No._____

IN THE SUPREME COURT OF THE UNITED STATES

SHANNON COPELAND,
Petitioner / Appellant,

v.

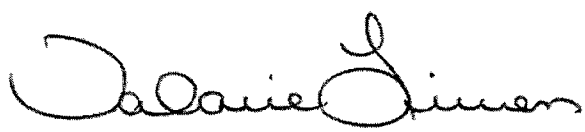
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
STATE OF FLORIDA ATTORNEY GENERAL
Respondent / Appellees.

On Petition For a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

Motion to Proceed In Forma Pauperis

Petitioner, SHANNON COPELAND, asks this Court for leave to proceed in forma pauperis. The United States Court of Appeals for the Eleventh Circuit previously granted Petitioner leave to proceed in forma pauperis and appointed the undersigned as CJA counsel.

Signed on this 9th day of June 2022.



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SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
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On Petition for a Writ of Certiorari to the
Eleventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I. After a criminal defendant is adjudicated incompetent, does the Due Process Clause of the Fifth Amendment require a continuing presumption of incompetency until the court makes an express finding of competency, or can a prior incompetency ruling can be simply cast aside without any further action by the court.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in the Eleventh Circuit Court of Appeals include the Secretary of the Florida Department of Corrections, the Attorney General of the State of Florida, and Petitioner Shannon Copeland. There are no parties to the proceedings other than those named in the petition.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, SHANNON COPELAND, respectfully petitions this Court for a writ of certiorari to review the *Opinion* rendered by the Eleventh Circuit Court of Appeals on APRIL 7, 2022. See Appendix A.

OPINIONS BELOW

The *Opinion* rendered by the Eleventh Circuit Court of Appeal is attached as Appendix A. The *Order* of the district court denying the petition for habeas corpus is attached as Appendix C.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment guarantees the right to not be deprived of liberty without due process of law.

Under the Antiterrorism Effective Death Penalty Act (AEDPA), a state prisoner may pursue habeas relief in federal courts "on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

JURISDICTION

The order of the Eleventh Circuit Court of Appeal was rendered on April 7, 2022. (App.A) This petition is filed within 90 days of that date. Rule 13.1. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1) (2022).

STATEMENT OF THE CASE

In the Section 2254 proceeding below, the Eleventh Circuit held that there is no existing federal law that requires a trial court to make an express finding of competency after a criminal defendant has previously been adjudicated incompetent. (App.A p.14–21)

In the petition for writ of habeas corpus, Ms. Copeland sought relief on the ground that the state court sentenced her as incompetent without being adjudicated competent. She pled that the state court adjudicated her incompetent yet failed to ever make an express finding that she had been restored to competency. (App.A p.8–9)

The state court record reveals that Ms. Copeland was charged with resisting an officer with violence. Both the prosecutor and defense counsel referred Ms. Copeland for a competency evaluation by Dr. Gregory Pritchard, who deemed her competent to proceed but opined that Ms. Copeland was not culpable due to her mental health condition. (App.A p.3)

Several weeks later, the prosecutor once again referred Ms. Copeland for a competency evaluation. This time, Dr. Celeste Shuler determined that Ms. Copeland was incompetent to proceed. Dr. Shuler's report revealed that Ms. Copeland had been committed for psychiatric treatment at least twice before and had been recently treated at a mental health treatment facility for bipolar disorder. Thus, the state court committed Ms. Copeland to a state mental health treatment facility. (App.A p.4)

After two months of inpatient mental health treatment, Dr. Leslie Dellenbarger submitted a written report to the court and opined that Ms. Copeland had been restored to competency. (App.A p.4–5)

At the hearing, both the prosecutor and defense counsel stipulated to Ms. Copeland's competency based upon the report of the psychologist. But rather than conducting a hearing on Ms. Copeland's competency, the state court judge proceeded directly to the plea colloquy. During this colloquy, the state trial court did not make any of the standard inquiries into Ms. Copeland's mental state, whether she was under the influence of drugs or alcohol, whether she was taking any medication, etc. The state trial court made no further inquiry into Ms. Copeland's competency and did not adjudicate her competent. Instead, the state court proceeded directly to sentencing. (App.A p.5–6)

Later, Ms. Copeland violated probation when she failed to report to the probation office as directed. In the appeal of this VOP, Ms. Copeland raised the issue that the state trial court violated her due process rights when she was sentenced without being adjudicated competent after previously having been adjudicated incompetent. The state appellate court affirmed without a written opinion or explanation. (App.A p.7–8)

Upon federal habeas corpus review, the district court adopted the *Report and Recommendations* of the magistrate judge, who found that the state appellate court's rejection of Ms. Copeland's claim was not contrary to, or an unreasonable application of, existing federal law. Specifically, the magistrate judge found that there was no

requirement under federal law for a continuing presumption of incompetency until a court makes an express finding of competency. (App.A p.9–10)

After granting a certificate of appealability on the issue, the Eleventh Circuit affirmed the order of the district court denying Section 2255 relief. First, the Eleventh Circuit held that the state trial court conducted a sufficient competency inquiry when it received a letter from the treating physician that Ms. Copeland had been restored to competency. According to the Court's opinion, the receipt of this letter, along with Ms. Copeland's response to the plea colloquy, was sufficient to establish that Ms. Copeland had been restored to competency. (App.A p.16–7)

Second, the Eleventh Circuit held that there was no evidence in the record that raised a "bona fide doubt" as to Ms. Copeland's competency at the change of plea hearing, even though the state court failed to ask a single question of Ms. Copeland about her present mental health status or medication adherence. (App.A p.17).

This petition for a writ of certiorari now follows.

REASONS FOR GRANTING THE WRIT

I. After a criminal defendant is adjudicated incompetent, does the Due Process Clause of the Fifth Amendment require a continuing presumption of incompetency until the court makes an express finding of competency, or can a prior incompetency ruling can be simply cast aside without any further action by the court?

Question Presented

The question presented in this petition is whether, after an adjudication of incompetency, the Fifth Amendment's Due Process clause requires a continuing presumption of incompetency until an express finding otherwise, or whether a prior incompetency ruling can be simply cast aside without any further action by the court.

Proceedings Below

In the Section 2254 proceeding below, the Eleventh Circuit held that there is no existing federal law that requires a trial court to make an express finding of competency after a criminal defendant has previously been adjudicated incompetent. (App.A p.14–21)

In the petition for writ of habeas corpus, Ms. Copeland sought relief on the ground that the state court sentenced her as incompetent without being adjudicated competent. She pled that the state court adjudicated her incompetent yet failed to ever make an express finding that she had been restored to competency. (App.A p.8–9)

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At the hearing, both the prosecutor and defense counsel stipulated to Ms. Copeland's competency based upon the report of the psychologist. But rather than conducting a hearing on Ms. Copeland's competency, the state court judge proceeded directly to the plea colloquy. During this colloquy, the state trial court did not make any of the standard inquiries into Ms. Copeland's mental state, whether she was under the influence of drugs or alcohol, whether she was taking any medication, etc. The state trial court made no further inquiry into Ms. Copeland's competency and did not adjudicate her competent. Instead, the state court proceeded directly to sentencing. (App.A p.5–6)

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Second, the Eleventh Circuit held that there was no evidence in the record that raised a "bona fide doubt" as to Ms. Copeland's competency at the change of plea

hearing, even though the state court failed to ask a single question of Ms. Copeland about her present mental health status or medication adherence. (App.A p.17).

Ms. Copeland now asks this Court to decide whether, after an adjudication of incompetency, the Fifth Amendment's Due Process Clause requires a continuing presumption of incompetency until an express finding otherwise, or whether a prior incompetency ruling can be simply cast aside without any further action by the court.

LAW

Under the Antiterrorism Effective Death Penalty Act (AEDPA), a state prisoner may pursue habeas relief in federal courts "on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). If a state court has adjudicated a claim on the merits, a federal court may grant habeas relief if the state court's decision was (1) "contrary to, or involved an unreasonable application of, clearly established [f]ederal law, as determined by the Supreme Court," or (2) "based on an unreasonable determination of the facts in light of the evidence presented in the [s]tate court proceeding." 28 U.S.C. § 2254(d)(1),(2). A state court's decision rises to the level of an unreasonable application of federal law only where the ruling is "objectively unreasonable, not merely wrong; even clear error will not suffice." Virginia v. LeBlanc, 137 S. Ct. 1726, 1728 (2017) (quotation omitted). Therefore, AEDPA imposes a "highly deferential standard for evaluating state-court rulings . . . and demands that state-court decisions be given the benefit of the doubt." Renico v. Lett, 559 U.S. 766, 773 (2010) (quotations omitted).

Due process categorically prohibits a defendant who is mentally incompetent to be subjected to any stage of criminal proceedings. Drope v. Missouri, 420 U.S. 162, 171–172 (1974) ("It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subject to trial.") Thus, convicting and sentencing an incompetent person violates due process. Pate v. Robinson, 383 U.S. 375, 378 (1966); U.S. Const. amend. V.

"[T] he failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial." Drope, 420 U.S. at 172; U.S. Const. amend. V. Procedural due process requires adequate notice and an opportunity to be heard "at a meaningful time and in a meaningful manner." Boddie v. Connecticut, 401 U.S. 371, 378 (1971). Interpreting these two constitutional principles in conjunction requires that an individual who has been adjudicated incompetent is presumed to remain incompetent until being afforded a meaningful competency hearing, where the person is then adjudicated competent to proceed by a court. See generally Pate, 383 U.S. 375 (holding that a defendant raising competency as an issue is entitled to a competency *hearing*).

ARGUMENT

Ms. Copeland asks this Court to decide, under the Fifth Amendment's Due Process clause, whether there is a continuing presumption of incompetency for a criminal defendant unless and until a court enters an express and independent finding that the defendant's competency has been restored.

To be clear, due process has always prohibited Ms. Copeland from being sentenced while incompetent. But a common sense reading of the constitutional interpretations of Drope and Boddie require that an individual who has been adjudicated incompetent is presumed to remain incompetent until being afforded a **meaningful** competency hearing, where the person is then adjudicated competent to proceed by the court. See generally Pate, 383 U.S. 375 (holding that a defendant raising competency as an issue is entitled to a competency *hearing*). Ms. Copeland was afforded no such hearing, as the state court failed to ask her simple and standard questions during the plea hearing colloquy such as whether she was taking her prescribed medication or whether she was under the influence of any drugs or medication.[1]

Simply put, the decision of the Eleventh Circuit permits a trial court to merely cast aside a prior incompetency adjudication without making any further express finding that the defendant is, in fact, competent to proceed to trial or sentencing. To

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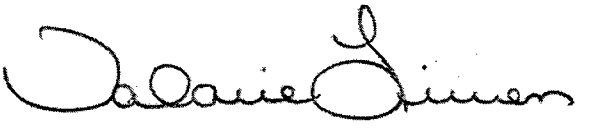
[1] In light of Dr. Dellenbarger's report to the court, the state court was well aware that Ms. Copeland had been prescribed various psychotropic medications during her treatment at Florida State Hospital, yet the state court failed to inquire as to whether she was taking those medications at the change of plea hearing on September 5, 2007. Instead, the state court proceeded directly to accepting the plea and sentencing Ms. Copeland. See App.A p.5–6.

allow this holding to stand would render the Fifth Amendment's competency, notice, and hearing requirements meaningless.

Accordingly, Ms. Copeland asks this Court to decide whether, after an adjudication of incompetency, the Fifth Amendment's Due Process clause requires a continuing presumption of incompetency until an express finding otherwise, or whether a prior incompetency ruling can be simply cast aside without any further action by the court.

CONCLUSION

Petitioner requests that this Court grant a writ of certiorari and award her any and all further relief to which she is entitled.



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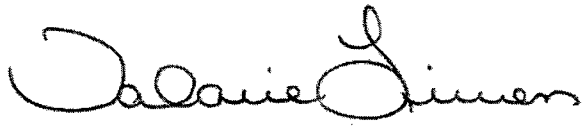
CERTIFICATE OF TYPEFACE COMPLIANCE

This brief complies with the type-volume limitation of Rule 33.1(g) because this brief contains 2,247 words. Signed on this 9th day of June 2022.



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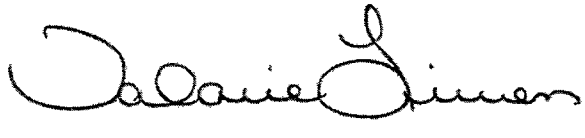
Respondent / Appellees.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Assistant Attorney General Bryan Jordan, Attorney for Appellees, Office of the Attorney General, 107 W. Gaines Street, Tallahassee, FL, 32399, by e-mail delivery on this 9th day of June 2022.



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APPENDIX

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

APPENDIX A

Opinion

[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 20-11742

Non-Argument Calendar

SHANNON COPELAND,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:18-cv-00173-RH-MJF

Before LAGOA, BRASHER, and JULIE CARNES, Circuit Judges.

PER CURIAM:

Petitioner Shannon Copeland appeals from the district court's denial of her petition for a writ of habeas corpus under 28 U.S.C. § 2254. Copeland argues on appeal that the district court erred when it held that the Florida appellate court's denial of her competency-based due process claim was not contrary to, or an unreasonable application of, clearly established federal law as determined by the Supreme Court. Having carefully reviewed the record and the arguments of the parties, we discern no error and thus affirm.

BACKGROUND

In May 2007, Petitioner Shannon Copeland was charged in Florida state court with resisting an officer with violence and battery on a law enforcement officer. The charges arose from an incident that occurred on May 17, 2007, after a Liberty County sheriff's deputy responded to a report by Copeland's father concerning a verbal altercation at his home. Copeland's father told the deputy who arrived on the scene that Copeland was acting out and would not take her medication for mental illness. When Copeland saw the deputy, she locked herself in a bathroom and called someone to come and get her. Copeland then climbed out of the bathroom window and ran.

After confirming that there were two outstanding Martin County warrants for Copeland's arrest, the deputy pursued and was able to apprehend and arrest Copeland despite a significant physical struggle. The struggle continued while Copeland was being processed at the Liberty County jail. Copeland eventually was pepper-sprayed and placed in a holding cell at the jail, at which time she allegedly urinated on the floor, scooped up the urine, and threw it at the deputy who had arrested her. Another deputy subsequently was able to obtain Copeland's compliance by tasing her.

The State declined to pursue the battery charge against Copeland but prosecuted her for resisting an officer with violence. Copeland's defense counsel and the prosecutor in the case jointly moved to refer Copeland for a competency evaluation. Copeland was evaluated in late May 2007 by Dr. Gregory Prichard, who determined that she was competent to proceed but not culpable due to her mental health condition. Dr. Prichard noted in his report that Copeland had been prescribed various psychotropic medications for bipolar disorder and that she had committed numerous criminal offenses beginning in 2002, all of which related to her relationship with a male individual and which culminated in a Martin County domestic violence injunction and aggravated stalking charge in 2006 or 2007. Dr. Prichard determined that Copeland had a rational appreciation of the resisting charge lodged against her in Liberty County and that she had the capacity to consult with counsel and testify relevantly as to the charge, but that her

delusional disorder prevented her from understanding the nature and consequences of her actions when she incurred the charge.

On June 7, 2007, a few weeks after Dr. Prichard's evaluation, the prosecutor referred Copeland for a second competency evaluation. This time, Dr. Celeste Shuler evaluated Copeland and determined that she was incompetent to proceed. Dr. Shuler's report indicated that Copeland had been committed for residential psychiatric treatment on two prior occasions, and that she was currently being treated for bipolar disorder but that she had admitted she was not taking her prescribed medications. Dr. Shuler noted that Copeland's behavioral difficulties had become progressively worse since her arrest, and that she had demonstrated delusional thinking throughout her evaluation. Dr. Shuler ultimately concluded that Copeland suffered from delusional disorder with additional symptoms of bipolar and borderline personality disorder, which diminished her capacity to effectively participate in her own defense.

Based on Dr. Shuler's evaluation, the state trial court committed Copeland to the Florida Department of Children and Families to be placed in a residential mental health treatment facility for the purpose of restoring her competency. Copeland was committed on June 8, 2007 and admitted to the Florida State Hospital for residential psychiatric treatment on June 13, 2007.

On August 13, 2007, after approximately two months of residential treatment, Florida State Hospital submitted a report to the state trial court indicating that Copeland no longer met the criteria for commitment and that she had been restored to competency.

The report included an evaluation by Dr. Leslie Dellenbarger, who noted that Copeland had been prescribed different psychotropic medications during her treatment at Florida State Hospital, that she had become compliant with her medications after her behavior and mental health symptoms stabilized, and that she had attended ten hours of weekly competency training while she was committed. Dr. Dellenbarger concluded that Copeland "demonstrated both a factual and rational understanding of all areas of competency assessed" and that she was "competent to proceed."

Upon receipt of the report from Florida State Hospital, the state trial court notified the parties that it would conduct a competency hearing for Copeland on September 5, 2007. At the hearing, defense counsel advised the court that Copeland had been deemed incompetent a few months prior but that the hospital where Copeland had received residential treatment had submitted a report finding her competent to proceed, and he stipulated to her competency. The prosecutor stated that he had reviewed the report finding Copeland competent, and he likewise stipulated to Copeland's competency. Defense counsel then informed the court that Copeland wanted to withdraw her previously entered plea of not guilty and enter a plea of no contest to one count of resisting with violence.

After the competency discussion, the court proceeded to colloquy Copeland. During the colloquy, Copeland responded affirmatively—and appropriately—to the state trial court's questions as to whether: (1) she had consulted and was satisfied with her

attorney, (2) she understood the charge against her and had voluntarily signed and understood her plea, (3) there was a factual basis to support the charge against her, and (4) she understood the maximum penalty that could be imposed for the charge and the rights she was giving up by entering a plea. The court subsequently accepted Copeland's plea and found that it was entered "freely, intelligently, and voluntarily."

After some additional discussion of Copeland's criminal offenses since 2002, and an explanation by defense counsel that Copeland would be returning to Martin County to be sentenced for the stalking offense she had committed there, Copeland directly addressed the court. At this time, Copeland explained to the court—rationally and succinctly—that it was a misunderstanding that she had not been taking her medication, that she was seeing a doctor on a regular basis, and that she had incurred the resisting charge in part because she did not know there were outstanding warrants against her and she believed when she saw the deputy at her father's house on May 17, 2007 that she was going to be involuntarily committed. Copeland explained further that she had not thrown urine from her jail cell, but rather scooped water off the floor of the cell to put in her eyes after being pepper sprayed.

Following the colloquy and Copeland's statements during the hearing, the state trial court adjudicated Copeland guilty of the offense of resisting an officer with violence. The court sentenced Copeland to 113 days of time-served, plus three years of probation with the special conditions that she fully comply with psychiatric

treatment recommendations, including taking her medication, that she avoid the individual she had been charged with stalking, and that she not go to Martin County except to answer her outstanding charge in that county.

Copeland subsequently was sentenced to serve over a year in the Martin County jail on her stalking charge there. Upon Copeland's release from the Martin County jail in January 2009, she was instructed to report to the probation office to begin serving her three-year probation for the Liberty County resisting offense underlying this case. Copeland violated her probation when she failed to report to the probation office as directed. It was later determined that Copeland had also violated her probation by changing her residence without informing her probation officer. Copeland was arrested for the probation violations in July 2009 and a violation of probation ("VOP") hearing was set for September 2009. Copeland did not appear for the 2009 hearing because she had by that time been reincarcerated and sentenced to 144 months on a high-speed or wanton fleeing charge in Martin County.

In July 2010, the state trial court was made aware that Copeland was serving a sentence in Martin County, and it ordered the Liberty County Sheriff's Office to issue a detainer against Copeland to secure her presence for disposition of the VOP charge once she was released from prison. In September 2016, Copeland's attorney arranged for her to be transported to Liberty County for a VOP hearing. At the VOP hearing, Copeland entered a counseled, open admission to the VOP charges, and her probation was

revoked. After a colloquy, the state trial court determined Copeland's admission was intelligently and voluntarily made, adjudicated Copeland guilty of violating her probation, and sentenced Copeland to 24 months on the Liberty County resisting offense, to be served consecutively to her Martin County sentence.[1]

Copeland appealed her VOP admission and sentence to the Florida appellate court. In support of her appeal, Copeland argued, among other things, that the state trial court had violated her due process rights by failing to make a judicial determination of her competence prior to accepting her plea on the resisting charge in 2007. Specifically, Copeland argued that after she was adjudicated incompetent in June 2007 (based on Dr. Shuler's report), she was presumed to remain incompetent until the state trial court held a competency hearing and expressly adjudicated her competent. According to Copeland, no such hearing and adjudication occurred prior to her plea and sentencing on the resisting charge in September 2007. The Florida appellate court rejected Copeland's appeal and affirmed the amended judgment against her in a *per curiam* decision issued without a written opinion or explanation. *See Copeland v. State*, 237 So.3d 940 (Fla. 1st DCA 2017) (Table).

Copeland subsequently filed the instant *pro se* federal habeas petition pursuant to 28 U.S.C. § 2254. In her petition, Copeland asserted the same competency-based due process claim

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[1] The sentence was later reduced by approximately four months after Copeland was awarded credit for time served in 2007.

that she raised in the Florida appellate court, among other claims.[2] In support of her competency claim, Copeland alleged that the state trial court had "sentenced [her] as incompetent without being adjudicated competent" and "after being found insane/incompetent."

Copeland's § 2254 petition was referred to a Magistrate Judge, who recommended in a Report and Recommendation ("R&R") that the petition be denied. As to Copeland's competency-based due process claim, the Magistrate Judge determined that relief under § 2254 was not warranted because the Florida appellate court's rejection of that claim was not contrary to, or an unreasonable application of, existing federal law. More specifically, the Magistrate Judge concluded that the Florida court's ruling on Copeland's claim could not be contrary to clearly established federal law because the Supreme Court "has not addressed a claim precisely like Copeland's, nor has it ruled on a materially indistinguishable set of facts." Nor was the ruling an unreasonable application of clearly established federal law, the Magistrate Judge reasoned, because the specific legal rule upon which Copeland's claim rested—a continuing presumption of incompetency until the trial court makes an express finding of competency, as required by

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[2] Copeland also alleged in her habeas petition that she was sentenced based on unsubstantiated allegations and a false police report, and that her plea was involuntary. The district court denied these claims, and this Court declined to issue a COA. Accordingly, we only consider Copeland's competency-based due process claim in this appeal.

Florida's procedural rules—"has not been squarely established by the Supreme Court." In further support of its recommendation, the Magistrate Judge cited evidence indicating that Copeland was in fact competent at the time of her plea and sentencing, including: (1) Dr. Dellenbarger's report finding Copeland competent, (2) the stipulations of the prosecutor and defense counsel, (3) Copeland's behavior and demeanor during the change of plea hearing, and (4) Copeland's answers to the court's questions and her rational discussion of the facts underlying her case.

The district court adopted the Magistrate Judge's R&R rejecting Copeland's competency-based due process claim and declined to issue a Certificate of Appealability ("COA") as to the claim. Copeland filed a notice of appeal, which this Court construed as a motion for a COA. A single judge of this Court appointed counsel for Copeland and granted a COA solely as to the competency issue. The COA describes the issue for appeal as: "[w]hether the [state] trial court violated Copeland's due process right to a fair trial by failing to enter an order of competence, in compliance with [Florida Rule of Criminal Procedure] 3.212, before accepting her no-contest plea."

Copeland argues on appeal that the state trial court violated her federal due process rights when it accepted her plea and sentenced her without first holding a competency hearing and entering an order expressly finding her competent. According to Copeland, once she had been deemed incompetent, she was presumed to remain incompetent until she was afforded such a

hearing and express competency finding. As such, Copeland argues, the Florida appellate court's order rejecting her competency-based due process claim and affirming the state trial court's amended entry of judgment sentencing her to 24 months on a VOP arising from her 2007 plea and sentencing is contrary to or an unreasonable application of federal law, warranting federal habeas relief under § 2254.

DISCUSSION

I. Standard of Review

We review the district court's legal conclusions, its holdings as to mixed questions of law and fact, and its ultimate denial of Copeland's § 2254 habeas petition *de novo*. *See Thomas v. Att'y Gen.*, 992 F.3d 1162, 1184 (11th Cir. 2021). We review any factual findings made by the district court for clear error. *Id.*

II. Federal Habeas Relief under § 2254

The Florida appellate court adjudicated Copeland's competency-based due process claim on the merits in her state appeal. Federal habeas relief is thus unavailable under § 2254, as amended by the Antiterrorism and Effective Death Penalty Act (AEDPA), unless the Florida court's ruling on the claim was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by" the United States Supreme Court.[3] *See*

[3] Federal habeas relief can also be granted when a state court's ruling on a federal claim is "based on an unreasonable determination of the facts in light of the evidence presented in the [s]tate court proceeding." *See* 28 U.S.C.

Sexton v. Beaudreaux, 138 S. Ct. 2555, 2558 (2018) (quoting 28 U.S.C. § 2254(d)) (quotation marks omitted).

The "contrary to" clause of § 2254(d)(1) applies when a state court "arrives at a conclusion opposite to that reached by the Supreme Court on a question of law or . . . decides a case differently than the Supreme Court has on a set of materially indistinguishable facts." *Franks v. GDCP Warden*, 975 F.3d 1165, 1171 (11th Cir. 2020) (quoting *Williams v. Taylor*, 529 U.S. 362, 413 (2000)) (alterations adopted and quotation marks omitted). The "unreasonable application" clause applies when a state court "identifies the correct governing legal principle from the Supreme Court's decisions but unreasonably applies that principle to the facts" of the case. *Id.* (alterations adopted and quotation marks omitted). A state court's decision constitutes an unreasonable application of clearly established federal law only where the ruling is "objectively unreasonable, not merely wrong[.]" *Virginia v. LeBlanc*, 137 S. Ct. 1726, 1728 (2017) (quotation marks omitted). Pursuant to AEDPA, even "clear error" by the state court does not warrant federal habeas relief under the unreasonable application prong of § 2254(d). *Id.*

For a petitioner to obtain habeas relief under either the "contrary to" or the "unreasonable application" provision of § 2254, there must be a "clear answer—that is, a holding by the Supreme

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§ 2254(d)(2). But Copeland does not argue for the application of that provision nor otherwise challenge any factual determination made by the state trial court or the Florida appellate court.

Court—about an issue of federal law" that is contravened by the challenged state court ruling. *See Reese v. Sec'y, Fla. Dep't of Corr.*, 675 F.3d 1277, 1286–88 (11th Cir. 2012). "A state court's decision cannot be contrary to, or involve an unreasonable application of, clearly established Federal law, as determined by the Supreme Court . . . unless there is a Supreme Court decision on point." *Nance v. Warden, Ga. Diagnostic Prison*, 922 F.3d 1298, 1304 (11th Cir. 2019) (citation and quotation marks omitted). Further, "it is not an unreasonable application of clearly established federal law for a state court to decline to apply a specific legal rule that has not been squarely established by" the Supreme Court. *Knowles v. Mirzayance*, 556 U.S. 111, 122 (2009) (quotation marks omitted). Notably, a federal court cannot grant habeas relief under § 2254 based solely on precedent from the state court or on a perceived error of state law. *See Reese*, 675 F.3d at 1290 ("A precedent of a state court about an issue of state law can never establish an entitlement to a federal writ of habeas corpus. Moreover, even if a decision of a state court interprets federal law, [a federal habeas petitioner] cannot rely on that decision because under AEDPA, our review is limited to examining whether the highest state court's resolution of a petitioner's claim is contrary to, or an unreasonable application of, clearly established law, as set forth by the United States Supreme Court." (quotation marks omitted)).

As evidenced by the above discussion, the standard for obtaining federal habeas relief on a claim that has been adjudicated on the merits in state court "is difficult to meet." *See Sexton*, 138

S. Ct. at 2558 (quoting *Harrington v. Richter*, 562 U.S. 86, 102 (2011) (quotation marks omitted)). That is "because it was meant to be." *Id.* (quotation marks omitted). Pursuant to AEDPA, a "state court's determination that a claim lacks merit precludes federal habeas relief so long as fairminded jurists could disagree" that the state court's ruling conflicts with the Supreme Court's precedents. *See Richter*, 562 U.S. at 101 (quotation marks omitted).

III. Copeland's Competency Claim

In support of her argument that the Florida appellate court's denial of her competency-based due process claim was contrary to—or an unreasonable application of—clearly established federal law, Copeland primarily relies on the Supreme Court decisions *Pate v. Robinson*, 383 U.S. 375 (1966) and *Drope v. Missouri*, 420 U.S. 162 (1975). In *Pate* and *Drope* the Supreme Court reiterated its long-standing rule that a defendant cannot, consistent with due process, be subjected to a criminal proceeding unless she is competent to stand trial. *See Pate*, 383 U.S. at 378 ("[T]he conviction of an accused person while he is legally incompetent violates due process"); *Drope*, 420 U.S. at 171 ("It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subject to a trial.").

For purposes of this rule, a defendant is competent when she has a "present ability to consult with [a] lawyer with a reasonable degree of rational understanding" and a "rational as well as factual

understanding of the proceedings" against her. *See Drope*, 420 U.S. at 172 (quoting *Dusky v. United States*, 362 U.S. 402 (1960) (quotation marks omitted)). The state trial courts in both *Pate* and *Drope* conducted a criminal trial without inquiring into the defendant's competency, and despite substantial evidence that the defendant in each of those cases did not have the requisite rational and factual understanding to satisfy the competency standard. *See Pate*, 383 U.S. at 378–85 (noting that the trial court had proceeded with the defendant's trial for shooting his wife without conducting a competency hearing despite evidence that the defendant had a long history of disturbed behavior and delusions, that he had served time in prison for shooting his 18-month old son in a prior erratic episode during which he had also shot himself in the head, and where numerous witnesses testified that the defendant was presently insane at the time of the trial and the prosecutor admitted that a psychological evaluation performed two or three months prior to trial and summarily opining that the defendant knew the nature of the charges against him and was able to cooperate with counsel was not dispositive on the issue of the defendant's competence); *Drope*, 420 U.S. at 164–81 (observing that the trial court had denied the defendant's motion for a continuance so he could be examined and receive psychiatric treatment, that the court had proceeded with the defendant's trial on a rape charge without a competency hearing despite evidence indicating that the defendant had a long history of mental illness and bizarre behavior, and that the court had thereafter proceeded with the trial in the defendant's absence after being informed that the defendant could not appear in court

because he had been hospitalized after shooting himself in the stomach on the second day of trial).

The Supreme Court held that the due process rights of the defendants in *Pate* and *Drope* were violated under the circumstances—that is, where the trial court had required the defendant to stand trial without holding a competency hearing or otherwise inquiring into the defendant's competency despite evidence that raised "a bona fide doubt as to [the] defendant's competence[.]" *Pate*, 383 U.S. at 385 (quotation marks omitted); *see also Drope*, 420 U.S. at 180 (noting that the evidence "created a sufficient doubt of [the defendant's] competence to stand trial to require further inquiry on the question"). But Copeland's competency-based due process claim does not clearly fall within the rule of *Pate* and *Drope* for several reasons.

First, and contrary to *Pate* and *Drope*, the state trial court in this case did not fail to inquire into Copeland's competence when the court was alerted by the parties in May 2007 that her competence was an issue. Instead, the court here obtained a psychological evaluation of Copeland and ultimately entered an order committing her to the Florida State Hospital for residential mental health treatment. Thereafter, the court did not hold any proceedings in Copeland's case until it was notified by the Florida State Hospital—and specifically by Dr. Dellenbarger, who evaluated Copeland on August 13, 2007 after she completed two months of residential mental health treatment—that Copeland had been restored to competency and that she no longer met the requirements

for commitment. At that time, the court scheduled a competency hearing for Copeland, which hearing occurred on September 5, 2007.

Second, and likewise dissimilar to *Pate* and *Drope*, there was no evidence that raised a "bona fide doubt" as to Copeland's competence at the time of the September 5, 2007 hearing, at the conclusion of which the state trial court accepted Copeland's plea and sentenced her. On the contrary, all the evidence before the state trial court—including Dr. Dellenbarger's report from August 13, 2007, the prosecutor and defense counsel's stipulations, and Copeland's demeanor and verbal responses in court—indicated that Copeland had been restored to competency after two months of residential treatment intended to achieve that exact purpose, and that at the time of her plea and sentencing on September 5, Copeland had a "present ability to consult with [her] lawyer" and a "rational . . . [and] factual understanding" of the proceedings against her. *See Dusky*, 362 U.S. at 402. To that end, Dr. Dellenbarger's report specifically stated that Copeland "demonstrated both a factual and rational understanding of all areas of competency assessed" and that she was "competent to proceed." Copeland's demeanor and presentation in court, including her rational and well-ordered explanation of certain facts surrounding her offense, confirmed her competency.

Copeland emphasizes that she had been deemed incompetent by Dr. Celeste Shuler and committed for residential treatment in June 2007, three months prior to her plea and sentencing

hearing. According to Copeland, federal due process requires that an individual who previously has been deemed incompetent must be "presumed to remain incompetent until being afforded a meaningful competency hearing, where the person is then adjudicated competent to proceed by a court." Again, the state trial court scheduled the September 5, 2007 hearing upon its receipt of a report from Florida State Hospital indicating that Copeland had been restored to competency. The court then opened the hearing by inquiring into Copeland's competency, and it ultimately determined based on the evidence presented at the hearing that Copeland had decided to enter a plea "freely, intelligently, and voluntarily." Accordingly, the record indicates that the state trial court held a hearing during which it inquired into Copeland's competency, and that it determined that she was competent although it did not enter a written order expressly adjudicating her so.

Copeland suggests that the September 5, 2007 hearing was inadequate because the state trial court did not independently consider additional evidence of her competency and, as noted, she argues further that she was presumed to remain incompetent until the court made an express adjudication of her competency. But Copeland does not point to any evidence that the state trial court overlooked or that would have led the court to question her competency as of September 5, 2007. *See Moore v. Campbell*, 344 F.3d 1313, 1324 (11th Cir. 2003) ("A defendant who was at the pertinent time competent to stand trial is not entitled to a new trial on the procedural ground that the trial judge in his initial trial failed to

hold a competency hearing."). Moreover, Copeland does not cite, and we have not found, any Supreme Court authority that requires the additional procedures for which she argues or that imposes a presumption of continuing incompetency until the trial court expressly enters an express adjudication of competency. *See Medina v. California*, 505 U.S. 437, 446 (1992) ("The rule that a criminal defendant who is incompetent should not be required to stand trial has deep roots in our common-law heritage. . . . By contrast, there is no settled tradition on the proper allocation of the burden of proof in a proceeding to determine competence." (quotation marks and citation omitted)). Those requirements are not mandated by *Pate* or *Drope*, the Supreme Court cases cited by Copeland in support of her § 2254 petition.

In fact, the presumption of continuing incompetency and express adjudication requirement cited by Copeland arise not from Supreme Court precedent, but instead from Florida Rule of Criminal Procedure 3.212. *See* Fla. R. Crim. P. 3.212(c)(7). Florida Rule 3.212 provides that "[i]f, at any time after [a defendant's] commitment [for treatment to restore competency], the court decides, after hearing, that the defendant is competent to proceed, it shall enter its order so finding and shall proceed." *Id.* As interpreted by the Florida Supreme Court, Florida Rule 3.212 requires that "[a]n individual who has been adjudicated incompetent is presumed to remain incompetent until adjudicated competent to proceed by a court." *See Dougherty v. State*, 149 So.3d 672, 676 (Fla. 2014) (quotation marks omitted). Per *Dougherty*, Florida law arguably

requires a more extensive competency hearing than occurred here, as well as a written order of competency to proceed, when a defendant previously has been adjudicated incompetent. *See id.* at 677–78 ("[B]ased on our precedent and the procedural rules for competency determinations, a defendant cannot stipulate that he is competent, particularly where he has been previously adjudicated incompetent during the same criminal proceedings. Further, if a trial court finds that a defendant is competent to proceed, it must enter a written order so finding.").

But even assuming, without deciding, that the state trial court failed to comply with Florida Rule 3.212 and *Dougherty* when it accepted Copeland's plea and sentenced her without entering an order expressly adjudicating her competent, that failure does not warrant federal habeas relief under § 2254. *See Reese*, 675 F.3d at 1290. As discussed above, Copeland does not cite, and we have not found, any Supreme Court authority that clearly mandates the specific procedures advocated for by Copeland under the circumstances of this case. Further, all the evidence before the state trial court at the time of Copeland's plea and sentencing on September 5, 2007—including Dr. Dellenbarger's psychological evaluation on August 13, 2007 concluding that Copeland had been restored to competency after two months of residential treatment, the prosecutor and defense counsel's stipulations, and Copeland's demeanor and verbal responses in the courtroom—indicates that Copeland was in fact competent to proceed at that time. *See Wright v. Sec'y for Dep't of Corr.*, 278 F.3d 1245, 1257 (11th Cir. 2002) (holding, on

facts similar to this case, that the state appellate court's rejection of a defendant's competency-based due process claim "implicitly reflects a conclusion that all of the facts considered together were not sufficient to raise a bona fide doubt" as to the defendant's competence at the time of trial). Therefore, the Florida appellate court's rejection of Copeland's competency-based due process claim was not contrary to or an unreasonable application of clearly established federal law, as required to support federal habeas relief under § 2254.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the judgment of the district court denying Copeland's § 2254 petition for federal habeas relief.

No._____

IN THE SUPREME COURT OF THE UNITED STATES

SHANNON COPELAND,
Petitioner / Appellant,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
STATE OF FLORIDA ATTORNEY GENERAL
Respondent / Appellees.

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

APPENDIX B

Order Granting COA

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11742-E

SHANNON COPELAND,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Northern District of Florida

ORDER:

Shannon Copeland, a Florida prisoner serving a two-year sentence for resisting arrest with violence and violating the conditions of her probation,[1] seeks a certificate of appealability ("COA") to appeal the district court's denial of her 28 U.S.C. § 2254 petition. In order to obtain a COA, Copeland must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). She satisfies this requirement by demonstrating that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," or that the issues "deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation marks omitted).

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[1] Copeland's sentence is consecutive to her 12-year sentence in a separate state-court case.

In Claim 1, Copeland argued that she was sentenced without first being adjudicated competent.[2] The district court determined that the state court's decision was not contrary to, or an unreasonable application of, clearly established federal law, as there was no Supreme Court case on point. Reasonable jurists could debate the district court's denial of this claim. Thus, a COA is granted on the following:

> Whether the trial court violated Copeland's due process right to a fair trial by failing to enter an order of competence, in compliance with Fla. R. Crim. P. 3.212, before accepting her no-contest plea.

In Claim 2, Copeland argued that the trial court violated her due process right by relying on an unsubstantiated allegation—that she traveled out of county in violation of her probation order—to impose a consecutive, rather than concurrent, sentence for violating her probation. Reasonable jurists would not debate the district court's denial of this claim, as the 24-month consecutive sentence was well below the statutory maximum for resisting arrest with violence. *See* Fla. Stat. § 775.082 (3)(e) (the term of imprisonment for a third-degree felony is up to 5 years).

In Claim 3, Copeland argued that the police report for her resisting arrest charge was based on the false report of an unnamed police officer who lied to cover up abuse and voluntarily resigned from duty for stealing money from the community softball program, without further elaboration. Reasonable jurists would not debate the district court's denial of this claim, as her free-standing claim of actual innocence is conclusory.

In Claim 4, Copeland argued that her plea was not voluntary, as she was "overmedicated into a stupor from the medicine not properly prescribed." Reasonable jurists would not debate the

[2] In her trial proceeding, Copeland was adjudged incompetent. Subsequently, the trial court held a competency hearing, where counsel announced that Copeland wanted to enter a no-contest plea to resisting arrest with violence. The court did not enter an order finding her competent before accepting her plea.

district court's determination that this claim was unexhausted, as Copeland did not fairly present this claim in state court. *See Picard v. Connor*, 404 U.S. 270, 275 (1971). Copeland also failed to show cause and prejudice or actual innocence to excuse her default. *See Bailey v. Nagle*, 172 F.3d 1299, 1306 (11th Cir. 1999). Finally, under these circumstances, we find it appropriate to *sua sponte* appoint counsel to represent Copeland in her appeal. *See Smith v. Fla. Dep't of Corr.*, 713 F.3d 1059, 1065 n.11 (11th Cir. 2013).

Accordingly, because Copeland has made a substantial showing of the denial of a constitutional right, her COA motion is GRANTED on only the issues identified in this order. We *sua sponte* GRANT appointment of counsel. Counsel shall be appointed by separate order.

/s/ Adalberto Jordan
UNITED STATES CIRCUIT JUDGE

No._____

IN THE SUPREME COURT OF THE UNITED STATES

SHANNON COPELAND,
Petitioner / Appellant,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
STATE OF FLORIDA ATTORNEY GENERAL
Respondent / Appellees.

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

APPENDIX C

Order

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

SHANNON COPELAND,

Petitioner,

v. CASE NO. 4:18cv173-RH-MJF

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent.

_____/

ORDER DENYING THE PETITION AND DENYING A CERTIFICATE OF APPEALABILITY

This petition for a writ of habeas corpus under 28 U.S.C. § 2254 is before the court on the magistrate judge's report and recommendation, ECF No. 39, and the objections, ECF No. 41. I have reviewed de novo the issues raised by the objections. The report and recommendation is correct and is adopted as the court's opinion.

Rule 11 of the Rules Governing § 2254 Cases requires a district court to "issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Under 28 U.S.C. § 2253(c)(2), a certificate of appealability may

issue "only if the applicant has made a substantial showing of the denial of a constitutional right." *See Miller-El v. Cockrell*, 537 U.S. 322, 335-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983); *see also Williams v. Taylor*, 529 U.S. 362, 402-13 (2000) (setting out the standards applicable to a § 2254 petition on the merits). As the Court said in *Slack*:

> To obtain a COA under § 2253(c), a habeas prisoner must make a substantial showing of the denial of a constitutional right, a demonstration that, under *Barefoot*, includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were " 'adequate to deserve encouragement to proceed further.' "

529 U.S. at 483-84 (quoting *Barefoot*, 463 U.S. at 893 n.4). Further, to obtain a certificate of appealability when dismissal is based on procedural grounds, a petitioner must show, "at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Id.* at 484.

The petitioner has not made the required showing. This order thus denies a certificate of appealability.

For these reasons,

IT IS ORDERED:

1. The report and recommendation is accepted.

2. The clerk must enter judgment stating, "The petition is denied with prejudice."

3. A certificate of appealability is denied.

4. The clerk must close the file.

SO ORDERED on April 17, 2020.

s/Robert L. Hinkle
United States District Judge

No._____

IN THE SUPREME COURT OF THE UNITED STATES

SHANNON COPELAND,
Petitioner / Appellant,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,
STATE OF FLORIDA ATTORNEY GENERAL
Respondent / Appellees.

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

APPENDIX D

Report and Recommendation

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

SHANNON COPELAND,

Petitioner,

v. Case No. 4:18-cv-173-RH-MJF

SECRETARY, DEPARTMENT OF CORRECTIONS,

Respondent.
_____/

REPORT AND RECOMMENDATION

Petitioner Shannon Copeland has filed a *pro se* petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. 1). Respondent ("the State") answered, providing relevant portions of the state court record. (Doc. 19). Copeland replied. (Doc. 23). The undersigned concludes that no evidentiary hearing is required for the disposition of this matter, and that Copeland is not entitled to habeas relief.[1]

[1] This case was referred to the undersigned to address preliminary matters and to make recommendations regarding dispositive matters. *See* N.D. Fla. Loc. R. 72.2(B); *see also* 28 U.S.C. § 636(b)(1)(B), (C); Fed. R. Civ. P. 72(b).

I. Background and Procedural History

In May 2007, Copeland was arrested in Liberty County, Florida, for resisting arrest with violence (Count 1) and battery on a law enforcement officer by throwing fluids (Count 2). (Doc. 19, Attach. 1, Ex. A (arrest report and probable cause affidavit)).[2] The State filed an information charging Copeland in Liberty County Circuit Court Case No. 2007-CF-60, with resisting arrest with violence. (Attach. 1, Ex. C at 181 (information)). The State declined to pursue the battery charge.

On September 5, 2007, Copeland entered an open plea of "no contest" to the resisting arrest charge. (Attach. 1, Ex. B at 56-71 (plea and sentencing transcript); Attach. 1, Ex. C at 204-05 (written plea and acknowledgement of rights)). The trial court accepted Copeland's plea, adjudicated her guilty of resisting arrest with violence, and sentenced her to 113 days in the county jail with credit for 113 days of time served, and a 3-year term of probation with the special conditions that she: (1) have no contact with Michael McGhee; (2) not go to Martin County except to answer outstanding warrants/charges in that county; and (3) comply with recommendations for treatment of her medical condition, including taking her medications. (Attach. 1,

[2] Citations to the state court record are to the electronically-filed exhibits attached to the State's answer. (Doc. 19). The citation refers to the electronic attachment number followed by the exhibit letter. When a page of an exhibit bears more than one page number, the court cites the number appearing at the bottom left corner of the page.

Ex. B at 56-71 (plea and sentencing transcript); Attach. 2, Ex. G (judgment and order of probation)). Copeland did not move to withdraw her plea, did not directly appeal the 2007 judgment and sentence, and did not seek collateral review of her conviction.

On January 1, 2009, Copeland was released from the Florida Department of Corrections after serving the incarceration portion of a sentence imposed by the Martin County Circuit Court in Case No. 2006-CF-1858. (Attach. 1, Ex. B at 13-21 (violation report with addenda and supporting affidavits); *see also* Exs. M-N (Martin County documents)). That same day, Copeland's probation officer directed her to report to the probation office in Quincy, Florida, on January 5, 2009. (*Id.*). On January 6, 2009, the State filed a probation violation report alleging that Copeland violated her probation by failing to report as directed by the probation officer. (Attach. B at 13-15). An additional VOP charge was added on January 12, 2009, alleging that Copeland changed her residence without procuring the consent of her probation officer. (Attach. 1, Ex. B at 17-21).

Copeland was arrested on the VOP charges on July 2, 2009. (Attach. 1, Ex. B at 22-23). Copeland was appointed counsel, and a VOP hearing was scheduled for September 1, 2009. (Attach. 1, Ex. B at 7-8 (docket sheet), Ex. B at 24 (order appointing counsel)). The VOP hearing was continued several times while Copeland

resolved pending VOCC charges for violating her community control in Martin County Case No. 2006-CF-1858. (Attach. 1, Ex. B at 8, 25).

On May 3, 2010, the court in Liberty County was notified that Copeland was sentenced to prison on the Martin County VOCC charges. (Attach. 1, Ex. B at 8 (docket sheet); *see also* Attach. 4, Exs. N, O (Martin County VOCC judgments (original and resentencing)). The Liberty County court scheduled a VOP hearing for July 7, 2010. (*Id.*). At the July 7, 2010, hearing, the court removed the case from the docket and lodged a detainer against Copeland to secure her presence for disposition of the VOP charges once she was released from prison. (*See* Attach. 1, Ex. B at 8 (docket sheet)).

On July 14, 2013, Copeland filed a *pro se* "Motion for Relief" in her Liberty County case requesting "final disposition" of the VOP charges. (Attach. 1, Ex. B at 29-30). On August 20, 2013, the court appointed counsel to represent Copeland and set the matter for a case management conference. (Attach. 1, Ex. B at 31).

In the meantime, on August 14, 2013, Copeland filed a *pro se* state habeas petition in the Liberty County Circuit Court. (Attach. 2-3, Ex. H). The court opened a new case file and assigned Case No. 2013-CA-169. (Attach. 2, Ex. H at 1). On December 5, 2013, the state court construed Copeland's petition as seeking relief from the detainer lodged against her in her criminal case (Case No. 2007-CF-60).

(Attach. 3, Ex. K at 1). The state habeas court took judicial notice of the fact that the State was "now actively prosecuting Petitioner on the charges in Case 07CF60," and that the docket in that case "also reflects that on July 30, 2013, Petitioner filed a Motion for Relief seeking similar relief, disposition of the probation violation charges." (Attach. 3, Ex. K at 1-2). The court concluded that Copeland's petition was "mooted by the prosecution of the charges," and ordered that the habeas case be closed. (*Id.* at 2). Copeland filed a notice of appeal from that order. (Attach. 3, Ex. L at 1). On January 7, 2014, the Florida First District Court of Appeal ("First DCA") ordered Copeland to file a copy of the order being appealed. (Attach. 3, Ex. L at 2). On April 4, 2014, after Copeland failed to comply, the First DCA dismissed the appeal for Copeland's failure to comply with that court's orders and her failure to file a copy of the order being appealed. (Attach. 3, Ex. L at 5).

On September 12, 2016, the Liberty County Circuit Court held a VOP hearing where Copeland entered a counseled, open admission to the VOP charges. (Attach. 1, Ex. B at 103-04 (plea/admission to VOP charges and acknowledgement of rights), Ex. B at 148-65 (VOP hearing transcript)). After a colloquy, the trial court determined that Copeland's admission to the violations was intelligently and voluntarily made, accepted Copeland's admission, adjudicated her guilty of violating her probation, revoked her probation, and sentenced her to 24 months of

imprisonment to run consecutive to her Martin County sentence. (Attach. 1, Ex. B at 105-113 (VOP judgment); *see also* Ex. B at 116 (order revoking probation)).

On September 13, 2016, Copeland filed a counseled motion to correct sentence under Florida Rule of Criminal Procedure 3.800(a), seeking jail credit of 4 months and 4 days on her VOP sentence. (Attach. 1, Ex. B at 99-102). On October 6, 2016, Copeland, on her own behalf, filed a "Motion to Withdraw Plea," in which she sought to withdraw her admission to the probation violations on the grounds that (1) she was promised her VOP sentence would not involve "consecutive time," (2) she was not guilty of the violations or of the original crime of resisting arrest with violence, and (3) her VOP sentence was excessive. (Attach. 1, Ex. B at 133-34). Copeland also filed, on her own behalf, a notice of appeal from the VOP judgment and sentence. (Attach. 1, Ex. B at 142).

On December 9, 2016, the court held a hearing on Copeland's Rule 3.800 motion and awarded her the additional jail credit. (Attach. 1, Ex. C at 206 (order); *see also* Ex. C at 207-12 (motion hearing transcript)). The court denied Copeland's motion to withdraw her plea due to her having filed a notice of appeal. (Attach. 1, Ex. C at 210-11).

Copeland pursued her VOP appeal with the assistance of counsel. (Attach. 7, Ex. AA, (initial brief), Ex. CC (reply brief)). On November 29, 2017, the First DCA

affirmed the VOP judgment and sentence *per curiam* without written opinion. *Copeland v. State*, 237 So. 3d 940 (Fla. 1st DCA 2017) (Table) (copy at Attach. 7, Ex. DD).

Copeland filed her federal habeas petition on March 6, 2018, raising four claims. (Doc. 1). The State asserts that each claim fails for one or more of the following reasons: (1) the allegations do not state a discernible basis for habeas relief; (2) the claim is unexhausted and procedurally defaulted; (3) Copeland fails to meet § 2254(d)'s demanding standard; and (4) the claim is refuted by the record and therefore fails on *de novo* review. (Doc. 19).

II. Section 2254 Standard of Review

A federal court "shall not" grant a habeas corpus petition on any claim that was adjudicated on the merits in state court unless the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court." 28 U.S.C. § 2254(d)(1). The United States Supreme Court explained the framework for § 2254 review in *Williams v. Taylor*, 529 U.S. 362 (2000).[3] Justice O'Connor described the appropriate test:

[3] Unless otherwise noted, references to *Williams* are to the majority holding, written by Justice Stevens for the Court (joined by Justices O'Connor, Kennedy, Souter, Ginsburg, and Breyer) in parts I, III, and IV of the opinion (529 U.S. at 367-75, 390-99); and Justice O'Connor for the Court (joined by Justices Rehnquist, Kennedy, Thomas, and—except as to the footnote—Scalia) in part II (529 U.S. at 403-13).

> Under the "contrary to" clause, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by this court on a question of law or if the state court decides a case differently than this Court has on a set of materially indistinguishable facts. Under the "unreasonable application" clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts of the prisoner's case.

Id., 529 U.S. at 412-13 (O'Connor, J., concurring).

Under the *Williams* framework, the federal court must first determine the "clearly established Federal law," namely, "the governing legal principle or principles set forth by the Supreme Court at the time the state court render[ed] its decision." *Lockyer v. Andrade*, 538 U.S. 63, 71-72 (2003). After identifying the governing legal principle, the federal court determines whether the state court's adjudication is contrary to the clearly established Supreme Court case law. The adjudication is "contrary" only if either the reasoning or the result contradicts the relevant Supreme Court cases. *See Early v. Packer*, 537 U.S. 3, 8 (2002) ("Avoiding th[e] pitfalls [of § 2254(d)(1)] does not require citation to our cases – indeed, it does not even require awareness of our cases, so long as neither the reasoning nor the result of the state-court decision contradicts them.").

The opinion of Justice Stevens in Part II was joined by Justices Souter, Ginsburg, and Breyer.

If the "contrary to" clause is not satisfied, the federal court determines whether the state court "unreasonably applied" the governing legal principle set forth in the Supreme Court's cases. The federal court defers to the state court's reasoning unless the state court's application of the legal principle was "objectively unreasonable" in light of the record before the state court. *See Williams*, 529 U.S. at 409; *Holland v. Jackson*, 542 U.S. 649, 652 (2004). "[E]ven a strong case for relief does not mean the state court's contrary conclusion was unreasonable." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

Section 2254(d) also allows habeas relief for a claim adjudicated on the merits in state court where that adjudication "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2). The "unreasonable determination of the facts" standard is implicated only to the extent the validity of the state court's ultimate conclusion is premised on unreasonable fact finding. *See Gill v. Mecusker*, 633 F.3d 1272, 1292 (11th Cir. 2011). As with the "unreasonable application" clause, the federal court applies an objective test. *See Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003) (holding that a state court decision based on a factual determination "will not be overturned on factual grounds unless objectively unreasonable in light of the evidence presented in the state court proceeding."). "The question under

AEDPA is not whether a federal court believes the state court's determination was incorrect but whether that determination was unreasonable—a substantially higher threshold." *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007) (citing *Williams*, 529 U.S. at 410). AEDPA also requires federal courts to "presume the correctness of state courts' factual findings unless applicants rebut this presumption with 'clear and convincing evidence.'" *Landrigan*, 550 U.S. at 473-74 (quoting 28 U.S.C. § 2254(e)(1)).

The Supreme Court has often emphasized that a state prisoner's burden under § 2254(d) is "difficult to meet, . . . because it was meant to be." *Richter*, 562 U.S. at 102. The Court elaborated:

> As amended by AEDPA, § 2254(d) stops short of imposing a complete bar on federal-court relitigation of claims already rejected in state proceedings. *Cf. Felker v. Turpin*, 518 U.S. 651, 664, 116 S. Ct. 2333, 135 L.Ed.2d 827 (1996) (discussing AEDPA's "modified res judicata rule" under § 2244). It preserves authority to issue the writ in cases where there is no possibility fairminded jurists could disagree that the state court's decision conflicts with this Court's precedents. It goes no further. Section 2254(d) reflects the view that habeas corpus is a "guard against extreme malfunctions in the state criminal justice systems," not a substitute for ordinary error correction through appeal. *Jackson v. Virginia*, 443 U.S. 307, 332, n. 5, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) (Stevens, J., concurring in judgment). As a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.

Richter, 562 U.S. at 102-03 (emphasis added).

A federal court may conduct an independent review of the merits of a petitioner's claim only if it first finds that the petitioner satisfied § 2254(d). *See Panetti v. Quarterman*, 551 U.S. 930, 954 (2007). Even then, the writ will not issue unless the petitioner shows that he is in custody "in violation of the Constitution or laws and treaties of the United States." 28 U.S.C. § 2254(a).

III. Discussion

Ground One **"Sentenced as incompetent without being adjudicated competent." (Doc. 1 at 5 in ECF).**

This claim involves Copeland's September 5, 2007, plea and conviction for resisting arrest with violence. Copeland alleges:

> I was sent to the state hospital after a psychologist lied and said I told her I could not stand the sight of the lawyer I had never met. No one adjudicated me competent and I was sentenced after being found insane/incompetent.

(Doc. 1 at 5 in ECF). The following procedural history provides context for this claim.

After the sworn complaint was filed on May 17, 2007, alleging that Copeland resisted an officer with violence and battered a law enforcement officer, Copeland's defense counsel referred her for a competency evaluation. Dr. Gregory Prichard evaluated Copeland on May 23, 2007, and concluded, in a report dated June 1, 2007, that Copeland was competent to proceed. (Attach. 2, Ex. H at 47-54 in ECF). The

State Attorney's Office referred Copeland for a competency evaluation on June 7, 2007. Dr. Celeste Shuler evaluated Copeland and concluded, in a report dated June 8, 2007, that Copeland was not competent to proceed. (Attach. 2, Ex. H at 55-62 in ECF).

The parties appeared for Copeland's arraignment on June 8, 2007. (Attach. 1, Ex. B at 6 (copy of docket); Attach. 1, Ex. C at 213-16 (transcript of proceeding)). The prosecutor informed the court:

> MR. COMBS [Prosecutor]: Judge, the next item is Shannon Copeland. Judge, on Ms. Copeland, there has been some various evaluations of Ms. Copeland. One, I was provided a report by a Dr. Prichard, and then as of yesterday, Dr. Shuler examined her and gave us an oral report this morning that in her opinion Ms. Copeland has decompensated since the time Dr. Prichard looked at her and is of the opinion that she is incompetent at this point in time and qualifies for the criteria for involuntary commitment to the Florida State Hospital on competency issues.
>
> As I understood from what she said, she believes that Ms. Copeland probably would be found competent after some period of time in the hospital, with some treatment and medication. And I would—I'm willing to stipulate to that. She has not written the report yet. She just evaluated her last night, came up this morning and reported to us her findings. She is present in the courtroom, if the Court has any questions to ask of her. I would stipulate to that report that she is about to write that a sufficient basis, if the Court determines that you would find her incompetent and commit her to Florida State Hospital. We would have to waive her appearance because she is not currently—
>
> MR. CROWLEY [Defense Counsel]: She's in the Gadsden County jail right now, which we do, we would waive it.

MR. COMBS: Defense waives her appearance. I would stipulate to Dr. Shuler's conclusion at this time about competency. I'm not agreeing on the question of not guilty by reason of insanity. I filed a motion for further evaluation of Ms. Copeland, but if she is going to be found incompetent and sent to Florida State Hospital, I would hold that off until we get back that she is competent. No use proceeding on that evaluation until then.

THE COURT: Well, if both of you stipulate and agree that she is incompetent to proceed—

MR. COMBS: Yes, sir, at this point in time, based upon what the doctor told me, I would say that she is.

THE COURT: The Court will enter an order then.

MR. CROWLEY: And the defense will also, Your Honor. I just so happen to have an order.

THE COURT: Okay.

MR. COMBS: The written report will need to be done by Dr. Shuler before she can be taken. He can sign the order, but they can't take her to Florida State Hospital until they get the report from Dr. Shuler attached to it. As I understand it, and you know better than I do, they're a bunch of bean counters up there.

MR. CROWLEY: They are.

MR. COMBS: And if they don't have the report, they won't take her.

MR. CROWLEY: If we try to send her without the written report, it will delay the whole thing.

THE COURT: All right. Well, I'll enter the order, subject to receiving that written report attached to the order.

(Doc. 19, Attach. 1, Ex. C at 213-16). That day, June 8, 2007, the trial court entered an order adjudging Copeland incompetent to proceed based on the written report of Dr. Prichard and the parties' stipulation.[4] (Attach. 1, Ex. C at 177-80). The court found that Copeland met the criteria for involuntary commitment, and committed her to the Florida Department of Children and Families for treatment. (*Id.*). Copeland was admitted to Florida State Hospital on June 13, 2007. (Attach. 1, Ex. C at 184).

On August 13, 2007, the administrator of the Florida State Hospital ("FSH") filed a competency evaluation and report prepared by Dr. Leslie Dellenbarger. (Attach. 1, Ex. C at 182-90). The Dellenbarger report discussed Copeland's mental health history, her treatment since Copeland's admission to FSH, her rehabilitation progress, and her responses to questions during the competency assessment. Dr. Dellenbarger concluded that Copeland understood the legal charge against her, understood the penalties associated with that charge, understood the adversarial nature of the legal process, could disclose relevant facts to her attorney, could conduct herself appropriately in a courtroom, and could provide relevant testimony. (Attach. 1, Ex. C at 187-90). Dr. Dellenbarger opined that Copeland was competent

[4] Dr. Shuler's report was not filed with the court until June 11, 2007. (Attach. 2, Ex. H at 55 in ECF).

to proceed in her criminal case and no longer met the criteria for continued involuntary commitment.

On August 14, 2007, the trial court entered an order notifying the parties of the Dellenbarger report and setting a hearing to address Copeland's competence. (Attach. 2, Ex. F). A hearing was held on September 5, 2007, at which Copeland was present with counsel. (Attach. 1, Ex. B at 56-71). At the outset of the hearing, defense counsel announced:

> MR. CROWLEY [Defense Counsel]: Your Honor, this is Ms. Shannon Copeland, 07-060. She was found incompetent to proceed a few months ago. The hospital sent a report finding her competent to proceed. We stipulate to that.
>
> MR. COMBS [Prosecutor]: And, Judge, I would stipulate to the report. I've reviewed it from the hospital that she is now competent to stand trial.
>
> MR. CROWLEY: And we would like at this point Your Honor, to withdraw the previously entered plea of not guilty and enter a plea of no contest to one count of resisting with violence. There is no agreement with the State as to a sentence at this time.

(Attach. 1, Ex. B at 58). Copeland was placed under oath, and the trial court asked her a series of questions:

> THE COURT: Your lawyer has provided to the Court a written plea and acknowledgement of rights form. It appears to bear your signature. Is that your signature?
>
> THE DEFENDANT: Yes, sir.

THE COURT: Have you gone over this fully with your lawyer?

THE DEFENDANT: Yes, sir.

THE COURT: Has he explained it to you in detail?

THE DEFENDANT: Yes, sir.

THE COURT: You read it yourself?

THE DEFENDANT: Yes, sir.

THE COURT: You can read and write? You understand it?

THE DEFENDANT: Yes, sir.

THE COURT: Has anyone threatened you in any way, promised you anything coerced you to enter this plea?

THE DEFENDANT: No, sir.

THE COURT: Is your plea entered into freely and voluntarily?

THE DEFENDANT: Yes, sir.

THE COURT: Are you satisfied with the services rendered to you by your lawyer?

THE DEFENDANT: Yes, sir.

THE COURT: Is there a factual basis to support the charges, counsel?

MR. CROWLEY: Yes, Your Honor[.]

THE COURT: Do you understand that you've been charged with a third-degree felony of resisting arrest with violence? Do you

understand the maximum penalty that could be imposed to that is five years in the penitentiary?

THE DEFENDANT: Yes, sir.

THE COURT: There's no agreement with the State as to what the penalty will be imposed by the Court?

THE DEFENDANT: Yes, sir.

THE COURT: There is no agreement?

THE DEFENDANT: Right.

THE COURT: No one has promised you anything?

THE DEFENDANT: Right.

THE COURT: And you know you have a right to a trial by jury when you are charged with a crime?

THE DEFENDANT: Right.

THE COURT: But by entering this plea, you are waiving that right to a trial of any kind?

THE DEFENDANT: Yes, sir.

THE COURT: You waive your right to have a lawyer assist you in trial and confront witnesses against you and call witnesses on your own behalf?

THE DEFENDANT: Yes, sir.

THE COURT: And you waive your right to remain silent as to these charges?

THE DEFENDANT: Yes, sir.

THE COURT: You understand all matters which are appealable at this point are waived by entering this plea?

THE DEFENDANT: Yes, sir.

(Attach. 1, Ex. B at 58-60). After confirming there was a factual basis for the plea, the trial court determined that Copeland's plea was "entered into freely, intelligently, and voluntarily," and accepted her no contest plea. (*Id.* at 61). Before sentencing her, the court heard arguments from the prosecutor and defense counsel concerning an appropriate sentence. The court addressed Copeland personally:

THE COURT: I was reading the probable cause while y'all were talking, and it indicated that you weren't being too good about taking your medication.

THE DEFENDANT: I was taking my medication. That was a misunderstanding that they had or someone had that I wasn't taking my medication, but I was. And I was seeing a doctor on a regular basis, a psychiatric nurse, and a licensed clinical social worker, so.

THE COURT: Well. Something caused you to act the way you did based on what—

THE DEFENDANT: I was very frightened. I thought—I didn't realize there were warrants out for me. My dad had called the police because he was upset with me over a minor thing. And the police showed up, and it frightened me. And I just left. And then it was after that that I understand that they found out there were warrants for me. They didn't come to the house to pick me up for warrants. My dad had called and told them that I was mentally ill and wasn't taking my medicine because he was upset with me. So, I didn't understand that there were warrants out for me. And when they put me in the holding cell, they pepper sprayed me and tased me with a taser gun. Then they

started giving me water to put on my eyes, and then they stopped giving me water. And then I started scooping it up off the floor to put on my eyes. And that's when they said that I was expelling fluids at them. And that is not true.

THE COURT: The Court will adjudicate you guilty of this offense of resisting with violence. The Court will place you on probation for a period of three years. Special conditions of probation will be that you don't go back down to Martin County, have no contact with this person.

MR. CROWLEY: She has to go back down there.

THE COURT: Well, except to answer for those offenses, but have no contact with the person that you, apparently, have been stalking. Do you have a name, Mr.—

. . . .

PROBATION OFFICER: Your Honor, his name is Michael McGee.

. . . .

THE COURT: Special condition of probation will be that you comply fully with recommendations for your treatment, taking medication for your mental health condition. It will be standard court costs and fines. Be sentenced to 113 days in county jail as condition of probation. You'll be given credit for 113 days time served. You have a right to appeal. If you desire to do so, you need to file a notice of appeal within 30 days. If you cannot afford a lawyer, the Court will appoint one for you at the public's expense.

(Attach. 1, Ex. B at 68-70; *see also* Attach. 2, Ex. G (judgment)).

Copeland did not appeal the September 5, 2007, judgment. Later, however, in her appeal of the 2016 VOP judgment, she raised this issue: "[T]he trial court erred

as a matter of law and violated Ms. Copeland's due process rights by failing to make a judicial determination of Ms. Copeland's competence to proceed prior to accepting her plea where Ms. Copeland had previously been adjudged incompetent to proceed by the court." (Attach. 7, Ex. AA, Issue I). Copeland's appellate brief framed the issue as a purely legal one. (*Id.* at 13-14). Copeland asserted that because she was adjudged incompetent to proceed on June 8, 2007, Florida law required that the trial court conduct a competency hearing and enter a written order finding her competent to proceed, before proceeding with her plea and sentencing. (*Id.* at 13-18). Copeland maintained that "the trial court never heard evidence, never held a hearing, never addressed the matter in any way, and never made any finding" that she was competent. (*Id.* at 16). Copeland concluded that "[t]he trial court's failure to make the required independent determination regarding Ms. Copeland's competency to stand trial, led to the State's proceeding against an incompetent defendant, which is prohibited." (*Id.* at 16 (citing *Dougherty v. State*, 149 So. 3d 672, 678 (Fla. 2014); *Barnes v. State*, 124 So. 3d 904, 915 (Fla. 2013); *Zern v. State*, 191 So. 3d 962, 965 (Fla. 1st DCA 2016))).

The First DCA summarily affirmed without explanation. (Attach. 7, Ex. DD). This court liberally construes Copeland's present claim as raising the same claim she presented to the First DCA. (Doc. 1 at 5). To clarify, Copeland does not allege,

nor did she in the First DCA, that she was not in fact mentally competent to proceed when she pleaded no contest (*i.e.*, that she did not have a "sufficient present ability to consult with h[er] lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against h[er]." *Godinez v. Moran*, 509 U.S. 389, 396 (1993)). Her allegation is that the trial court's failure to follow Florida's statutory procedures requiring an adjudication of competence deprived her of a fair proceeding. (Doc. 19, Attach. 7, Ex. AA at 14-16 (citing Florida caselaw)). The State asserts that Copeland is not entitled to habeas relief because she fails to meet § 2254(d)'s demanding standard. (Doc. 19 at 22-30).

A. Clearly Established Federal Law

The "conviction of an accused person while he is legally incompetent violates due process." *Pate v. Robinson*, 383 U.S. 375, 378 (1966) (citing *Bishop v. United States*, 350 U.S. 961 (1956)). A defendant is incompetent if she lacks "sufficient present ability to consult with h[er] lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against h[er]." *Godinez*, 509 U.S. at 396 (internal quotation marks omitted) (citing *Dusky v. United States*, 362 U.S. 402, 402 (1960)). The constitutional competency standard for entering a guilty plea is the same as the competency standard for standing trial. *Godinez*, 509 U.S. at 396.

When evidence raises a "bona fide doubt" of a defendant's competence to proceed, due process requires that a court hold an adequate hearing regarding competency. *Pate*, 383 U.S. at 385 (holding that when the evidence "raises a bona fide doubt as to a defendant's competence to stand trial, the judge on his own motion must . . . conduct a [competency hearing].") (quotation marks omitted); *Drope v. Missouri*, 420 U.S. 162, 180 (1975) (holding that when the evidence "create[s] sufficient doubt" about the defendant's competence to stand trial, a competency hearing is constitutionally required); *see also Medina v. Singletary*, 59 F.3d 1095, 1106 (11th Cir. 1995) ("To prevail on the procedural claim, a petitioner must establish that the state trial judge ignored facts raising a bona fide doubt regarding the petitioner's competency to stand trial.").

A procedural competency claim (*i.e.*, a *Pate* claim) necessarily is confined to information presented to the trial court. *See Pate*, 383 U.S. at 378 (analyzing a procedural competency claim by reviewing the conduct of the trial and the evidence touching on the question of the defendant's competence at that time); *Drope*, 420 U.S. at 180 (same); *Fallada v. Dugger*, 819 F.2d 1564, 1568 (11th Cir. 1987) (holding that a *Pate* analysis focuses on "what the trial court did in light of what it then knew, [and] whether objective facts known to the trial court were sufficient to raise a bona fide doubt as to the defendant's competency"); *see also Medina*, 59 F.3d

at 1106 (noting that a *Pate* claim "can and must be raised on direct appeal because an appellate court hearing the claim *may consider only the information before the trial court before and during trial*." (emphasis added)).

In assessing this information, the Supreme Court in *Drope* elaborated:

> The import of our decision in *Pate v. Robinson* is that evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but that even one of these factors standing alone may, in some circumstances, be sufficient. There are, of course, no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated. That they are difficult to evaluate is suggested by the varying opinions trained psychiatrists can entertain on the same facts.

Drope, 420 U.S. at 180.

B. Section 2254 Review of State Court's Decision

The First DCA's summary decision is an "adjudication on the merits" of Copeland's claim and, therefore, is entitled to deference under § 2254(d). *Richter*, 562 U.S. at 99 ("When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary."); *id.* at 100 ("This Court now holds and reconfirms that

§ 2254(d) does not require a state court to give reasons before its decision can be deemed to have been 'adjudicated on the merits.'").

Where, as here, the last adjudication on the merits provides no reasoned opinion, federal courts review that decision using the test announced in *Richter*. According to *Richter*, "[w]here a state court's decision is unaccompanied by an explanation," a petitioner's burden under section 2254(d) is to "show[ ] there was no reasonable basis for the state court to deny relief." *Richter,* 562 U.S. at 98. "[A] habeas court must determine what arguments or theories supported or, as here, could have supported, the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of [the United States Supreme] Court." *Id.* at 102.

Florida's statutory procedure protects a criminal defendant's right not to be tried while incompetent.[5] Florida Rule 3.210 provides: "A person accused of an offense . . . who is mentally incompetent to proceed at any material stage of a criminal proceeding shall not be proceeded against while incompetent." Fla. R. Crim. P. 3.210(a) (2007). When a criminal defendant is found incompetent to

[5] Copeland does not challenge the constitutional adequacy of Florida's statutory procedure.

proceed and committed for treatment, the treatment facility must file a status report no later than 6 months from the date of admission. Fla. R. Crim. P. 3.212(c)(5) (2007). If at any time during that six-month period the administrator of the facility "determines that the defendant no longer meets the criteria for commitment or has become competent to proceed, the administrator shall notify the court by such a report, with copies to all parties." Fla. R. Crim. P. 3.212(c)(5) (2007). The court must hold a hearing within 30 days of its receipt of the report. Fla. R. Crim. P. 3.212(c)(6) (2007). At such hearing, "[t]he experts preparing the reports may be called by either party or the court, and additional evidence may be introduced by either party." Fla. R. Crim. P. 3.212(a) (2007). If the court decides, after hearing, that the defendant is competent to proceed, it "shall enter its order so finding and shall proceed." Fla. R. Crim. P. 3.212(c)(7) (2007). If, after such hearing, the court determines that the defendant remains incompetent to proceed but no longer meets the criteria for commitment, the defendant may be released on appropriate release conditions for a period not to exceed one year. Fla. R. Crim. P. 3.212(c)(8) (2007).

In *Dougherty*, *supra*, the Florida Supreme Court recognized that, generally, a proper competency hearing involves the calling of court-appointed experts. 149 So. 3d at 677. The court, however, also recognized that "[t]he plain language of rule 3.212(a) . . . does not require the calling of expert witnesses or any additional

witnesses because the word 'may' is used. Further, 'where the parties and the judge agree, the trial court may decide the issue of competency on the basis of the written reports alone.'" *Id.* at 677-78 (emphasis added) (quoting *Fowler v. State*, 255 So.2d 513, 515 (Fla. 1971)).

Copeland's competence to proceed was addressed at the September 5, 2007, hearing. The parties do not dispute the accuracy of the evidence relevant to Copeland's mental condition that was before the trial court at that time. The trial court possessed the following evidence:

(1) the June 8, 2007, Shuler report and court adjudication that Copeland was incompetent to proceed;

(2) the August 7, 2007, Dellenbarger report finding Copeland competent to proceed;

(3) the parties' September 5, 2007, stipulation to Copeland's competence to proceed, and the parties' joint stipulation to the issue of Copeland's competence being determined on the basis of the Dellenbarger report alone;

(4) Copeland's behavior and demeanor at the September 5, 2007, hearing;

(5) Copeland's answers to the trial court's questions at the September 5, 2007, hearing concerning her ability to consult with her attorney about her case and her satisfaction with counsel's representation; and

(6) Copeland's answers to the trial court's questions at the September 5, 2007, hearing confirming (i) her understanding of the nature of the criminal charge and the maximum possible penalty, (ii) her understanding of the plea process, including the consequences of entering a no contest plea, (iii) her understanding of the constitutional rights she was waiving by entering the plea, (iv) her understanding of the terms of the written plea and waiver of rights form she signed, (v) that she, personally, made the decision to plead no contest, and (vi) that she was entering her plea because she believed it was in her best interest and not because she was threatened or improperly induced.

Copeland does not identify any other evidence that was before the trial court on the issue of her competence. Copeland also does not dispute that the evidence before the court raised no doubt that as of September 5, 2007, she was able to consult with her lawyer with a reasonable degree of rational understanding and that she had a rational and factual understanding of the proceeding. Rather, Copeland claims that the trial court's failure to comply with Florida's statutory rule requiring entry of an order of competence deprived her of a fair proceeding.

Copeland has failed to show that the "contrary to" prong of the AEDPA standard has been satisfied. *See* 28 U.S.C. § 2254(d)(1). A state court decision is "contrary to . . . clearly established Federal law, as determined by the Supreme Court

of the United States" where the state court (1) "arrives at a conclusion opposite to that reached by [the Supreme Court] on a question of law" or (2) "confronts facts that are materially indistinguishable from a relevant Supreme Court precedent and arrives at a result opposite to [the Supreme Court]." *Williams*, 529 U.S. at 405-06. The Supreme Court has not addressed a claim precisely like Copeland's, nor has it ruled on a "materially indistinguishable" set of facts.

The remaining question is whether the First DCA unreasonably applied a holding of the Supreme Court of the United States when it rejected Copeland's due process claim. "[I]t is not an unreasonable application of clearly established Federal law for a state court to decline to apply a specific legal rule that has not been squarely established by [the Supreme Court]." *Knowles v. Mirzayance*, 556 U.S. 111, 122 (2009) (internal quotation marks omitted). The Supreme Court often has reiterated that, in the absence of a clear answer—that is, a holding by the Supreme Court—about an issue of federal law, a federal habeas court cannot say that a decision of a state court about that unsettled issue was an unreasonable application of clearly established federal law. *Wright v. Van Patten*, 552 U.S. 120, 126 (2008) ("Because our cases give no clear answer to the question presented, let alone one in Van Patten's favor, it cannot be said that the state court unreasonably applied clearly established federal law.") (internal quotation marks omitted); *Schriro v. Landrigan*,

550 U.S. 465, 478 (2007) (holding that the Arizona Supreme Court did not unreasonably apply federal law because "we have never addressed a situation like this."); *Carey v. Musladin*, 549 U.S. 70, 77 (2006) ("Given the lack of holdings from this Court regarding the potentially prejudicial effect of spectators' courtroom conduct of the kind involved here," the denial of relief by the California Court of Appeal "was not contrary to or an unreasonable application of clearly established federal law."). Copeland has not established "that the state court's ruling . . . was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Richter*, 562 U.S. at 103.

Because the First DCA's rejection of Copeland's due process claim was neither contrary to, nor an unreasonable application of, a holding of the United States Supreme Court, Copeland is not entitled to habeas relief on Ground One.

Ground Two **"Sentenced based on unsubstantiated allegation." (Doc. 1 at 7 in ECF).**

Copeland's next claim challenges her VOP sentence on this basis: "Judge said she was giving me a 2 year consecutive sentence because I went to Martin County. This was not true and there was no evidence presented to support this." (*Id.* at 7 in ECF). Copeland asserts that she raised this claim in her VOP appeal. (*Id.*). Copeland's counseled brief on appeal presented this issue: "Whether the trial court

violated Ms. Copeland's fundamental due process rights by specifically relying on unsubstantiated allegations of misconduct as the sole basis for imposing a consecutive sentence." (Attach. 7, Ex. AA at i, 18). Although Copeland couched her claim in terms of due process, she did not identify any federal law or United States Supreme Court precedent supporting her claim, nor does she here.

The First DCA summarily affirmed Copeland's VOP sentence without explanation. (*Id.*, Ex. DD). The First DCA's summary decision is an "adjudication on the merits" of Copeland's claim and, therefore, is entitled to deference under § 2254(d). *Richter*, 562 U.S. at 99, 100. The State asserts that Copeland is not entitled to habeas relief because she fails to meet § 2254(d)'s demanding standard. (Doc. 19 at 30-36).

A. Clearly Established Federal Law

A sentence within legislatively mandated guidelines is presumptively valid. *Rummel v. Estelle*, 445 U.S. 263, 272 (1980). If a sentence is within statutory limits, state courts have wide discretion in determining "the type and extent of punishment for convicted defendants." *Williams v. New York*, 337 U.S. 241, 245 (1949). Federal habeas courts "afford wide discretion to the state trial court's sentencing decision, and challenges to that decision are not generally constitutionally cognizable, unless it is shown the sentence imposed is outside the statutory limits or unauthorized by

law." *Dennis v. Poppel*, 222 F.3d 1245, 1258 (10th Cir. 2000) (citing *Haynes v. Butler*, 825 F.2d 921, 923-24 (5th Cir. 1987)); *see also Branan v. Booth*, 861 F.2d 1507, 1508 (11th Cir. 1998) ("[F]ederal courts cannot review a state's alleged failure to adhere to its own sentencing procedures.").

B. Section 2254 Review of State Court's Decision

Even assuming to Copeland's benefit (without deciding) that her sentencing claim is cognizable on federal habeas review, she is not entitled to relief. In Florida, the statutory maximum for resisting arrest with violence, a third degree felony, is five years of imprisonment. Fla. Stat. § 775.082(3)(e). Copeland's VOP sentence falls within that statutory limit.

Additionally, the sentencing transcript, read in its entirety, shows that Copeland was given a fair hearing at sentencing. After considering the attorneys' arguments and Copeland's own statements, the VOP court sentenced Copeland to 24 months of imprisonment consecutive to her Martin County sentence, explaining:

> THE COURT: All right. Well, I think that's a fair disposition. So 24 months, I'm not going to give the credit if that's what it is. It's consecutive for totally disobeying the court order. Not just a violation of probation but, you know, a very edict. If in fact Judge Smith said, don't go and you just [bee-lined] down there any.
>
> THE DEFENDANT: No, ma'am, that's where the misunderstanding was. I didn't violate it for going to Martin County. I haven't been to Martin County in ten years.

THE COURT: Okay.

THE DEFENDANT: See, I think a lot of things are being misunderstood, that are being misrepresented and you're taking that into consideration.

THE COURT: All right. Well, I'm not going to do what Mr. Combs [Assistant State Attorney] wants but I think this is fair so—

(Attach. 1, Ex. B at 164-65).

The First DCA reasonably could have interpreted the trial court's final remarks as a conclusion that the 24-month consecutive sentence was fair even if Copeland did not go to Martin County. The sentence was less than the 5-year consecutive sentence sought by the prosecution, and it fell within the statutory limit.

Based on the foregoing, Copeland has not shown that the state court's rejection of her sentencing claim was inconsistent with any holding of the United States Supreme Court, or that it was based on an unreasonable determination of the facts. *See* 28 U.S.C. § 2254(d)(1)-(2). Copeland is not entitled to habeas relief on Ground Two.

Ground Three **Untitled (Doc. 1 at 9 in ECF).**

Copeland does not identify the nature of her claim in Ground Three. She seeks habeas relief based on these facts:

Charge based on false report of police officer who lied to cover up abuse; he was about to voluntarily resign in 2015 after it was

> discov[ered] he was stealing money from the community soft ball program.

(*Id.*). Copeland asserts that she raised this claim in her state habeas petition filed in 2013. (*Id.* at 10 in ECF). The State asserts that Copeland's allegations present no discernable basis for federal habeas relief, nor is any basis discernable from the "meandering narrative" of her state habeas petition. (Doc. 19 at 39 (citing Attach. 2-3, Ex. H)).

Copeland's state habeas petition is a 17-page narrative explaining Copeland's version of the facts underlying her Liberty County and Martin County criminal cases. (Attach. 2-3, Ex. H). Copeland appears to seek relief from her convictions because she is actually innocent.

A freestanding claim of actual innocence is not cognizable on federal habeas review. *See Herrera v. Collins*, 506 U.S. 390, 400 (1993) ("Claims of actual innocence . . . have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding."); *Cunningham v. Dist. Attorney's Office for Escambia Cty.*, 592 F.3d 1237, 1272 (11th Cir. 2010) ("[T]his Court's own precedent does not allow habeas relief on a freestanding innocence claim in non-capital cases[.]"). This rule "is grounded in the principle that federal habeas courts sit to ensure that individuals are not imprisoned in violation of the Constitution—not to correct errors of fact."

Herrera, 506 U.S. at 400-01. Copeland's allegations in Ground Three provide no basis for federal habeas relief.

Ground Four "Plea not voluntary" (Doc. 1 at 11 in ECF).

Copeland claims that her plea was involuntary for this reason: "overmedicated into a stupor from the doctor not properly prescribed." (Doc. 1 at 11 in ECF). Copeland states that she did not exhaust her state remedies on this claim because she "did not know this at the time," but she also states that she raised this issue in her 2013 state habeas petition. (*Id.*). The court construes this claim as a challenge to Copeland's 2007 no-contest plea to the resisting arrest charge.[6] The State asserts that this claim is procedurally defaulted and refuted by the record. (Doc. 19 at 41-43).

A. Federal Habeas Exhaustion Requirement

Before seeking federal habeas relief under § 2254, the petitioner must exhaust all available state court remedies for challenging her conviction, 28 U.S.C. § 2254(b)(1), thereby giving the State the "'opportunity to pass upon and correct' alleged violations of its prisoners' federal rights." *Duncan v. Henry*, 513 U.S. 364, 365 (1995) (quoting *Picard v. Connor*, 404 U.S. 270, 275 (1971)). To satisfy the exhaustion requirement, the petitioner must "fairly present" her federal claim to the state's highest court, either on direct appeal or on collateral review. *Castille v.*

[6] Copeland's Liberty County VOP charges were still pending in 2013.

Peoples, 489 U.S. 346, 351 (1989); *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999) ("[S]tate prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process."). A claim that was not properly presented to the state court and which can no longer be litigated under state procedural rules is considered procedurally defaulted, *i.e.,* procedurally barred from federal review. *Boerckel*, 526 U.S. at 839-40.

A petitioner seeking to overcome a procedural default must "demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice." *Coleman v. Thompson*, 501 U.S. 722, 750 (1991). "For cause to exist, an external impediment, whether it be governmental interference or the reasonable unavailability of the factual basis for the claim, must have prevented petitioner from raising the claim." *McCleskey v. Zant*, 499 U.S. 467, 497 (1991) (citing *Murray v. Carrier*, 477 U.S. 478, 488 (1986)). "To establish 'prejudice,' a petitioner must show that there is at least a reasonable probability that the result of the proceeding would have been different." *Henderson v. Campbell*, 353 F.3d 880, 892 (11th Cir. 2003).

The miscarriage of justice exception requires the petitioner to show that "a constitutional violation has probably resulted in the conviction of one who is actually innocent." *Schlup v. Delo*, 513 U.S. 298, 327 (1995). "'[A]ctual innocence' means factual innocence, not mere legal insufficiency." *Bousley v. United States*, 523 U.S. 614, 624 (1998).The *Schlup* standard is very difficult to meet:

> [A] substantial claim that constitutional error has caused the conviction of an innocent person is extremely rare. To be credible, such a claim requires [a] petitioner to support his allegations of constitutional error with new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial.

513 U.S. at 327. "To establish the requisite probability, the petitioner must show that it is more likely than not that no reasonable juror would have convicted him." *Id.*

B. Application of the Exhaustion Standard

The State asserts that the only time Copeland alleged in state court that she was "overmedicated" was in a single sentence in her state habeas petition where she stated, in reference to her September 5, 2007, plea, that "[t]his plea was involuntary due to the overmedicated state I as [sic] in at the time." (Attach. 2, Ex. H at 15; *see also* Ex. H at 6 ("After being forced to take medication that was not properly prescribed according to the psychiatrist who evaluated my records, I was not in any state to make a decision about entering a plea."). The State contends that this passing reference, in a pleading seeking a hearing on the VOP charges, did not fairly present

a claim that Copeland's 2007 plea was involuntary. Moreover, even assuming *arguendo* that the allegation fairly presented a constitutional challenge to her 2007 plea, Copeland procedurally defaulted the claim by abandoning her appeal from the circuit court's order ruling that the petition was moot. (Doc. 19 at 41-42). The State alternatively asserts that this claim fails on the merits on *de novo* review, because it is conclusively refuted by the record of Copeland's 2007 plea. (*Id.* at 42-43).

A review of the state court record confirms that this claim is procedurally defaulted for the reasons outlined in the State's answer. The only pleading in which Copeland mentioned being overmedicated was in her state habeas petition.[7] There, however, she did not present the allegation as a constitutional challenge to her 2007 no-contest plea, nor did the court construe it as such. *See Kelley v. Sec'y Dep't of Corr.*, 377 F.3d 1317, 1344-45 (11th Cir. 2004) (articulating the "fair presentation" requirement for habeas exhaustion). Further, even assuming to Copeland's benefit that she fairly presented her involuntary plea claim in her state habeas petition, she abandoned her appeal from the circuit court's ruling, rendering the claim unexhausted and procedurally defaulted on habeas review. *Boerckel*, 526 U.S. at

[7] Copeland's appeal from the VOP judgment did not claim that the 2007 plea was involuntary because Copeland was overmedicated. (*See* Attach. 7, Ex. AA).

845. Copeland makes none of the requisite showings to excuse her procedural default. Copeland's procedural default bars federal habeas review of Ground Four.

IV. Certificate of Appealability is Not Warranted

Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts provides: "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." If a certificate is issued, "the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2)." 28 U.S.C. § 2254 Rule 11(a). A timely notice of appeal must still be filed, even if the court issues a certificate of appealability. *See* 28 U.S.C. § 2254 Rule 11(b).

"[Section] 2253(c) permits the issuance of a COA only where a petitioner has made a 'substantial showing of the denial of a constitutional right.'" *Miller-El*, 537 U.S. at 336 (quoting 28 U.S.C. § 2253(c)). "At the COA stage, the only question is whether the applicant has shown that 'jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.'" *Buck v. Davis*, 580 U.S. ___, 137 S. Ct. 759, 774 (2017) (quoting *Miller-El*, 537 U.S. at 327). "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue

when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (emphasis added). Here, Petitioner has not made the requisite demonstration. Accordingly, the court should deny a certificate of appealability in its final order.

The second sentence of Rule 11(a) provides: "Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue." 28 U.S.C. § 2254 Rule 11(a). If there is an objection to this recommendation by either party, that party may bring such argument to the attention of the district judge in the objections permitted to this report and recommendation.

V. Conclusion

For the reasons set forth above, the undersigned respectfully **RECOMMENDS** that:

1. The petition for writ of habeas corpus (Doc. 1), challenging the judgment of conviction and sentence in *State of Florida v. Shannon Copeland*, Liberty County Circuit Court Case No. 2007-CF-60, be **DENIED**.
2. The District Court **DENY** a certificate of appealability.
3. The clerk of court close this case file.

At Panama City, Florida, this 23rd day of March, 2020.

/s/ *Michael J. Frank*
Michael J. Frank
United States Magistrate Judge

NOTICE TO THE PARTIES

Objections to these proposed findings and recommendations must be filed within fourteen (14) days after being served a copy thereof. Any different deadline that may appear on the electronic docket is for the court's internal use only, and does not control. A copy of objections shall be served upon all other parties. If a party fails to object to the magistrate judge's findings or recommendations as to any particular claim or issue contained in a report and recommendation, that party waives the right to challenge on appeal the district court's order based on the unobjected-to factual and legal conclusions. ***See*** **11th Cir. Rule 3-1; 28 U.S.C. § 636.**