23-5624

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

Charles M. Porter
#461843
Blackwater River C.R.F.
5914 Jeff Ates Road
Milton, FL 32583

Re: *Porter v. U.S. Dist. Ct. MD FL*
No. 23-5624

AMENDED PETITION FOR REHEARING

This amended petition for rehearing is presented in good faith and not for delay. Petitioner hereby certifies that the grounds are limited to other substantial grounds not previously presented.

GROUND ONE

NEWLY DISCOVERED EVIDENCE OF STATE'S ONLY WITNESS TESTIMONY THAT EXONERATES PETITIONER OF FELONY

On April 18, 2018, the State's only witness wrote a statement with the police about the crime where witness stated "I then Jaked my kids up to get out the room." See attached copy of original police report as (Exhibit "A"), which is inaccurate and corroborates Petitioner's statement that all the kids were asleep. This exonerating evidence was not revealed to Petitioner until the denial of the Certiorari by Supreme Court of the United States on November 13, 2023, prompting Petitioner to research

the entire record of this case at which time he discovered a copy of the original police report which was inaccurate and false, which proves the special and important reason for the questions presented in the Certiorari. 1) Whether the warrantless arrest is unlawful because the facts stated in the arrest affidavit were insufficient to establish probable cause for the charged crime. The testimony of State's only witness was not known to trial court, defense counsel, nor Petitioner, could not have been ascertained through an exercise of due diligence insofar as the State did not produce statement of April 18, 2018, nor did defense counsel request Discovery; had counsel requested Discovery, this information would have been available for Petitioner to impeach witness and not enter into an involuntary plea. Counsel was not functioning as the counsel guaranteed by the Sixth Amendment to the U.S. Constitution whereas his deficient performance prejudiced Petitioner's defense, had counsel performed effectively the outcome would have been different.

GROUND TWO

INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO FILE MOTION FOR IMPEACHMENT OF INFORMATION FAVORABLE TO PETITIONER WHICH PREJUDICED DEFENSE

Trial Counsel's failure to file motion for impeachment of information favorable to Petitioner is a deficiency warranting postconviction relief. The testimony of State's only witness would have irrefutably proven that Petitioner did not commit the charged crime.

GROUND THREE

PROSECUTORIAL MISCONDUCT BRADY VIOLATION IN FAILURE TO DISCLOSE EXCULPATORY AND IMPEACHING EVIDENCE FAVORABLE TO PETITIONER WHICH PREJUDICED HIS DEFENSE

The Brady violation occurred when the State suppressed the police report of April 18, 2018, which was favorable to Petitioner and was exculpatory and impeaching which was willfully or inadvertently suppressed because the evidence was material and Petitioner was prejudiced warranting postconviction relief. Had Petitioner known of the impeaching statement of the only witness, he would not have entered into a plea and the outcome would have been different, absent the misconduct.

CONCLUSION

The judgment of the Circuit Court should be reversed and remanded with directions that Petitioner's convictions be set aside, and that he be discharged.

/s/ Charles Porter

Charles Porter
DC# 461843
Blackwater River Corr. Rehab Facility
5914 Jeff Ates Road
Milton, Florida 32583

OATH

Under penalty of perjury and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this motion is found to be frivolous or in bad faith, I certify that I understand the contents of the foregoing motion, that the facts contained in the motion are true and correct, and that I have reasonable belief that the motion is timely filed. I certify that this motion does not duplicate previous motions that have been disposed of by the Court. I further certify that I understand English.

/s/ Charles Porter

Charles Porter
DC# 461843

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to prison officials for mailing to the Clerk of Court, U.S. Supreme Court, One First St. N.E., Washington, DC 20543 and the Attorney General at 444 Seabreeze Blvd., 5th Floor, Daytona Beach, FL 32118 on this 22 day of December, 2023.

/s/ Charles Porter

Charles Porter
DC# 461843
Blackwater River Corr. Rehab Facility
5914 Jeff Ates Road
Milton, Florida 32583

Legal Mail
Provided to
Blackwater River Correctional
and Rehabilitation Facility
on 12-22-23 for mailing. CMB
Initials

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RE: *Porter v. U.S. Dist. Ct. MD FL*
No: 23-5624

MEMORANDUM OF LAW

In the plea context as in the instant case at bar, it is important to keep in mind that withdrawal of a nolo contender plea, after sentencing, should be allowed when necessary to correct a "manifest injustice"; *Frank v. Blackburn,* 646 F. 2d 873 (5th Cir. 1980); *Miller v. State,* 814 So. 2d 1131, 1132 (Fla. 5th DCA 2002).

"Manifest injustice [occurs] whenever... the plea was involuntarily." *Blackburn,* 646 F. 2d at 891. Thus, any time that the newly discovered evidence has a significant impact on the voluntariness "(as in the instant case)" of the plea, it should be alleged that withdrawal of the plea is necessary to correct the manifest injustice. Therefore, Petitioner requests this Court allow him to withdraw his plea to correct the manifest injustice. Had Petitioner known of the exonerating statement of the State's only witness, he would not have entered a plea and would have used the corroborating circumstances surrounding his case to establish trustworthiness of the evidence and

its desired effect to show that the result of the proceeding would have probably been different. See Fla. Stat. 90.804(2)(C); *Jackson v. State,* 421 So. 2d 15 (Fla. 3rd DCA 1982); Petitioner has met the "manifest injustice" standard of *Williams v. State,* 316 So. 2d 267 (Fla. 1975); *Kalapp v. State,* 729 So. 2d 987 (Fla. 5th DCA 1999); *Veach v. State,* 705 So. 2d 135 (Fla. 1st DCA 1998); *Daniel v. State,* 740 So. 2d 1179 (Fla. 2d DCA 1999); *rev. den.* 751 So. 2d 1251 (Fla. 2000). The evidence at issue was favorable to Petitioner because it was exculpatory and impeaching that was suppressed by the State either willfully or inadvertently which prejudiced Petitioner's whole case as to undermine confidence in the outcome. Petitioner could not have had constructive knowledge of the police reports and materials counsel failed to have acquired; *Bailey v. State,* 768 So. 2d 508 (Fla. 2nd DCA 2000). Furthermore, in *Waterhouse v. State,* 82 So. 3rd 84 (2012 Fla. LEXIS 267; 37) Supreme Court of Florida holds that the "due diligence" prong of a newly discovered evidence claim is satisfied when: (1) a witness swears in an affidavit that he or she spoke with the police about the crime, but the information ultimately included in the police report is either inaccurate or false; see attached copy of purported affidavit of State's only witness who has agreed to swear in affidavit the police report is inaccurate and false, mailed to mother of witness on December 18, 2023 as Exhibits B & C respectively, and (2) the Petitioner's counsel swears that he or she relied upon the veracity of that police report and did not contact that witness (as in the instant

case) because the report indicated that the witness would not have any pertinent information about the crime. In the instant case counsel never requested discovery at all so he never saw the police report.

OATH

Under penalty of perjury and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this motion is found to be frivolous or in bad faith, I certify that I understand the contents of the foregoing motion, that the facts contained in the motion are true and correct, and that I have reasonable belief that the motion is timely filed. I certify that this motion does not duplicate previous motions that have been disposed of by the Court. I further certify that I understand English.

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/s/ Charles Porter

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December 11, 2023

Charles M. Porter
#461843
5914 Jeff Ates Road
Milton, FL 32583

RE: Porter v. US Dist. Ct. MD FL
No: 23-5624

Dear Mr. Porter:

The petition for rehearing in the above-entitled case was postmarked November 28, 2023 and received December 11, 2023 and is herewith returned for failure to comply with Rule 44 of the Rules of this Court. The petition must briefly and distinctly state its grounds and must be accompanied by a certificate stating that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

You must also certify that the petition for rehearing is presented in good faith and not for delay.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 15 days of the date of this letter, the petition will not be filed. Rule 44.6.

Sincerely,
Scott S. Harris, Clerk
By:

Redmond K. Barnes
(202) 479-3022

Enclosures