No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

MARK A. JONES,
Petitioner,

v.

RICKY D. DIXON,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

On Petition for Writ of Certiorari to the Eleventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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A. QUESTION PRESENTED FOR REVIEW

Whether this Court's holding in *Missouri v. Frye*, 566 U.S. 134 (2012), that an attorney has a duty pursuant to the Sixth Amendment to communicate a formal plea offer to a criminal defendant also encompasses a duty to communicate to the criminal defendant that the plea offer deadline has been extended.

B. PARTIES INVOLVED

The parties involved are identified in the style of the case.

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The Petitioner, MARK A. JONES, requests the Court to issue a writ of certiorari to review the opinion/judgment of the Eleventh Circuit Court of Appeals entered in this case on January 20, 2023. (A-3).[1]

D. CITATION TO ORDER BELOW

The opinion below was not reported.

E. BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1254 to review the final judgment of the Eleventh Circuit Court of Appeals.

F. CONSTITUTIONAL PROVISION INVOLVED

The Sixth Amendment to the Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence." "[T]he right to counsel is the right to the effective assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771, n.14 (1970).

[1] References to the appendix to this petition will be made by the designation "A" followed by the appropriate page number.

G. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

1. Statement of the Case.

The Petitioner was charged, convicted after a jury trial, and sentenced to life imprisonment as a prison releasee reoffender for burglary of a conveyance with assault and attempted carjacking. The charges stemmed from an incident that occurred in the parking lot of a grocery store in Altamonte Springs, Florida. On direct appeal, the Florida Fifth District Court of Appeal affirmed the convictions and sentence. *See Jones v. State*, 113 So. 3d 18 (Fla. 5th DCA 2013).

Following the direct appeal, the Petitioner timely filed a state postconviction motion pursuant to Florida Rule of Criminal Procedure 3.850 raising several claims of ineffective assistance of counsel. The state postconviction court granted an evidentiary hearing on two of the postconviction claims and the evidentiary hearing was held on May 26, 2017. Notably, during the evidentiary hearing, the prosecution introduced into evidence an email thread between the original prosecutor and the Petitioner's trial/defense counsel that established that the defense counsel had obtained an extension of the deadline to accept the prosecution's pretrial plea offer – a fact for which the Petitioner was *unaware* prior to the evidentiary hearing. Following the evidentiary hearing, the state postconviction court denied the Petitioner's rule 3.850 motion. On appeal, the Florida Fifth District Court of Appeal affirmed the denial of the Petitioner's rule 3.850 motion. *See Jones v. State*, 261 So. 3d 560 (Fla. 5th DCA 2018).

Based on the new information about the plea deadline that the Petitioner

learned for the first time during the state court postconviction evidentiary hearing, the Petitioner filed a *pro se* second rule 3.850 motion raising a newly discovered evidence claim – i.e., defense counsel failed to properly communicate to the Petitioner that the deadline to accept the prosecution's pretrial plea offer had been extended. The state postconviction court summarily denied/dismissed this claim without an evidentiary hearing, and on appeal, the Florida Fifth District Court of Appeal summarily affirmed (without any discussion or reasoning) the denial/dismissal of the Petitioner's second rule 3.850 motion. *See Jones v. State*, 278 So. 3d 694 (Fla. 5th DCA 2019).

The Petitioner subsequently filed a petition pursuant to 28 U.S.C. § 2254. In his § 2254 petition, the Petitioner raised the same claim that he previously presented in his second rule 3.850 motion (i.e., defense counsel failed to properly communicate to the Petitioner that the deadline to accept the prosecution's pretrial plea offer had been extended). On September 3, 2021, the district court denied/dismissed the Petitioner's § 2254 petition. (A-14, A-15).

On March 8, 2022, the Eleventh Circuit Court of Appeals granted the Petitioner a certificate of appealability on the following issue:

> Whether the district court erred in finding that Jones's underlying ineffective-assistance-of-trial-counsel claim for failure to convey a plea offer was not "substantial" to overcome procedural default under *Martinez v. Ryan*, 566 U.S. 1 (2012).

(A-11). After this issue was briefed on the merits, the Eleventh Circuit subsequently issued an opinion affirming the denial/dismissal of the Petitioner's § 2254 petition. (A-3). In the opinion, the Eleventh Circuit held that the procedural posture of the Petitioner's case was different than the procedural posture of *Missouri v. Frye*, 566 U.S.

134 (2012):

> Unlike in *Frye*, it's not that trial counsel failed to convey the plea offer entirely; he just tried but failed to convey the deadline extension. *Frye*, 566 U.S. at 145.

(A-8).

2. Statement of the Facts.

On June 27, 2011, the prosecution charged the Petitioner with one count of burglary of a conveyance with an assault and one count of attempted carjacking. The prosecution also filed a notice of its intent to seek habitual felony offender status and prison releasee reoffender ("PRR") status.

In October of 2011, the prosecutor offered the Petitioner a fifteen-year written plea agreement. The plea offer incorporated both counts and included a November 10, 2011, deadline for acceptance. At the time the prosecutor extended the plea offer, defense counsel had been exploring an insanity defense based on the Petitioner's extensive mental health history documented with the Veterans Administration. Defense counsel had made arrangements for the Petitioner to receive a psychological evaluation from Dr. Danziger on *November 14, 2011.* Thus, the November 10, 2011, plea deadline required a decision from the Petitioner *without* knowing the results of Dr. Danziger's psychological evaluation (i.e., the Petitioner could not properly consider a plea offer without knowing whether he had a viable insanity defense). As a result, the Petitioner rejected the prosecutor's fifteen-year plea offer based on defense counsel's advice that the offer was rather high in light of a potential insanity defense.

On November 15, 2011, Dr. Danziger informed defense counsel that based on his

psychological evaluation, the Petitioner was *not* insane on the date of the alleged offenses. Dr. Danziger's psychological evaluation negated defense counsel's anticipated insanity defense. The Petitioner subsequently proceeded to trial, was found guilty as charged for both counts, and was sentenced to life imprisonment as a PRR.

The Petitioner thereafter filed a state postconviction/rule 3.850 motion, and the state postconviction court granted an evidentiary hearing on two of the claims raised in the motion. The evidentiary hearing was held on May 26, 2017 (A-63-216), and during the evidentiary hearing, the prosecutor (Assistant State Attorney Tom Hastings) introduced into evidence the following printed version of an email exchange that he had with defense counsel (Stuart Bryson) prior to the Petitioner's trial (and undersigned counsel notes that the email thread contains the most-recent exchange at the top and earliest exchange at the bottom):

> From: Tom HASTINGS [the prosecutor]
> To: Stuart Bryson [defense counsel]
> Date: 11/3/2011 11:18 AM
> Subject: RE: Mark Jones
>
> [Y]our expert will at least be able to give you a verbal report by the new deadline. Tom
>
> >>>"Stuart Bryson" <sbryson@odl8.net> 11/3/2011 10:22AM>>>
> I may not have my evaluation results by then, but I guess we can cross that bridge when we get there.
>
> -----Original Message----
> From: Tom HASTINGS [mail to: THASTINGS@sal 8.state.fl.us]
> Sent: Tuesday, November 01, 2011 1:10 PM
> To: Stuart Bryson
> Subject: Re: Mark Jones
>
> **Will extend offer's deadline to 11/16/2011.** Tom H.

>>>"Stuart Bryson"<sbryson@pd18.net> 11/1/2011 9:26 AM>>>
Tom, I gave you an[] incorrect date on the evaluation. [I]t is actually November 14, 2011.

Stuart A. Bryson
Assistant Public Defender

(A-58) (bold emphasis added). This email thread was introduced at the evidentiary hearing for the purpose of disproving the Petitioner's postconviction claim that Mr. Bryson failed to correctly inform him of the maximum penalty he faced before rejecting the prosecution's fifteen-year plea offer. During Mr. Hastings' cross-examination of Mr. Bryson at the evidentiary hearing, the following exchange occurred:

A. Having looked at the email conversation between your office and myself, it appears that the reason that I had asked for the extension was because of psychological evaluations that were being pursued.

Q. Uh-huh.

A. *My thought would have been perhaps that at this point I'm not going to accept any offer because maybe I'm going to end up with this defense. Once I had conversation with the doctors who had evaluated Mr. Jones, I knew that was no longer an option, I asked for an extension and attempted to reach out to Mr. Jones to encourage him that we don't have the defense that we hoped we were going to have.*

Q. Okay and he had provided you with a phone number to reach him?

A. Indeed.

Q. And you tried to reach him?

A. I did on two occasions.

Q. And were you able to reach him on the 15th or the 16th?

A. *I was not*. I did leave a message on the 15th; on the 16th when I returned the phone call to the same number that phone was – that number was no longer in service.

(A-84-85) (emphasis added). As explained above, the original written plea agreement that the prosecutor offered to the Petitioner included a November 10, 2011, deadline. At the time of the evidentiary hearing, neither the Petitioner nor his postconviction counsel[2] had *any knowledge* that Mr. Bryson asked for and received an extension of the prosecutor's fifteen-year plea offer. Mr. Bryson requested the extension of the prosecutor's plea offer from November 10, 2011, to November 16, 2011, for the *sole purpose* of exploring an insanity defense based on the results of the Petitioner's November 14, 2011, psychological evaluation. Notably, Mr. Bryson testified at the evidentiary hearing that he informed the Petitioner only of the prosecutor's original plea offer's expiration date of November 10, 2011 – *and that he never conveyed to the Petitioner that the prosecutor had extended the plea offer deadline to November 16, 2011.* Mr. Bryson's revelation at the evidentiary hearing established that Mr. Bryson failed to inform the Petitioner that the prosecutor's fifteen-year plea offer was still available for the Petitioner to accept *after Dr. Danziger's psychological evaluation negated the Petitioner's anticipated insanity defense.* Ultimately, Mr. Bryson allowed the new plea offer deadline to expire without getting an informed decision about the plea offer from the Petitioner (i.e., a decision that would have taken into account that Dr. Danziger would *not* be able to support the insanity defense). After learning at the evidentiary hearing that Mr. Bryson failed to advise him that the prosecutor's plea

[2] (A-59-62).

offer deadline had been extended until after Dr. Danziger had completed his psychological evaluation, the Petitioner filed a *pro se* second state postconviction motion pursuant to rule 3.850 raising this newly discovered evidence claim.[3]

[3] When a claim is discovered for the first time during an evidentiary hearing on an initial rule 3.850 motion, Florida law permits the defendant to file a second rule 3.850 motion based on the newly discovered evidence. *See Forbes v. State*, 269 So. 3d 677, 678-679 (Fla. 2d DCA 2019) ("The subject matter of the claims and the postconviction court's disposition of Ms. Forbes' April 2012 rule 3.850 motion are not pertinent to this appeal. What is relevant is her assertion that, at the November 2014 evidentiary hearing, she learned for the first time that her trial counsel failed to convey a purported probationary sentence offered by the State. [She] fil[ed] of another rule 3.850 motion in August 2015 . . . [raising a] newly discovered evidence claim. . . . Ms. Forbes' newly discovered evidence claim was filed timely based upon her professed November 2014 discovery of the uncommunicated probationary plea offer.") (citations omitted).

H. REASON FOR GRANTING THE WRIT

The question presented is important.

The question presented in this case is as follows:

> Whether this Court's holding in *Missouri v. Frye*, 566 U.S. 134 (2012), that an attorney has a duty pursuant to the Sixth Amendment to communicate a formal plea offer to a criminal defendant also encompasses a duty to communicate to the criminal defendant that the plea offer deadline has been extended.

The Petitioner requests the Court to grant the instant petition and thereafter address whether the duty to communicate a plea offer to a criminal defendant encompasses the duty to communicate to the defendant that the plea offer deadline has been extended.

While *Strickland v. Washington*, 466 U.S. 668 (1984), remains the backdrop against which ineffective-assistance-of-counsel claims are measured, in *Frye*, the Court established a more specific framework for assessing deficiency where a lawyer has allegedly failed to communicate a favorable plea offer. The Court held that "as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." *Frye*, 566 U.S. at 145. The Court further held that if a lawyer fails to communicate such an offer, and it lapses, the attorney's performance is deemed deficient. *See id.* at 147. The Court explained:

> This Court now holds that, as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused. Any exceptions to that rule need not be explored here, for the offer was a formal one with a fixed expiration date. When defense counsel allowed the offer to expire without advising the defendant or allowing him to consider it, defense counsel did not render the effective assistance the

Constitution requires.

> Though the standard for counsel's performance is not determined solely by reference to codified standards of professional practice, these standards can be important guides. The American Bar Association recommends defense counsel "promptly communicate and explain to the defendant all plea offers made by the prosecuting attorney," ABA Standards for Criminal Justice, Pleas of Guilty 14–3.2(a) (3d ed. 1999), and this standard has been adopted by numerous state and federal courts over the last 30 years. *See, e.g., Davie v. State*, 675 S.E.2d 416, 420 (S.C. 2009); *Cottle v. State*, 733 So. 2d 963, 965-966 (Fla. 1999); *Becton v. Hun*, 516 S.E.2d 762, 767 (W.V. 1999); *Harris v. State*, 875 S.W.2d 662, 665 (Tenn. 1994); *Lloyd v. State*, 373 S.E.2d 1, 3 (Ga. 1988); *United States v. Rodriguez Rodriguez*, 929 F.2d 747, 752 (11th Cir. 1991); *Pham v. United States*, 317 F.3d 178, 182 (2d Cir. 2003); *United States ex rel. Caruso v. Zelinsky*, 689 F.2d 435, 438 (3d Cir. 1982); *Griffin v. United States*, 330 F.3d 733, 737 (6th Cir. 2003); *Johnson v. Duckworth*, 793 F.2d 898, 902 (7th Cir. 1986); *United States v. Blaylock*, 20 F.3d 1458, 1466 (9th Cir. 1994); *cf. Diaz v. United States*, 930 F.2d 832, 834 (11th Cir. 1991). The standard for prompt communication and consultation is also set out in state bar professional standards for attorneys. *See, e.g.*, Fla. Rule Regulating Bar 4-1.4 (2008); Ill. Rule Prof. Conduct 1.4 (2011); Kan. Rule Prof. Conduct 1.4 (2010); Ky. Sup. Ct. Rule 3.130, Rule Prof. Conduct 1.4 (2011); Mass. Rule Prof. Conduct 1.4 (2011-2012); Mich. Rule Prof. Conduct 1.4 (2011).
>
> . . . .
>
> Here defense counsel did not communicate the formal offers to the defendant. As a result of that deficient performance, the offers lapsed.

Id. at 145-147.

In the instant case, there is no dispute that defense counsel initially told the Petitioner about the prosecutor's fifteen-year pretrial plea offer. However, there is also no dispute that when defense counsel told the Petitioner about the offer, both defense counsel and the Petitioner were waiting for the Petitioner to be evaluated by a mental health expert in order to determine whether the Petitioner had a viable insanity defense. Apparently realizing that the Petitioner could not make an informed decision

about the prosecutor's pretrial plea offer until after the Petitioner learned whether he had a viable insanity defense, defense counsel was able to convince the prosecutor to extend the plea offer deadline until after the date of the Petitioner's psychological evaluation. Yet, as acknowledged by the Eleventh Circuit Court of Appeals in its opinion below, defense counsel failed to communicate to the Petitioner that the plea offer deadline had been extended. Nevertheless, the Eleventh Circuit held that the Petitioner's case is distinguishable from *Frye* because the failure to communicate in this case involved the plea offer deadline extension rather than the plea offer itself:

> Unlike in *Frye*, it's not that trial counsel failed to convey the plea offer entirely; he just tried but failed to convey the deadline extension. *Frye*, 566 U.S. at 145.

(A-8). The Petitioner requests the Court to grant this petition and thereafter clarify whether the Sixth Amendment duty to communicate a plea offer to a criminal defendant also encompasses the duty to communicate a deadline extension.

Granting the petition in this case will also allow the Court to answer another question that was left unanswered in *Frye* – namely, what "reasonable" steps must a lawyer take when communicating a plea offer to a defendant. In this case, defense counsel did *not* immediately tell the Petitioner about the deadline extension on November 1, 2011, when the prosecutor initially extended the deadline to accept the plea offer. Rather, defense counsel waited until *after* the Petitioner's November 14, 2011, psychological evaluation before he even attempted to tell the Petitioner about the deadline extension – and even then, defense counsel merely (1) called the Petitioner

and left a message with instructions to call him back[4] and (2) called a second time – but discovered that the number that he was calling was out of service.[5] Notably, after being unable to communicate with the Petitioner and inform him that the plea offer deadline had been extended, *defense counsel made no effort to contact the prosecutor in order to get an additional extension of the plea offer deadline* (as he had done before

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[4] The record establishes that when defense counsel called the Petitioner and left a message, defense counsel did *not* call the correct number. As explained in the affidavits/exhibits attached to the Petitioner's state postconviction motion (A-51-54), defense counsel was instructed to use the Petitioner's parents' home number as the primary contact number and the Petitioner's girlfriend's number (Rose Ruiz) as the secondary contact number. These numbers were listed as the primary numbers on the front of defense counsel's file (which includes the following notation):

> NAME: JONES, MARK A . . .
> PHONE (352) 753-3459

(A-57). This phone number listed on the front of the file is Petitioner's parents' number. Additionally, the top of the file contains the notation "Rose" and "407.462.8658." (A-57). Yet defense counsel never attempted either number, as evidenced by the following testimony from the state court postconviction evidentiary hearing:

> Q. Okay. But you didn't call Rose or his parents in an attempt to reach him?
>
> A. No.
>
> Q. About the plea?
>
> A. No.

(A-78).

[5] The failure to immediately inform the Petitioner on November 1, 2011, that the plea offer deadline had been extended is significant. In the Petitioner's mind, the plea offer had expired on November 10, 2011 (i.e., the original plea offer deadline) – *before* Dr. Danziger rendered his opinion that the Petitioner did not have a viable insanity defense.

when he informed the prosecutor that he was still waiting on the psychological evaluation). Yet in the opinion below, the Eleventh Circuit concluded that defense counsel's actions were not deficient:

> [T]rial counsel sought an extension on the plea-deal deadline in the hope that Jones might change his mind given an upcoming psychological evaluation that would determine whether he could pursue an insanity defense. After receiving the extension, trial counsel tried to contact Jones. Jones did not answer the phone call so trial counsel left a message with instructions to call him back. Trial counsel called Jones a second time, but the number was out of service. The plea-deal deadline passed, and Jones went to trial where he was sentenced to life in prison.
>
> Under the deferential standard of *Strickland*, trial counsel's attempts to contact Jones were not perfect but nonetheless reasonable. From trial counsel's "perspective at the time," Jones had rejected the 15-year plea deal. His attorney's last attempt to contact Jones was to try to change his mind given the results of his psychological evaluation. . . . So having failed to reach Jones twice, trial counsel reasonably relented.
>
> With the benefit of hindsight, Jones argues that trial counsel should have tried to contact his parents or seek a deadline extension. But evaluating deficient performance "has nothing to do with what the best lawyers would have done. Nor is the test even what most good lawyers would have done. We ask only whether some reasonable lawyer [during plea negotiations] could have acted, in the circumstances, as defense counsel acted [during plea negotiations]." *Waters v. Thomas*, 46 F.3d 1506, 1512 (11th Cir. 1995) (*en banc*) (internal citations omitted). While trial counsel could have taken those extra steps, the Sixth Amendment did not require him to do so. Trial counsel's actions were reasonable and did not fall below the standard of performance expected of attorneys.

(A-8-9) (some citations omitted). The Petitioner requests the Court to grant this petition and thereafter address the "reasonable" steps that a lawyer must take when attempting to communicate a plea offer with a criminal defendant.[6]

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[6] Undersigned counsel submits that *no reasonable attorney* – after having previously obtained an extension of the plea offer deadline – would simply let the offer expire without (1) doing everything in his or her power to make contact with the client (including calling *all numbers* in the file) and/or (2) obtaining (or attempting to obtain) a second extension of the deadline.

At the conclusion of the opinion below, the Eleventh Circuit asserted that even if defense counsel was ineffective for failing to communicate to the Petitioner that the plea offer deadline had been extended, the Petitioner was not prejudiced because he failed to demonstrate that he would have accepted the prosecutor's plea offer after learning that he did not have a viable insanity defense:

> Even if Jones's argument that trial counsel was deficient had merit, Jones's arguments that he was prejudiced fail because he did not show that he would have accepted the plea deal even with the extension. While Jones now claims that he would have accepted the offer once he knew that the insanity defense was not viable, there is little evidence in the record that shows that's true. In initial conversations with his lawyer about the plea deal, Jones stated that 15 years was too long because his loved ones would have passed away by the time he was released. Furthermore, at the state post-conviction evidentiary hearing, Jones stated that he rejected the 15-year plea deal because he thought he did not qualify as a PRR. Throughout his testimony at the evidentiary hearing, he never conveyed that his decision to reject the plea deal was based on the viability of an insanity defense. His after-the-fact statements before this Court are not enough to show that but for trial counsel's failure to tell him of the extension, he would have taken the deal.

(A-9-10) (citations omitted). The Eleventh Circuit's contention is refuted by a number of factors. First, if defense counsel believed that there was *no chance* that the Petitioner would accept the plea offer, *then why did counsel seek an extension of the plea offer deadline in order to obtain Dr. Danziger's opinion as to whether the Petitioner had a viable insanity defense?* The fact that defense counsel sought the extension clearly shows that counsel believed there was a chance that the Petitioner would accept the plea offer *after learning of Dr. Danziger's opinion*. Defense counsel's own testimony during the state court postconviction evidentiary hearing supports this conclusion:

> My thought would have been perhaps that at this point [i.e., prior

> to the November 14th psychological evaluation] *I'm not going to accept any offer because maybe I'm going to end up with this defense.* Once I had conversation with the doctors who had evaluated Mr. Jones, I knew that was no longer an option, I . . . attempted to reach out to Mr. Jones to encourage him that we don't have the defense *that we hoped we were going to have*.

(A-84) (emphasis added). It was not until *November 15, 2011*, that Dr. Danziger informed defense counsel that based on his psychological evaluation, the Petitioner was *not* insane on the date of the alleged offenses. But prior to that date, *defense counsel and the Petitioner* both "hoped" that the Petitioner was going to have a viable insanity defense (i.e., "the defense that *we* hoped *we* were going to have") – which is why the Petitioner had previously rejected the prosecutor's plea offer.[7] Moreover, the following factors establish that – after learning that he did not have a viable insanity defense – the Petitioner would have accepted the prosecutor's plea offer had he been afforded the opportunity to do so and/or been informed that the deadline for accepting the plea offer had been extended:

- The Petitioner has had previous cases in the criminal justice system, and he has never taken any of those prior cases to trial (i.e., he had always entered guilty/no contest pleas);

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[7] Defense counsel's only discussion with the Petitioner regarding the prosecution's plea offer occurred in October of 2011. (A-73). During that meeting, defense counsel conveyed the plea offer to the Petitioner, but defense counsel told the Petitioner that the plea offer had a November 10th deadline (i.e., a deadline that was *before* the date of the Petitioner's evaluation with Dr. Danziger) – meaning that during that meeting, the Petitioner was forced to give an answer about the plea offer *before* knowing whether he has a viable insanity defense. Because he "hoped" that he was going to have a viable insanity defense, the Petitioner rejected the plea offer during the October 2011 meeting.

- The affidavits attached to the Petitioner's *pro se* second rule 3.850 motion (from the Petitioner's parents and Ms. Ruiz) and the Petitioner's sworn assertions in his rule 3.850 motion – which demonstrate that had the Petitioner known he had no insanity defense, he would have accepted the prosecutor's plea offer (A-35-50, A-51-54);
- A September 2011 letter given to defense counsel by the Petitioner and his family wherein they ask "for some sort of pretrial intervention such as a plea negotiation . . . short of life in prison." (A-55-56). *This letter was written before the prosecutor had even offered the fifteen-year plea offer*;
- After Dr. Danziger concluded that the Petitioner did not have a viable insanity defense, *the Petitioner had no defense* (and generally criminal defendants do not give up a favorable plea offer and proceed to trial facing mandatory life with no defense);
- The prosecution's case against the Petitioner was strong. The prosecution presented credible witnesses, and the case ultimately came down to their word against the word of the Petitioner (who was a convicted felon).

As explained above, the Petitioner should not have been denied the opportunity to accept a favorable plea offer simply because his defense counsel waited until the eleventh hour to attempt to contact him about the plea deadline extension (and, when

unsuccessful in making contact, defense counsel simply gave up and let the deadline expire).

By granting the petition for writ of certiorari in the instant case, the Court will have the opportunity to further clarify the holding in *Frye* and (1) whether the duty to communicate a plea offer to a criminal defendant also encompasses the duty to communicate a deadline extension and (2) the "reasonable" steps that a lawyer must take when attempting to communicate a plea offer with a criminal defendant. The issue in this case is important and has the potential to affect numerous criminal cases nationwide. Accordingly, for the reasons set forth above, the Petitioner prays the Court to grant his certiorari petition.

I. CONCLUSION

The Petitioner requests the Court to grant his petition for writ of certiorari.

Respectfully Submitted,

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