debate the District Court's determination that the state court's resolution of Grounds One (trial counsel failed to adequately advise Petitioner of the strength of his insanity defense), Two (trial counsel failed to adequately advise Petitioner of his ability to suppress his statements made to law enforcement), and Four (the trial court violated his due process rights by accepting his guilty plea without a finding of a factual basis despite his protestations of innocence) were not contrary to or an unreasonable application of *Strickland v. Washington*, 466 U.S. 668 (1984) (Grounds One and Two) or *North Carolina v. Alford*, 400 U.S. 25 (1970) (Ground Four). The COA Denial made no mention of *Hill v. Lockhart*, 474 U.S. 52 (1985), which is the controlling law that would apply to Ground One or *Premo v. Moore*, 562 U.S. 115 (2011) the controlling law which governs any analysis of Ground Two.

REASONS FOR GRANTING THE WRIT

To be blunt, this Court should grant the instant petition for the simple reasons of forcing the Eleventh Circuit and the State of Florida to abide by this Court's precedents regarding the rights of the accused as it pertains to guilty pleas and in order to prevent an innocent man from being held to account for a heinous crime that he simply did not commit.

QUESTION ONE[2]

> Because of the importance of protecting the innocent and of insuring that guilty pleas are a product of free and intelligent choice, various state and federal court decisions properly caution that pleas coupled with claims of innocence should not be accepted unless there is a factual basis for the plea and until the judge taking the plea has inquired into and sought to resolve the conflict between the waiver of trial and the claim of innocence.
>
> *Alford*, 400 U.S. at 38 n. 10

"[W]here [a] defendant proclaims his innocence but pleads guilty anyway, due process is satisfied only if the state can demonstrate a 'factual basis for the plea.'" *Ormain v. Cain*, 228 F.3d 616, 621 (5th Cir. 2000) (quoting *Alford*, 400 U.S. at 38).

---

[2] This question arises from Ground Four of Petitioner's §2254 Petition and the state habeas petition which was denied and affirmed in the state appellate court with a written opinion.

What significance should a trial court give when a defendant who is pleading guilty asserts that he is innocent? If the Eleventh Circuit is to be believed, a defendant must state a specific magic word or utterance in order to grab the court's attention that a defendant may possibly not be aware that he is not guilty of the crimes to which he is pleading. This Court will not find a more blaring example of why its position in *Alford* is so relevant and critical even today. Here, the State of Florida has allowed a defendant to plead guilty to physically drowning two victims in a pool that is five foot deep at its deepest point without producing a single bruise, mark, scratch or sign of trauma on either body. No one can minimize the tragic outcome of that day, but at what point does tragedy justify trouncing a person's constitutional safeguards? If they are to be believed, the Respondents indicate that the truth is meaningless and the question of one's innocence is irrelevant so long as a defendant has adequately waived his right to trial.

Here, Petitioner expressly notified the trial court that he believed himself to be innocent. The trial court did not pause the regular mode of the colloquy to attempt to inquire further into this protestation of innocence. Nor did the trial court ever make a judicial finding of a factual basis for the plea prior to accepting the same as voluntarily entered. The state court's resolution of this matter makes no mention of the governing instructions of *Alford*. The District Court explained that the burden was on the defense, not the trial court, to object to the factual basis or the acceptance of the plea. The Eleventh Circuit simply stated that Petitioner's assertion of innocence did not invalidate his plea as he still ultimately moved forward with his plea knowingly and voluntarily.

Who can shamelessly say that such a waiver was knowingly and voluntarily made when the trial court

entirely avoided its obligations under *Alford* to inquire further into Petitioner's perceived innocence? Who knows if he understood that his conduct (or lack thereof) did not seriously amount to the conduct required to sustain two murder convictions? This Court enunciated the rule in *Alford* exactly for situations such as these, where a trial court can be certain that a defendant is not simply following the whims of a public defender eager to close a particularly high profile and troublesome case no matter the expense of the client.

To date, no court, either state or federal, has entertained the very real possibility that Petitioner is innocent. This Court should grant the instant writ as the Eleventh Circuit's COA Denial misapprehends this Court's *Alford* precedent, the question of the scope of *Alford* should be clarified by this Court, or simply because there exists an innocent man whose cries of innocence have gone unheard before every court below.

QUESTION TWO[3]

> Under the "unreasonable application" clause of [of 28 U.S.C. §2254(d)(1)] a federal habeas court may grant the writ if the State court identifies the correct governing legal principle from [the Supreme] Court's decisions but unreasonably applies that principle to the facts of the prisoner's case.
>
> *Williams v. Taylor*, 529 U.S. 362,

[3] This question arises from Ground Two of Petitioner's §2254 Petition and Claim Two of Petitioner's Second Amended Motion for Postconviction Relief filed in state court.

412-413 (2000).

> [W]here [a] petitioner faults his lawyer for failing to pursue a motion to suppress prior to entering a plea, both the deficient performance and prejudice prongs of *Strickland* turn on the viability of the motion to suppress. This is because a lawyer's performance only falls outside the range of competence demanded of counsel if [] he did not pursue a motion to suppress that would have affected the outcome of the case had the defendant rejected the plea and proceeded to trial.
>
> *Arvelo v. Fla. Dep't. of Corrections*, 788 F.3d 1345, 1348 (11th Cir. 2015) (citing *Premo v. Moore*, 562 U.S. 115, 124 (2011) (addressing *Strickland's* performance prong and holding that the relevant question is whether "no competent attorney would think a motion to suppress would have failed.")

Despite all of the troubling circumstances surrounding Petitioner's statements to law enforcement the Eleventh Circuit found trial counsel's decision not to file a motion to suppress was reasonable as "the motion would have required proof that [Petitioner]'s antipsychotic medication prevented him from understanding the nature of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966)." COA Denial at 3. It is unclear where the Eleventh

Circuit derives its authority to create a "rule" that runs afoul of that enunciated by this Court in *Premo* by narrowing the scope of the trial court's review of trial counsel's failure to file a motion to suppress to one factual point. In fact, not a single court that has reviewed this case, either state or federal, has answered the question posed by *Premo*.

A fair assessment of whether a motion to suppress would have been granted would require a court to consider the following factual circumstances surrounding Petitioner's statement: (a) Petitioner's assessment by a mental health practitioner only a day prior to the interview that deemed his "insight and judgment both unreliable" and recommended that he remain under involuntary psychiatric commitment; (b) Petitioner's repeated utterances during the interview that the Haldol which was involuntarily administered was affecting his ability to recall; (c) Dr. Krop's letter to defense counsel indicating he believed Petitioner may have been manipulated by law enforcement into agreeing to their version of events; and (d) the fact that Petitioner was admitted to the hospital for Altered Mental State and placed under involuntary psychiatric commitment by the same detective who interviewed him.

Compare the aforementioned facts with the paucity of evidence linking Petitioner to the victim's deaths as revealed by the arrest report. Law enforcement could make no concrete conclusions as to who might have killed the victims even pursing the initial leads of Tiffany Cecconi's then-current boyfriend Thomas Pierce and her estranged husband, Richard Cecconi. Indeed, it was not until law enforcement elicited Petitioner's statements in the hospital that the case was closed. Even the medical examiner's report relied on Petitioner's statement in concluding that the manner of deaths for both victims was a homicide. Trial counsel's testimony that Petitioner's statement was not

dispositive of the case as there existed other evidence is simply untrue in the face of this record.

Had the state court, or any other court reviewing this claim, taken the time to answer the question posed by *Premo*, then all of the aforementioned irregularities would have been revealed. More importantly, the question again arises if there was no other evidence outside of a constitutionally infirm confession to inculpate Petitioner, then does an innocent man remain convicted of a crime which he did not commit? Petitioner would aver that the answer is yes.

As the state and federal courts have elected to refrain from answering the relevant question posed in this Court's *Premo v. Moore* decision, Petitioner contends that their decisions run in direct contravention of this Court's guidance and opinion. Which brings us to the apex of the question posed here: Can a court reviewing an ineffective assistance of trial counsel claim for failure to suppress incriminating statements prior to pursuing a guilty plea resolve that claim without deciding whether the motion to suppress would have been granted? Petitioner avers the answer is no and, as such, implores this Court to grant the instant writ in order to correct a decision that runs afoul of its well established precedent; to clarify the scope of this Court's *Premo* decision, or to ensure that an innocent defendant does not remain convicted based upon an illegally obtained "confession."

QUESTION THREE[4]

A court reviewing a claim for ineffective assistance of counsel "must...determine whether, in light of all the

[4] This question arises from Ground One of Petitioner's §2254 Petition and Claim One, Subclaim A of Petitioner's Second Amended Motion for Postconviction Relief filed in state court.

circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Strickland v. Washington*, 466 U.S. 668, 690 (1984). "In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all of the circumstances." *Id.* at 688. "In assessing prejudice, the reviewing court must consider the totality of the evidence, mindful that 'a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support.'" *Williams v. Allen*, 542 F.3d 1326, 1342 (11th Cir. 2008) (quoting *Strickland*, 466 U.S. at 696). "Categorical rules are ill-suited to an inquiry that...demands a 'case-by-case examination' of the 'totality of the evidence.'" *Lee v. United States*, 137 S. Ct. 1958, 1966 (2017) (quoting *Taylor*, 529 U.S. at 391 and *Strickland*, 466 U.S. at 695).

"[T]he two-part *Strickland v. Washington* test applies to challenges to guilty pleas." *Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (internal citations omitted). "[I]n order to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59. "*Hill* instructs courts to [] focus [] on whether [a defendant's] defenses likely would have prevailed at trial [] in determining whether the defendant would have insisted on going to trial." *Lynch v. Sec'y., Fla. Dep't of Corrections*, 776 F.3d 1209, 1218-19 (11th Cir. 2015) (quoting *Hill*, 474 U.S. at 59). "The likelihood that an affirmative defense will be successful at trial and an assessment of the probable increase or reduction in sentence relative to the plea if the defendant proceeds to trial are clearly relevant to the determination of whether an attorney acted competently in recommending a plea." *Pannuccio v. Kelly*, 927 F.2d 106, 109 (2d Cir. 1991).

Every court, state and federal, to address this claim has reached the conclusion that there was no conceivable

possibility that trial counsel's advice to take a guilty plea was deficient as both of the forensic psychologists disagreed as to whether Petitioner was insane at the time of the offense. No court, state or federal, has taken the time to answer the relevant question posed by this court in *Hill*, to wit: Whether Petitioner's insanity defense would have likely prevailed had he gone to trial.

A fair assessment of that question would require the brave court which sought to ascertain the truth to abide by this Court's mandates in *Strickland* and *Lee* to consider the totality of the evidence/circumstances. The totality of the evidence supporting Petitioner's insanity defense outside of Dr. Krop's opinion included: (a) lay witness testimony that Petitioner had been involved in a car accident and hit his head a week prior to the incident; (b) his subsequent "magical beliefs" concerning spiritual powers ; (c) the bizarre events surrounding his arrest including the fact that he was found nude in a catatonic state, forcibly removed from the scene, placed under a Baker Act, admitted for Altered Mental State and involuntarily administered antipsychotic medications; (d) the fact that there were no signs of trauma to the bodies of either victim, making it impossible to substantiate the State's theory that Petitioner physically drowned the victims in a three foot deep pool; and (e) the fact that the adult victim's toxicology report showed positive traces of Carbamazepine (Tegretol), an anticonvulsant whose side effects include dizziness, drowsiness, disturbances of coordination, confusion, visual hallucinations and sometimes paralysis.

Under a consideration of all of the aforementioned circumstances is it fair to reach the conclusion that irrespective of the differing opinions of Dr. Krop and Dr. Meadows that there existed a plethora of evidence that would lead any reasonable trier of fact to conclude that Petitioner's insanity defense likely would have succeeded? Is it even more of a stretch to reach the conclusion that

Petitioner may have committed no crime at all? Petitioner asserts that we may never know the answers to either of these most relevant questions as both the State of Florida and the Eleventh Circuit have elected to apply the inverse rule of *Hill*/*Strickland*. Consider only one piece of evidence/circumstance that would run contrary to a defendant's defense and do not reach the question of whether that defense would have succeeded.

Does the totality of the evidence provision of *Strickland* bear any importance? Does a court even have to decide whether a defendant's defense likely would have succeeded? Petitioner implores this Court to grant the instant writ in order to correct the inverse applications of *Strickland*/*Hill*. Additionally, and perhaps to someone, more importantly, this Court should issue the writ in order to prevent an innocent man from being convicted of crimes which the totality of the evidence/circumstances demonstrates he did not commit.

CONCLUSION

For the foregoing reasons Petitioner respectfully moves this Honorable Court to grant the foregoing Petition for Writ of Certiorari.

Respectfully Submitted,

Andrew M. Gomez

Andrew M. Gomez, *pro se*
DC#134164
Martin Correctional Instit.
1150 S.W. Allapattah Road
Indiantown, FL 34956

DATED this 28th day of March 2023.