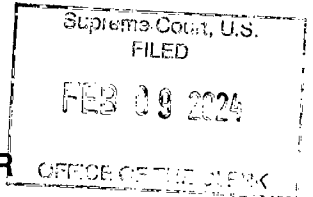


No. 23-6787

IN THE
SUPREME COURT OF THE UNITED STATES

JERRY MEANS — PETITIONER
(Your Name)



vs.

SECRETARY, Florida
DEPARTMENT OF CORRECTIONS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ELEVENTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JERRY MEANS
(Your Name)

19000 SW 377TH STREET
(Address)

Florida City, Florida 33034
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

WHETHER AN, INNOCENT AS A MATTER OF STATE LAW, ACTUAL AND FACTUAL INNOCENT, INDIGENT PRO SE DEFENDANT IN A STATE CRIMINAL CASE WHO IS PROHIBITED AN ADEQUATE FIRST POSTCONVICTION COUNSEL, BUT WHO IS DE JURE FORCED TO RAISE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN A SECOND INITIAL COLLATERAL REVIEW PROCEEDINGS FOR HIS PROCEDURAL DEFAULTS TO BE ENFORCED IN FEDERAL COURT, THE PROCEDURAL SCHEME THAT DE FACTO FORCES DEFENDANT TO RAISE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIMS IN POSTCONVICTION PROCEEDINGS WITHOUT THE ASSISTANCE OF COMPETENT COUNSEL IS INADEQUATE AND DISCRIMINATES AGAINST HIS SIXTH AMENDMENT RIGHT TO AN EFFECTIVE TRIAL ATTORNEY BY FAILING TO AFFORD HIM A REASONABLE OPPORTUNITY TO EVER CHALLENGE HIS TRIAL ATTORNEYS' PERFORMANCE.

WHETHER AN, INNOCENT AS A MATTER OF STATE LAW, ACTUAL AND FACTUAL INNOCENT, INDIGENT PRO SE DEFENDANT IN A STATE CRIMINAL CASE WHO IS PROHIBITED BY STATE LAW FROM RAISING ON DIRECT APPEAL ANY CLAIM OF TRIAL COURT ERROR, BUT WHO HAS A STATE-LAW RIGHT TO RAISE SUCH A CLAIM IN A RECONSIDERATION PROCEEDING, HAS A FEDERAL CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COURT RETAINED STANDBY TRIAL COUNSEL, AND COURT APPOINTED APPELLATE COUNSEL SPECIFICALLY WITH RESPECT TO HIS TRIAL COURT ERROR CLAIM.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

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U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF
FLORIDA. JUDGMENT ENTERED JANUARY 15, 2010

MEANS V. SEC'y, Fla. DEP'T OF CORR. NO. 10607,
U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT,
JUDGMENT ENTERED JUL. 11, 2011

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix C, D, E to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix - to the petition and is

☒ reported at 83/ So.2d 672; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the FIRST DISTRICT COURT OF APPEAL court appears at Appendix F to the petition and is

☒ reported at 814 So.2d 1136; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was SEPTEMBER 25, 2023.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: DECEMBER 5, 2023, and a copy of the order denying rehearing appears at Appendix B.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was APRIL 8, 2002. A copy of that decision appears at Appendix F.

☐ A timely petition for rehearing was thereafter denied on the following date: NONE, and a copy of the order denying rehearing appears at Appendix _____.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES "CONGRESS SHALL MAKE NO LAW... ABRIDGING THE FREEDOM OF SPEECH, ... AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES."

THE FOURTH AMENDMENT PROVIDES THAT "THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS AND EFFECTS... NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE...."

THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES "IN ALL CRIMINAL PROSECUTIONS THE ACCUSED SHALL ENJOY THE RIGHT TO A... public trial, by an impartial jury... TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE."

THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES THAT "NO STATE SHALL... DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS."

STATEMENT OF THE CASE

I. STATE COURT PROCEEDINGS

A. EVIDENCE PRESENTED DURING PRETRIAL

ON JUNE 8, 2000, D.E. WATTS (DETECTIVE) NOTWITHSTANDING HAVING A COPY OF THE MEDICAL REPORT, IN WHICH THE STATE'S ALLEGED MEDICAL EXPERT MARY GUILMOND (NURSE) STATED THE ALLEGED VICTIM'S HYMEN WAS INTACT, THERE WERE NO INJURIES, NO MICROSCOPIC SIGNS OF PENETRATION, AND THE DYE TEST REVEALED NO LACERATIONS OR TEARING, AND HAVING ASSISTED IN THE PREPARATION OF AN OUT-OF-COURT UNSWORN VIDEOTAPED STATEMENT FROM THE ALLEGED VICTIM, IN WHICH SHE RECALLED MULTIPLE TIMES AND UNEQUIVOCALLY STATED, SHE HAD "LIED". D.E. WATTS COLLUDED WITH ALLAN MIZRAHI (PROSECUTOR) AND COMPLETED AN AFFIDAVIT FOR AN ARREST WARRANT, IN WHICH HE ALLEGED, THE ALLEGED VICTIM STATED IN HIS PRESENCE THAT PETITIONER HAD HAD PENIS TO VAGINA INTERCOURSE WITH HER. HOWEVER, BASED ON THE MEDICAL REPORT, THE AFFIDAVIT CONTAINED A DELIBERATE, INTENTIONAL, AND MATERIAL MISSTATEMENT BY D.E. WATTS AND ALLAN MIZRAHI WHICH VOIDED THE ARREST WARRANT. THE MISSTATEMENT WAS NOT INNOCENT OR NEGLIGENT, BUT DELIBERATE, INTENTIONAL, MATERIAL, AND INSUFFICIENT TO ESTABLISH PROBABLE CAUSE. PETITIONER WAS GRANTED CO-COUNSEL STATUS, ON OR ABOUT SEPTEMBER 28, 2000.

B. EVIDENCE PRESENTED AT TRIAL

PETITIONER WAS CHARGED IN THE STATE TRIAL COURT WITH ONE COUNT OF SEXUAL BATTERY AND ONE COUNT OF LEWD AND LASCIVIOUS CONDUCT. THE STATE'S THEORY WAS THAT PETITIONER HAD SEXUAL INTERCOURSE WITH HIS FRIEND'S DAUGHTER, ELIZABETH, ON SEVERAL OCCASIONS BETWEEN NOVEMBER 1, 1999 AND MAY 31, 2000. HOWEVER, IN ITS CLOSING ARGUMENT, ALLAN MIZRAHI ABANDONED THAT THEORY OF SEXUAL INTERCOURSE AND PENETRATION, AND TOLD THE JURY THAT IF PETITIONER MERELY TOUCHED ELIZABETH, IT WAS ENOUGH TO CONVICT. 433 FED. APPX. AT 852.

ELIZABETH TESTIFIED AT SOME LENGTH AT TRIAL, BUT SHE STATED THAT SHE DID NOT REMEMBER MUCH OF WHAT HAD (OR HAD NOT) HAPPENED BETWEEN NOVEMBER 1, 1999 AND MAY 31, 2000. ON CROSS-EXAMINATION, HOWEVER, ELIZABETH TESTIFIED THAT PETITIONER HURT HER LEG BETWEEN HER ANKLE AND KNEE.

ALTHOUGH ELIZABETH'S TRIAL TESTIMONY DID NOT INCULPATE PETITIONER, THE STATE WAS PERMITTED TO OFFER TESTIMONY THAT ELIZABETH HAD MADE STATEMENTS PRIOR TO TRIAL INDICATING THAT PETITIONER HAD TOUCHED HER "VAGINA" WITH HIS "PENIS". STANDBY COUNSEL FAILED TO PRESENT THE EVIDENCE THAT ELIZABETH HAD RECANTED HER ACCUSATIONS AGAINST PETITIONER AND STATED SHE HAD "LIED", AND HE FAILED TO PRESENT OTHER, MORE PERSUASIVE EVIDENCE OF SUCH RECANTATIONS. ELIZABETH'S

RECANTATIONS WERE CONSISTENT WITH PETITIONER'S EXCULPATORY STATEMENTS TO THE POLICE.

THE PROSECUTION SOUGHT TO EXPLAIN AWAY ELIZABETH'S RECANTATIONS PRIMARILY BY PLAY ACTING AS ELIZABETH AND ITS OWN EXPERT WITNESS, WITH ANATOMICAL DOLLS IN VIOLATION OF THE ADVOCATE'S WITNESS RULE. WHEN IN FACT, THE MOTHER'S TESTIMONY DID NOT SUPPORT WHAT THE STATE ALLEGED. IN THIS REGARD, THE STATE RELIED HEAVILY ON EXPERT TESTIMONY BY A NURSE, MARY GUIMOND, WHO WAS KNOWINGLY, INTENTIONALLY, AND DELIBERATELY ABSENT FROM THE TRIAL COURT, AND HAD HER DISCOVERY DEPOSITION READ INTO THE TRIAL RECORD BY SOMEONE FROM THE STATE ATTORNEY'S OFFICE, AND THAT REVEALED THE ABSENT NURSE, EXPERT WITNESS COMMITTED MULTIPLE ACTS OF PERJURY IN GIVING HER DEPOSITION TESTIMONY.

MOREOVER, THE PROSECUTION SUPPRESSED THE JUNE 8, 2000, MEDICAL REPORT PREPARED BY THE NURSE, WHICH HAD REVEALED THERE WERE NO INJURIES, HYMEN INTACT, NO MICROSCOPIC SIGNS OF PENETRATION, AND A DYE TEST THAT REVEALED NO LACERATIONS OR TEARING. ALTHOUGH, STANDBY COUNSEL KNEW THAT MARY GUIMOND WOULD BE ABSENT AND WOULD NOT TESTIFY, HE DID NOT OBJECT AND PRESERVE PETITIONER'S SIX AMENDMENT CONFRONTATION CLAUSE RIGHTS, HE DID NOT RESEARCH THE PURPORTED "SCIENTIFIC" BASIS FOR MARY GUIMOND'S OPINIONS; HE DID NOT SEEK TO OBTAIN EXPERT TESTIMONY TO REFUTE THOSE OPINIONS, EVEN THOUGH SUCH TESTIMONY WAS READILY AVAILABLE; HE ALLOWED THE

prosecution to have Mary Guinond's discovery deposition read into the trial record, in her absence, a fundamental miscarriage of justice, and allowed her perjured testimony to be entered in the record without objection, and it was standby counsel suborning perjury. The state presented the June 8, 2000, medical report prepared by Mary Guinond, but immediately suppressed the medical report, it was never presented to the jury and appears nowhere in the trial court record. The state did present the unworn out-of-court prior inconsistent state of Elizabeth, that was materially different than her deposition. And the statement was inadmissible, under state law, because it was not corroborated by the medical report, and violated Means' Sixth Amendment Confrontation Clause and Cross-Examination Rights.

Due Process Clause protects an accused against conviction except upon proof beyond a reasonable doubt. *In re Winship*, 90 S. Ct. 1068 (1970). The Florida Supreme Court has agreed that "the risk of convicting an innocent accused is simply too great when the conviction is based entirely upon prior inconsistent statements. Prior inconsistent statements of a recanting alleged victim of child sexual abuse, is not sufficient in and of itself to sustain conviction, even if repeated on multiple occasions. *State v. Green*, 667 So.2d 756 (Fla. 1995).

As we held in *Green* and reaffirmed in *Beber v. State*, 887 So.2d 1348 (Fla. 2004), a prior inconsistent

STATEMENT STANDING ALONE IS INSUFFICIENT AS A MATTER OF LAW TO PROVE GUILT BEYOND A REASONABLE DOUBT, TO ALLOW THE STATE TO USE AS ITS SOLE EVIDENCE OF THE COMMISSION OF THE CRIME CHARGED SUCH PRIOR UNSWORN OUT-OF-COURT STATEMENTS WHICH WERE NOT SUBJECT TO CROSS-EXAMINATION BY THE DEFENDANT WOULD VIOLATE THE DEFENDANT'S 6TH AMENDMENT RIGHT TO CONFRONTATION AND CROSS-EXAMINATION.

PETITIONER WAS CONVICTED OF ONE COUNT OF SEXUAL BATTERY AGAINST HIM, AND HE WAS SENTENCED ON NOVEMBER 17, 2000 TO LIFE IMPRISONMENT INELIGIBLE FOR PAROLE.

C. STATE APPELLATE PROCEEDINGS

IT IS ESPECIALLY INEXPLICABLE WHY THE DUVAL PUBLIC DEFENDERS OFFICE FILED A RULE 3.800 (B)(2) "MOTION TO CORRECT AN ILLEGAL SENTENCE" PRIOR TO THE FILING OF MEANS' INITIAL BRIEF, INSTEAD OF HIS COURT RETAINED STANDBY TRIAL COUNSEL, AND FAILED TO ARGUE THAT THE 80 ADDITIONAL POINTS ADDED TO THE GUIDELINES SCORESHEET FOR "PENETRATION" VIOLATED MEANS' 6TH AMENDMENT RIGHT TO A TRIAL BY JURY. APPENDIX V, NEW JERSEY, 120 S.C.T. 2348 (2000).

ON DIRECT APPEAL, MEANS RAISED TWO ISSUES THAT ARE RELEVANT TO THIS PETITION: (1) MEANS' CONVICTION ON LEGALLY INSUFFICIENT EVIDENCE IS A FUNDAMENTAL MISCARRIAGE OF JUSTICE, IN VIOLATION OF HIS FEDERAL AND STATE RIGHT TO DUE PROCESS OF LAW IN THAT THE STATE

failed to prove every element of the offense beyond a reasonable doubt. And the State Appellate Court chose not to address the issue; and (2) whether the trial court erred as a matter of law or applied an incorrect standard in admitting the child hearsay statements under section 90.803(23), Florida Statutes. (Affidavit, Exhibit (6), page 8, last paragraph); *Baugh v. State*, 961 So.2d 198 (Fla. 2007); *Collier v. State*, 982 So.2d 1281 (Fla. 1st DCA 2008); *Means v. State*, 814 So.2d 1136 (Fla. 1st DCA 2002).

D. STATE POSTCONVICTION PROCEEDINGS

1. Florida procedures for the adjudication of trial judge's disqualification on own motion

At least since 1963, the rule in Florida has been that when orders have been entered in any cause by a judge prior to the entry of any order of disqualification under section 38.05, any party to the cause may, within 30 days after the filing in the cause of the order of the chief judge of the circuit or the chief justice of the supreme court, as provided for in section 38.09, petition the judge so designated for a reconsideration of the orders entered by the disqualified judge prior to the date of the entry of the order of disqualification.

SUCH A PETITION SHALL SET FORTH WITH PARTICULARITY THE MATTERS OF LAW OR FACT TO BE RELIED UPON AS GROUNDS FOR THE MODIFICATION OR VACATION OF THE ORDERS. SUCH A PETITION SHALL BE GRANTED AS A MATTER OF RIGHT. UPON THE GRANTING OF THE PETITION, NOTICE OF THE TIME AND PLACE OF THE HEARING THEREON, TOGETHER WITH A COPY OF THE PETITION, SHALL BE MAILED BY THE ATTORNEY, OR ATTORNEYS, OF RECORD FOR THE PETITIONER, TO THE OTHER ATTORNEY OR ATTORNEYS OF RECORD, OR TO THE PARTY OR PARTIES IF THEY HAVE NO ATTORNEYS OF RECORD. THIS NOTICE SHALL BE MAILED AT LEAST 8 DAYS PRIOR TO THE DATE FIXED BY THE JUDGE FOR THE HEARING. THE JUDGE BEFORE WHOM THE CAUSE IS THEN PENDING MAY, AFTER THE HEARING, AFFIRM, APPROVE, CONFIRM, REENTER, MODIFY, OR VACATE THE ORDERS.

UNDER SECTION 38.08, IF NO PETITION FOR RECONSIDERATION IS FILED, AS PROVIDED FOR IN SECTION 38.07, ALL ORDERS ENTERED BY THE DISQUALIFIED JUDGE PRIOR TO THE ENTRY OF THE ORDER OF DISQUALIFICATION SHALL BE AS BINDING AND VALID AS IF SAID ORDERS HAD BEEN DULY ENTERED BY A QUALIFIED JUDGE AUTHORIZED TO ACT IN THE CAUSE. THE FACT THAT AN ORDER WAS ENTERED BY A JUDGE WHO IS SUBSEQUENTLY DISQUALIFIED UNDER SECTION 38.05 SHALL NOT BE ASSIGNABLE AS ERROR SUBJECT TO REVIEW BY THE APPROPRIATE APPELLATE COURT UNLESS A PETITION FOR RECONSIDERATION AS PROVIDED FOR IN SECTION 38.07, WAS FILED BY THE PARTY URGING THE MATTER AS ERROR, AND THE JUDGE BEFORE WHOM THE CAUSE WAS THEN PENDING REFUSED TO VACATE OR MODIFY SAID ORDER.

BRINKLEY V. STATE, 898 So.2d 1175 (Fla. 2d DCA 2005).

E. STATE POSTCONVICTION PROCEEDINGS

1. FLORIDA PROCEDURES FOR THE ADJUDICATION OF INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS

AT LEAST SINCE 1983, THE RULE IN FLORIDA HAS BEEN THAT ANY INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIMS CANNOT BE RAISED FOR THE FIRST TIME ON DIRECT APPEAL. *Williams v. State*, 438 So.2d 781 (Fla. 1983). CONSEQUENTLY, A CONVICTED FLORIDA DEFENDANT MUST RAISE ANY INEFFECTIVE ASSISTANCE CLAIM IN A POSTCONVICTION RELIEF PROCEEDING UNDER RULE 3.850 OF THE FLORIDA RULE OF CRIMINAL PROCEDURE.

A FEDERAL INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM IS AUTHORIZED BY FLA. R. CRIM. P. 3.850, WHICH PROVIDES THAT IT IS A GROUND FOR POSTCONVICTION THAT "THE CONVICTION OR SENTENCE WAS IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES." A POSTCONVICTION RELIEF PROCEEDING IS COMMENCED BY TIMELY FILING IN THE STATE TRIAL COURT A MOTION FOR POSTCONVICTION RELIEF UNDER RULE 3.850 FLA. R. CRIM. P., WITHIN 2 YEARS AFTER THE MANDATE ON DIRECT APPEAL.

FLORIDA LAW DOES NOT RECOGNIZE AN INDIGENT DEFENDANT'S RIGHT TO THE EFFECTIVE ASSISTANCE OF FIRST POSTCONVICTION COUNSEL, BECAUSE CLAIMS OF INEFFECTIVE ASSISTANCE OF FIRST POSTCONVICTION COUNSEL DO NOT PRESENT A VALID CLAIM FOR RELIEF, *Banks v. State*, 150 So.3d 797 (Fla. 2014), EVEN WITH RESPECT TO A FEDERAL INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIM.

2. PETITIONER'S TRUNCATED FIRST POSTCONVICTION RELIEF PROCEEDING

IN JULY 2001, DURING THE PENDENCY OF MEANS' DIRECT APPEAL BUT WITHOUT HIS AUTHORIZATION, THE SUCCESSOR JUDGE PETER DEARING, CONSTRUED MEANS' "MOTION FOR RECONSIDERATION" AS A "MOTION FOR POST-CONVICTION RELIEF. CONSISTENTLY WITH THE FLORIDA RULES OF CRIMINAL PROCEDURE, THESE CONSTRUED POSTCONVICTION MOTIONS DID STATE SOME CLAIMS FOR RELIEF, BUT IT HAD THE EFFECT OF COMMENCING A POST-CONVICTION PROCEEDING. FLORIDA RULES CRIMINAL PROCEDURE 3.850.

THERE WAS NO REASON FOR JUDGE PETER DEARING TO CONSTRUE THE JULY 23 AND JULY 25, 2001, "MOTIONS FOR RECONSIDERATION" AS POST-CONVICTION RELIEF BEFORE THE CONCLUSION OF MEANS' DIRECT APPEAL,² AND FAILING TO PROVIDE "ADEQUATE" FIRST POST-CONVICTION RELIEF COUNSEL, AND FAILING TO CONSIDER ANY INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIMS. THAT JUDGE DEARING HAD NO SUCH REASON BECAME APPARENT ON SEPTEMBER 21, 2001, WHEN JUDGE DEARING WITHOUT HAVING COMMUNICATED WITH NEITHER MEANS' COURT RETAINED STANDBY TRIAL COUNSEL, NOR COURT APPOINTED APPELLATE COUNSEL, AND WITHOUT HAVING OTHERWISE INVESTIGATED A POSSIBLE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIM, ENTERED AN "ORDER STRIKING DEFENDANT'S CONSTRUED MOTIONS FOR POST-CONVICTION RELIEF" BECAUSE IT WAS WITHOUT JURISDICTION, SINCE IT WAS PENDING IN AN

2. AS PREVIOUSLY NOTED, A MOTION FOR POST-CONVICTION RELIEF IS TIMELY IF IT IS FILED WITHIN 2 YEARS AFTER MANDATE ON DIRECT APPEAL.

APPELLATE COURT.

HOWEVER, DURING THE PENDENCY OF MEANS' DIRECT APPEAL, THE TRIAL COURT LACKED JURISDICTION TO RULE ON, MUCH LESS TO CONSTRUCT A "MOTION FOR RECONSIDERATION" AS A MOTION FOR POSTCONVICTION RELIEF. DANIELS V. STATE, 712 So.2d 765 (Fla. 1998). THE SUCCESSOR JUDGE HAD STRICKEN FROM THE RECORD ITS CONSTRUED MOTIONS FOR POSTCONVICTION RELIEF, BUT UNDER SECTION 38.07 IT ALSO LACKED JURISDICTION TO STRIKE MEANS' "MOTION FOR RECONSIDERATION," IT COULD ONLY AFFIRM, APPROVE, CONFIRM, REENTER, MODIFY, OR VACATE THE CHALLENGED ORDERS, THAT WERE PENDING ON SEPTEMBER 21, 2001, (MORE THAN 18 MONTHS BEFORE THE CONCLUSION OF THE DIRECT APPEAL).

IT IS ESPECIALLY INEXPLICABLE THAT JUDGE DEARING ENTERED AN ORDER CONSTRUING MEANS' "MOTIONS FOR RECONSIDERATION" AS A FIRST POSTCONVICTION RELIEF MOTION BUT THEN DID NOTHING (TO APPOINT FIRST POSTCONVICTION COUNSEL) TO INVESTIGATE A POSSIBLE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIM: THAT TYPE OF CLAIM IS ONE OF THE FEW FOR WHICH A FIRST POSTCONVICTION PROCEEDING PROVIDES FIRST-TIER REVIEW IN FLORIDA; AND FLORIDA'S "PRECLUSION" RULES MAKE IT VERY DIFFICULT TO OBTAIN REVIEW OF MOST CLAIMS THAT COULD HAVE BEEN RAISED ON DIRECT APPEAL OR IN A PREVIOUS POSTCONVICTION RELIEF PROCEEDING.

FURTHERMORE, THE SUCCESSOR JUDGE FAILED TO SERVE HIS "ORDER STRIKING DEFENDANT'S CONSTRUED MOTIONS FOR POST-CONVICTION RELIEF" ON NEITHER MEANS' COURT RETAINED STANDBY TRIAL COUNSEL, NOR HIS COURT APPOINTED APPELLATE COUNSEL, AND IT CONSTITUTED STRUCTURAL ERROR.

3. PETITIONER'S SECOND POSTCONVICTION RELIEF PROCEEDING

PETITIONER FILED A TIMELY PRO SE SECOND MOTION FOR POSTCONVICTION RELIEF, IN THE STATE TRIAL COURT ON OR ABOUT DECEMBER 10, 2003. THE MOTION ALLEGED THAT PETITIONER'S TRIAL COUNSEL WAS INEFFECTIVE, IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, IN SEVERAL RESPECTS, INCLUDING FAILING TO ACQUIRE HIS OWN EXPERT TO REBUT MARY GUIMOND'S EXPERT OPINION, AND THE FACT THAT THE ALLEGED VICTIM'S RECANTATIONS WERE INADMISSIBLE UNDER STATE LAW, FAILING TO RESEARCH THE PURPORTED BASIS FOR MARY GUIMOND'S TESTIMONY OR TO PRESENT READILY AVAILABLE AND PERSUASIVE EXPERT TESTIMONY THAT MARY GUIMOND'S TESTIMONY WAS PERJURED, INACCURATE AND MISLEADING IN LIGHT OF THE EMPIRICAL LITERATURE IN THE FIELD; FAILING TO IMPEACH AN IMPORTANT PROSECUTION WITNESS CONCERNING ELIZABETH'S PRETRIAL STATEMENTS WITH HIS OWN POLICE REPORT, FAILING TO DISCOVER OR PRESENT ADDITIONAL COMPELLING EVIDENCE THAT THE ALLEGED VICTIM'S INITIAL ACCUSATIONS WERE FALSE AND HER SUBSEQUENT RECANTATIONS TRUE, CLOSING OF THE COURT ROOM DURING A JUROR'S VOIR DIRE, PROSECUTORIAL MISCONDUCT, AND THE LACK OF JURISDICTION.

MOREOVER, MEANS ALLEGED THAT HIS COURT RETAINED STANDBY TRIAL COUNSEL WITHOUT ANY OBJECTION, ALLOWED THE PROSECUTION TO PLAY ACT AS THE ALLEGED VICTIM AND AS AN ALLEGED EXPERT WITNESS WITH ANATOMICAL DOLLS IN VIOLATION OF THE ADVOCATE/WITNESS RULE, AND FAILED TO OBJECT WHEN THE PROSECUTION PROVIDED FALSE TESTIMONY AS TO WHAT THE ALLEGED VICTIM HAD TESTIFIED. STANDBY TRIAL COUNSEL FAILED TO REQUEST THAT, MEANS WAS ENTITLED TO AN INSTRUCTION THAT PROVIDED AN ACCURATE DEFINITION OF VAGINA AND THAT DISTINGUISHED BETWEEN THE VULVA AND THE VAGINA IN HIS TRIAL, CHARGING HIM WITH CAPITAL SEXUAL BATTERY, A VIOLATION OF Fla. STAT. §794.011(2)(a), BECAUSE, IN ORDER TO CONSTITUTE A VIOLATION OF 794.011(2), THERE MUST BE ACTUAL PENETRATION OF THE VICTIM'S VAGINA, AND THE CONFUSING TESTIMONY, REGARDING THE DEFINITION OF VAGINA AT MEANS' TRIAL, MAY HAVE MISLED THE JURY INTO BELIEVING THAT PENETRATION OF THE VAGINA AREA WAS SUFFICIENT TO CONVICT MEANS. *RICHARDS V. STATE*, 738 So.2d 415 (Fla. 2d DCA 1999). MEANS' CONVICTION FOR CAPITAL SEXUAL BATTERY ON A CHILD LESS THAN 12 YEARS OF AGE IN VIOLATION OF Fla. STAT. §794.011(2) WAS IMPROPER. *STATE V. CONTRERAS*, 979 So.2d 896 (Fla. 2008).

PETITIONER WAS GRANTED AN EVIDENTIARY HEARING AND APPOINTED WAYNE ELLIS AS POSTCONVICTION COUNSEL. WAYNE ELLIS PERFORMED VERY INEFFECTIVELY BY FAILING TO PREPARE AND FILE A MOTION FOR POSTCONVICTION RELIEF, FAILED TO CORRECT THE DEFICIENCIES IN PETITIONER'S POSTCONVICTION MOTION, FAILED TO COMMUNICATE MEANINGFULLY WITH PETITIONER, FAILED TO PERFORM ANY OTHER EXTRA-RECORD INVESTIGATION INTO TRIAL COUNSEL'S EFFECTIVENESS, FAILED TO UNCOVER THE PREJUDICIAL DEFICIENCIES IN TRIAL COUNSEL'S PERFORMANCE OUTLINED ABOVE, AND WAS SO GROSSLY INEFFECTIVE AS THE STATE'S POSTCONVICTION ATTORNEY, TO CONSTITUTE "EXTRAORDINARY CIRCUMSTANCES" SUFFICIENT TO TOIL AEDPA'S ONE-YEAR STATUTE OF LIMITATIONS, *Holland v. Florida*, 130 S.Ct. 2549 (2010).

PETITIONER COMPLAINED TO THE TRIAL COURT ABOUT THE INEFFECTIVENESS OF HIS APPOINTED SECOND POST-CONVICTION COUNSEL, AND THE TRIAL COURT ABRUPTLY RELEASED PETITIONER'S APPOINTED POSTCONVICTION COUNSEL, PRIOR TO THE SCHEDULED HEARING WITHOUT HOLDING THE REQUIRED NELSON OR FARETTA INQUIRIES.

THE STATE TRIAL COURT DENIED THE POSTCONVICTION MOTION, FINDING THAT DEFENDANT'S ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL IS WITHOUT MERIT. THE FLORIDA COURT OF APPEALS GRANTED REVIEW BUT PER CURIAM AFFIRMED.

II. FEDERAL Habeas Corpus Proceedings

PETITIONER FILED A PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2254, ON OR ABOUT MAY 6, 2006. THE PETITION ASSERTED NUMEROUS SIXTH/FOURTEENTH INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIMS.

THE PETITIONER'S SECTION 2254 RAISED A TOTAL OF 13 GROUNDS FOR RELIEF, ALL OF WHICH WERE PROCEDURALLY BARRED OR PROCEDURALLY DEFAULTED.

IT IS ESPECIALLY INEXPLICABLE WHY THE DISTRICT COURT DID NOT GRANT PETITIONER AN EVIDENTIARY HEARING, NOTWITHSTANDING THE PROSECUTOR'S MISCONDUCT AT TRIAL, WHEN HE VIOLATED THE ADVOCATE/WITNESS RULE, THE FAILURE OF THE STATE TO ESTABLISH PROBABLE CAUSE, THE TRIAL COURT'S LACK OF SUBJECT-MATTER JURISDICTION, AND THAT THE STATE APPELLATE COURT'S WRITTEN OPINION WAS NOT ENTITLED TO DEFERENCE, UNDER SECTION 2254(e)(1) ON THE RELEVANT FACTUAL ISSUE OF THE ALLEGED VICTIM'S COMPETENCE, BECAUSE THE OPINION MERELY ENDORSED THE STATE'S VERSION OF THE FACTS WITHOUT PURPORTING TO MAKE ITS OWN FINDINGS OF FACT, AND IT WAS FUNDAMENTAL ERROR, AND CAUSED A MANIFEST INJUSTICE, AND EX POST FACTO VIOLATION WHEN PETITIONER WAS CONVICTED FOR AN OFFENSE FOR WHICH IT WAS WELL ESTABLISHED AS A MATTER OF LAW THAT HE COULD NOT BE CONVICTED, AND HIS CLAIMS WERE NOT SUBJECT TO PROCEDURAL DEFAULT BECAUSE HE SHOWED "CAUSE" AND "PREJUDICE".

ON JANUARY 14, 2010, THE DISTRICT COURT DISMISSED THE PETITION AS BEING PROCEDURALLY BARRED ON ALL GROUNDS, BUT GRANTED A CERTIFICATE OF APPEALABILITY ON PETITIONER'S APPELLATE COUNSEL'S FAILURE TO CHALLENGE A FINDING THAT THE ALLEGED VICTIM WAS COMPETENT TO TESTIFY. THE APPELLATE COURT EXPANDED THE COA TO INCLUDE A CLAIM OF INSUFFICIENT EVIDENCE UNDER FLA. STAT. 794.011(2)(a).

ON JULY 12, 2011, NOTWITHSTANDING, THE TRIAL COURT'S FAILURE TO PERFORM ITS DUTY AND RESPONSIBILITY TO ANNOUNCE ITS FINDING OF THE CHILD'S COMPETENCE TO TESTIFY, IN OPEN COURT, AND PETITIONER BEING INNOCENT AS A MATTER OF STATE LAW, FACTUALLY AND ACTUALLY INNOCENT, THE COURT OF APPEALS ISSUED A PANEL OPINION AFFIRMING THE JUDGMENT OF THE DISTRICT COURT, THAT WAS A FUNDAMENTAL MISCARRIAGE OF JUSTICE AND A MANIFEST INJUSTICE. 433 FED. APPX. 852. THE COURT OF APPEALS RULING WAS BASED ON ITS CONCLUSION THAT THE STATE REASONABLY APPLIED THE SUPREME COURT'S DECISION IN JACKSON V. VIRGINIA, 99 S. CT. 2781 (1979), AND THERE WAS A SUFFICIENT BASIS IN THE RECORD FOR CONCLUDING THAT THE INCONSISTENCIES IN THE VICTIM'S STATEMENTS WERE ATTRIBUTABLE TO HER AGE.

PETITIONER TIMELY FILED A PETITION FOR REHEARING AND REHEARING EN BANC AND WAS DENIED ON SEPTEMBER 13, 2011. 451 FED. APPX. 908

2. PETITIONER'S MOTION FOR RELIEF FROM A JUDGMENT OR ORDER UNDER RULES 60(b)(6), 60(b)(4), 60(d)(3), AND 9(b)

ON MARCH 21, 2022, MEANS FILED HIS MOTION FOR RELIEF FROM A JUDGMENT OR ORDER IN THE DISTRICT COURT.

MEANS ARGUED IN HIS MOTION THAT THE CHANGES BROUGHT ABOUT BY THE SUPREME COURT'S RULINGS IN

MARTINEZ¹, APPENDI², MELENDEZ-DIAZ³, AND HOLLAND⁴, COMBINED WITH MULTIPLE STRUCTURAL ERRORS, MULTIPLE UNADDRESSED FUNDAMENTAL ERRORS, AMBIGUOUS AND OBSCURE STATE COURT ADJUDICATIONS, MEANS IS INNOCENT AS A MATTER OF LAW, FACTUALLY AND ACTUALLY INNOCENT, IN THIS CASE, CONSTITUTES "EXTRAORDINARY CIRCUMSTANCES" REQUIRING THAT MEANS' CASE BE REOPENED AND THE RELEVANT CLAIMS REVIEWED ON THE MERITS.

IF MEANS HAS A SIXTH AMENDMENT RIGHT TO COMPETENT COUNSEL IN HIS FIRST STATE POSTCONVICTION PROCEEDING BECAUSE THAT WAS THE FIRST FORUM IN WHICH THE INEFFECTIVENESS OF TRIAL COUNSEL CAN BE ALLEGED, IT FOLLOWS THAT MEANS HAS A SIXTH AMENDMENT RIGHT TO COMPETENT COUNSEL IN THE SECOND STATE POSTCONVICTION PROCEEDING, FOR THAT IS THE FIRST FORUM IN WHICH HE CAN RAISE A CHALLENGE BASED ON THE LACK OF FIRST POSTCONVICTION COUNSEL, IN THE FIRST STATE POSTCONVICTION PROCEEDING. FURTHERMORE, BECAUSE MEANS' FIRST FEDERAL HABEAS PETITION PRESENTED THE FIRST OPPORTUNITY TO RAISE THE INEFFECTIVE ASSISTANCE IN THE SECOND STATE POSTCONVICTION PROCEEDING, IT FOLLOWS LOGICALLY THAT MEANS HAS A SIXTH AMENDMENT RIGHT TO COUNSEL IN THE FIRST FEDERAL HABEAS PROCEEDING AS WELL. BECAUSE ANY SIXTH AMENDMENT VIOLATION CONSTITUTES CAUSE, FEDERAL

1. MARTINEZ V. RYAN, 132 S.C.T. 1309 (2012)
2. APPENDI V. NEW JERSEY, 120 S.C.T. 2348 (2000)
3. MELENDEZ-DIAZ V. MASSACHUSETTS, 129 S.C.T. 2527 (2009)
4. HOLLAND V. FLORIDA, 130 S.C.T. 2549 (2010)

COURTS WOULD NEVER BE ABLE TO AVOID REACHING THE MERITS OF ANY INEFFECTIVE ASSISTANCE CLAIM, REGARDLESS OF THE NATURE OF THE PROCEEDING IN WHICH COUNSEL'S COMPETENCE IS ALLEGED TO HAVE BEEN DEFECTIVE.

THE DISTRICT COURT'S DISPOSITIVE RULING THAT MEANS' SIXTH / FOURTEENTH AMENDMENT INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIM WAS PROCEDURALLY DEFAULTED NECESSARILY WAS BASED ON THE FLORIDA COURT OF APPEALS' DECISION MADE IN THE CONTEXT OF THIS SECOND STATE POSTCONVICTION RELIEF PROCEEDING, THAT THE CLAIM WAS "PRECLUDED". THAT STATE COURT DECISION IN TURN WAS BASED ON THE FACT THAT MEANS' INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIM WAS NOT RAISED, BECAUSE THE STATE COURTS DID NOT APPOINT HIM AN EFFECTIVE COUNSEL IN THE ABORTED FIRST STATE POSTCONVICTION RELIEF PROCEEDING, AND GROSSLY INEFFECTIVE ASSISTANCE OF SECOND POSTCONVICTION COUNSEL TO RAISE THE CLAIM IN THOSE PROCEEDINGS, INCLUDING THE FIRST PORTION OF GROUND ONE, AND GROUNDS 8, 10, 11, 12, AND 13.

HERE, MEANS ASSERTS THAT THE REQUIRED "EXTRAORDINARY CIRCUMSTANCES" EXIST TO GRANT RELIEF UNDER RULE 60(b)(6) AND RULE 60(b)(5) SECOND CLAUSE, AND A DEFECT IN THE INTEGRITY OF THE HABEAS PROCEEDINGS, AND THAT THE PRIOR DISTRICT COURT'S RULING THAT MEANS DEFAULTED OR FAILED TO EXHAUST HIS INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIMS BY FAILING TO ADEQUATELY REPRESENT HIMSELF WITH REGARD TO THEM, IS A FUNDAMENTAL MISCARriage OF JUSTICE, MANIFEST INJUSTICE, AND CREATES A SUFFICIENT DANGER OF THE RISK OF INJUSTICE TO THE PARTIES OR

THE RISK OF UNDERMINING THE PUBLIC'S CONFIDENCE IN THE JUDICIAL PROCESS AND CONSTITUTES "EXTRAORDINARY CIRCUMSTANCES" REQUIRED BY RULE 60(b)(6)

THE PRIOR DISTRICT COURT'S HABEAS RULING ON THE FIRST PORTION OF GROUND ONE, AND GROUNDS 8, 10, 11, 12 AND 13, WHICH PRECLUDED A MERITS DETERMINATION WAS ERROR, AND MEANS SEEKS REVIEW OF THE SUBSTANTIVE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIMS IN THE ABOVE GROUNDS THAT HAVE NEVER RECEIVED A MERITS REVIEW BY ANY COURT, BECAUSE OF THE LACK OF FIRST POSTCONVICTION COUNSEL IN THE ABORTED FIRST POSTCONVICTION PROCEEDING, FOR THREE RELATED, BUT INDEPENDENTLY SUFFICIENT REASONS: (a) THE PROCEDURAL GROUND ON WHICH THE STATE APPELLATE COURT DENIED MEANS CLAIM WAS NOT "ADEQUATE" TO BAR FEDERAL HABEAS CORPUS REVIEW; (b) THERE WAS "CAUSE AND PREJUDICE" TO EXCUSE ANY DEFAULT; AND (c) THERE WAS AN "OBJECTIVE FACTOR EXTERNAL TO THE DEFENSE" THAT IMPEDED MEANS' EFFORT TO COMPLY WITH THE STATE PROCEDURAL RULES. THE THREE OF THOSE REASONS DEPEND ON THE PROPOSITION THAT MEANS HAS A FOURTEENTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF HIS FIRST POSTCONVICTION COUNSEL WITH REGARD TO A SIXTH / FOURTEENTH AMENDMENT INEFFECTIVE TRIAL COUNSEL CLAIM, WHEN THE FIRST POSTCONVICTION PROCEEDING PROVIDES THE FIRST OPPORTUNITY TO RAISE SUCH A CLAIM, SIXTH / FOURTEENTH AMENDMENT "BEDROCK PRINCIPLE" RIGHT TO THE EFFECTIVE ASSISTANCE OF HIS TRIAL COUNSEL.

HERE, THE PROCEDURAL GROUND ON WHICH THE STATE APPELLATE COURT DENIED MEANS' FEDERAL CLAIM WAS NOT "ADEQUATE" TO PROHIBIT FEDERAL COURT REVIEW BECAUSE

IT FRUSTRATED THE PROTECTION OF THREE RELATED FEDERAL RIGHTS: (a) MEANS' RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL; (b) MEANS' RIGHT TO EFFECTIVE ASSISTANCE OF FIRST-TIER POSTCONVICTION COUNSEL WITH RESPECT TO ANY INEFFECTIVE TRIAL COUNSEL CLAIM; AND (c) MEANS' RIGHT TO EFFECTIVE ASSISTANCE OF HIS APPOINTED APPELLATE COUNSEL.

ON AUGUST 11, 2022, THE DISTRICT COURT DENIED MEANS' MOTION FOR RELIEF FROM JUDGMENT OR ORDER. THE DISTRICT COURT FOUND THAT THE RULE 60(b) MOTION WAS NOT FILED WITHIN A REASONABLE TIME AND/OR WITHIN ONE YEAR OF THE ENTRY OF JUDGMENT.

THE DISTRICT COURT FAILED TO REALIZE THAT MEANS' PETITION FOR WRIT OF HABEAS CORPUS WAS STILL PENDING IN THE SUPREME COURT AT THE SAME TIME THAT MARTINEZ V. RYAN WAS PENDING.

3. PETITIONER'S MOTION TO DISMISS UNDER RULE 12(b)(1) FED. R. CIV. P.

ON JUNE 2, 2022, MEANS FILED HIS MOTION TO DISMISS IN THE DISTRICT COURT.

MEANS ARGUED HIS MOTION THAT BOTH THE DISTRICT COURT AND THE ELEVENTH CIRCUIT COURT OF APPEALS LACKED SUBJECT-MATTER JURISDICTION BECAUSE OF THE LACK OF PROBABLE CAUSE. (AFFIDAVIT, EXHIBITS (C), (D), (E), (F), (G), (H) AND (I)). WHICH VOIDED THE ARREST WARRANT AND REQUESTED A FRANKS HEARING. FRANKS V. DELAWARE, 98 S. CT. 2674 (1978); SEE STEPHENSON V. RICE, 574 SO.2D 286 (FLA. 2D DCA 1991) (HEARSAY TESTIMONY CONCERNING

STATEMENTS MADE BY CHILD VICTIMS WAS INSUFFICIENT TO ESTABLISH PROBABLE CAUSE TO BELIEVE THAT PETITIONER HAD COMMITTED OFFENSE OF SEXUAL BATTERY WHERE NO CORROBORATIVE TESTIMONY WAS PRESENTED); *Brugh v. STATE*, 961 So.2d 198 (Fla. 2007); *Collier v. STATE*, 982 So.2d 1281 (Fla. 1st. DCA 2008); (Affidavit, Exhibit (6), page 8, last paragraph.).

MEANS ARGUED UNDER 12(b)(1) FED. R. CIV. P.; *Gonzalez v. Thaler*, 132 S.Ct. 641 (2012); AND *UNITED STATES v. COTTON*, 122 S.Ct. 1781 (2002) (DEFECTS IN SUBJECT-MATTER JURISDICTION CAN NEVER BE FORFEITED OR WAIVED, AND DEFECTS IN SUBJECT-MATTER JURISDICTION REQUIRE CORRECTION....), TO CORRECT THE DISTRICT COURT'S PRIOR JANUARY 14, 2010, "ORDER OF DISMISSAL WITH PREJUDICE" OF PETITIONER'S §2254 HABEAS CORPUS PETITION FOR LACK OF PROBABLE CAUSE AND LACK OF SUBJECT-MATTER JURISDICTION.

MEANS' MOTION TO DISMISS IS A "FACTUAL ATTACK" CHALLENGING THE EXISTENCE OF SUBJECT-MATTER JURISDICTION IN FACT, OF THE STATE TRIAL AND APPELLATE COURTS, THE MIDDLE DISTRICT FEDERAL COURT CASE 3:06-CV-403-J-32 HTS AND CASE NUMBER 433 FED. APPX. 852 (11TH CIR. 2011), IRRESPECTIVE OF THE PLEADINGS AND MATTERS OUTSIDE OF THE PLEADINGS, SUCH AS TESTIMONY AND AFFIDAVITS ARE CONSIDERED. MOREOVER, A "FACTUAL ATTACK" UNDER 12(b)(1) FED. R. CIV. P., MAY OCCUR AT ANY STAGE OF THE PROCEEDINGS. *MENCHACA v. CHRYSLER CREDIT CORP.*, 613 F.2d 507 (11TH CIR. 1980) (EVIDENTIARY HEARING HELD, ALLEGATIONS IN THE COMPLAINT ARE TAKEN AS TRUE FOR PURPOSES OF THE MOTION.).

HERE, THE TRIAL COURT DID NOT CONSIDER OTHER CORROBORATIVE EVIDENCE, AS REQUIRED BY SECTION 90.803(23), BELIEVING THAT PRIOR INCONSISTENT STATEMENT WAS SUFFICIENT SUBSTANTIVE EVIDENCE OF GUILT. AS THE EVIDENCE AGAINST MEANS WAS THE OUT-OF-COURT UNSWORN INCONSISTENT STATEMENT AND SCANTY, THE TRIAL COURT SHOULD HAVE GRANTED MEANS' JUDGMENT OF ACQUITTAL. SEE BAUGH.

PENETRATION IS ONE OF THE ESSENTIAL ELEMENTS THAT MUST BE PROVEN IN A PROSECUTION FOR CAPITAL SEXUAL BATTERY UNDER SECTION 794.011(2)(a). PENETRATION CANNOT BE ESTABLISHED BY AN INCONSISTENT AND UNCORROBORATED HEARSAY STATEMENT OFFERED IN EVIDENCE UNDER 90.803(23). BARTON V. STATE, 704 So.2d 569 (Fla. 1st DCA 1977); RICHARDS V. STATE, 738 So.2d 415 (Fla. 2d DCA 1999) (IN ORDER TO CONSTITUTE A VIOLATION OF Fla. STAT. § 794.011(2), THERE MUST BE ACTUAL PENETRATION OF THE VICTIM'S VAGINA.); AND STATE V. CONTRERAS, 979 So.2d 896 (Fla. 2008) (AS THE VIDEO WAS THE ONLY EVIDENCE OF PENETRATION, ITS ADMISSION WAS NOT HARMLESS AS TO SEXUAL BATTERY CHARGE, WHICH REQUIRED PROOF OF PENETRATION.).

HERE, MEANS SCORED OUT TO ABOUT 120 POINTS FOR SENTENCING PURPOSES. HOWEVER, THE SENTENCING JUDGE MADE AN INDEPENDENT FACT FINDING THAT PENETRATION HAD OCCURRED, AND ADDED EIGHTY (80) ADDITIONAL SENTENCING POINTS TO THE SCORESHEET, THAT ALTERED THE LEGALLY PRESCRIBED SENTENCING RANGE AND AGGRAVATED THE PENALTY TO LIFE IMPRISONMENT. (AFFIDAVIT, EXHIBIT (H)).

APPENDI V. NEW JERSEY, 120 S. CT. 2348 (2000) CONCLUDED THAT ANY "FACT THAT INCREASES THE PRESCRIBED RANGE OF PENALTIES TO WHICH A CRIMINAL DEFENDANT IS EXPOSED" ARE ELEMENTS OF THE CRIME AND THUS THE 6TH AMENDMENT PROVIDES DEFENDANTS WITH THE RIGHT TO HAVE A JURY FIND THOSE FACTS BEYOND A REASONABLE DOUBT. SPEIGHTS V. STATE, 102 So.3d 671 (Fla. 2d DCA 2012); CUNNINGHAM V. CALIFORNIA, 127 S. CT. 856 (2007).

MEANS HAS SUFFERED A MANIFEST INJUSTICE ON HIS CLAIM, THAT HE IS ENTITLED TO UNCONDITIONAL RELEASE FROM CUSTODY WITH PREJUDICE TO REPROSECUTION BECAUSE OF CONSTITUTIONALLY INSUFFICIENT EVIDENCE AND THE ABSENCE OF SUBJECT-MATTER JURISDICTION, HE WAS FOUND GUILTY IN THE ABSENCE OF ANY EVIDENCE TO SUPPORT ONE OF THE ESSENTIAL ELEMENTS OF THE CRIME, WHEN COMPARED TO OTHERS WHO HAVE OBTAINED RELIEF ON THIS TYPE OF CLAIM. F.B. V. STATE, 852 So.2d 226 (Fla. 2003).

MEANS ARGUES THAT THE DISTRICT VIOLATED HIS FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH, BREATHING SPACE, AND 14TH AMENDMENT DUE PROCESS WHEN ON AUGUST 11, 2022, IT DENIED MEANS' MOTION TO DISMISS WITHOUT FIRST HOLDING A HEARING, SINCE THE RULE REQUIRES A PRELIMINARY HEARING OR HEARING AT TRIAL.

4. PETITIONER'S MOTION TO ALTER OR AMEND JUDGMENT UNDER RULE 59(e) FED. R. CIV. P.

ON SEPTEMBER 6, 2022, PETITIONER FILED HIS MOTION

TO ALTER OR AMEND JUDGMENT UNDER RULE 59(e),
FED. R. CIV. P.

MEANS ARGUED IN HIS MOTION THAT HIS RULE 59(e) HAD BEEN FILED WITHIN 28 DAYS OF THE DISTRICT COURT'S DENIAL OF HIS RULE 60(b) MOTION ON AUGUST 11, 2022, AND WAS TIMELY UNDER *BANISTER V. DAVIS*, 140 S. CT. 1698 (2020), AND THAT HIS REASON FOR DELAY WAS THAT THE SUPREME COURT DID NOT DENY HIM HIS PETITION FOR WRIT OF CERTIORARI UNTIL FEBRUARY 2012, AND HE HAD BEEN ON CERTIORARI AT THE SAME TIME THAT *MARTINEZ V. RYAN*, 132 S. CT. 1309 (2012) WAS BEING DECIDED BY THE COURT.

MEANS ASSERTED THAT HIS RULE 60(b)(4) CONSTITUTED "EXCEPTIONAL CIRCUMSTANCES AS TO RELIEVE HIM FROM NORMAL STANDARDS OF TIMELINESS.

IN THIS CASE, IT IS PATENTLY CLEAR FROM THE FACE OF THE RECORD THAT THE TRIAL COURT FAILED TO ENTER A VALID FINAL ORDER OR VALID FINAL JUDGMENT, AND SENTENCED MEANS ON A GUIDELINE SCORESHEET FOR CAPITAL SEXUAL BATTERY, AS THE PRIMARY OFFENSE AND LIFE FELONY, WHICH WAS FUNDAMENTAL ERROR, BECAUSE THE TRIAL COURT LACKED JURISDICTION OR AUTHORITY TO DO SO. *BROSZ V. STATE*, 466 So.2d 256 (Fla. 5TH DCA 1995).

MEANS ASSERTED THAT HIS SENTENCE IS VOID, HIS FINAL JUDGMENT IS VOID, RENDERING THE JUDGMENT OF THE DISTRICT COURT NULL AND VOID, BECAUSE OF THE LACK OF SUBJECT-MATTER JURISDICTION. *FERREIRA V. SEC'y DEP'T OF CORR.*, 494 F.3d 1286 (11TH CIR. 2004); *APPENDI V. NEW JERSEY*, 120 S. CT. 2348 (2000).

MEANS ARGUED THAT THE DISTRICT COURT COMMITTED A MANIFEST INJUSTICE WHEN IT FAILED TO CONSIDER MATERIAL FACTS AND DISPOSITIVE LEGAL ARGUMENT IN MEANS' OPENING STATEMENT, AT TRIAL, OF HIS FACTUAL AND ACTUAL INNOCENCE, AND IN HIS INITIAL BRIEF ARGUMENT ON PAGE 29, THAT HE WAS CONVICTED WHERE THE STATE FAILED TO PROVE AN ESSENTIAL ELEMENT. AND IT WAS MORE LIKELY THAN NOT THAT NO REASONABLE JUROR WOULD HAVE CONVICTED HIM IN LIGHT OF THE NEW SCORESHEET EVIDENCE. THIS WAS A MANIFEST INJUSTICE AND VIOLATED MEANS' DUE PROCESS, EQUAL PROTECTION, SIXTH AMENDMENT RIGHT TO A JURY TRIAL AND A "GRAVE MISCARRIAGE OF JUSTICE."

MOREOVER, THE DISTRICT COURT'S ASSERTION ON PAGE 25, OF ITS JANUARY 14, 2010, ORDER, "THAT HER HEARSAY STATEMENTS WERE RELIABLE AS HER STATEMENTS WERE THE ONLY EVIDENCE AGAINST MEANS, IS ANOTHER "GRAVE MISCARRIAGE OF JUSTICE," CLEAR ERROR, APPLICATION OF THE WRONG LEGAL STANDARD, ABUSE OF DISCRETION, AND A USURPATION OF THE LEGISLATURE'S INTENT OF SECTION 90.803(23), FLORIDA STATUTE, AND THE FLORIDA SUPREME COURT IN THE CASES STATE V. GREEN, 667 So.2d 756 (Fla. 1995); AND BEBER V. STATE, 887 So.2d 1248 (Fla. 2004).

THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT FAILED TO HOLD AN EVIDENTIARY HEARING, APPLIED AN INCORRECT LEGAL STANDARD, APPLIED THE LAW IN AN UNREASONABLE OR INCORRECT MANNER, FOLLOWED IMPROPER PROCEDURES AND MADE FINDINGS OF FACT THAT ARE CLEARLY ERRONEOUS, WHEN MEANS CONTENDED IN HIS 60(b) MOTION THAT HE SEEKS REVIEW OF THE SUBSTANTIVE INEFFECTIVE

ASSISTANCE OF COUNSEL CLAIMS RAISED IN THE FIRST-PORTION OF GROUND ONE, AND GROUNDS 8, 10, 11, 12, AND 13, THAT HAVE NEVER RECEIVED MERITS REVIEW BY ANY COURT

MEANS ARGUED THAT JUST BECAUSE HE DID NOT SPECIFICALLY RAISE THE ISSUE OF A LACK OF FIRST POST-CONVICTION COUNSEL AS TO THE FIRST-PORTION OF GROUND ONE, AND GROUNDS 8, 10, 11, 12, AND 13 IN THE PRIOR PROCEEDINGS, IT DOES NOT PRECLUDE HIM FROM RAISING THEM IN THE RULE 60(b)(6) MOTION. MEANS NOTES THAT THE UNDERLYING SUBSTANTIVE CLAIMS RAISED ARE THE EXACT SAME CLAIMS RAISED IN THE ORIGINAL PETITION. MEANS CONTENDS THAT HE IS NOT RAISING NEW CLAIMS, BUT REQUESTING THE COURT RE-EXAMINE ITS HOLDING THAT THE CLAIMS IN THE FIRST-PORTION OF GROUND ONE, AND GROUNDS 8, 10, 11, 12, AND 13 COULD NOT BE CONSIDERED ON THE MERITS BECAUSE OF AN INDEPENDENT AND ADEQUATE STATE GROUND (PROCEDURAL DEFAULT) FOR DENIAL

THE CHANGES IN THE LAW BROUGHT ABOUT BY THE SUPREME COURT RULINGS IN MARTINEZ V. RYAN, AND TREVINO V. THAYER, 133 S. CT. 1911 (2013), COMBINED WITH THE UNIQUE CIRCUMSTANCES OF THIS CASE CONSTITUTE "EXTRAORDINARY CIRCUMSTANCES REQUIRING MEANS' CASE BE RE-OPENED.

MEANS' LACK OF A FIRST POSTCONVICTION COUNSEL IN THE FIRST INITIAL REVIEW COLLATERAL PROCEEDING, AND GROSSLY INEFFECTIVE ASSISTANCE OF SECOND POSTCONVICTION COUNSEL IN THE DE JURE FORCED SECOND INITIAL REVIEW COLLATERAL PROCEEDING FOR THE FIRST-PORTION OF GROUND ONE, AND GROUND 8, 10, 11, 12, AND 13, ARE NOT BARRED ON HABEAS

BECAUSE IT WAS NOT RAISED IN STATE COURT. MARTINEZ DOES NOT SEEM TO REQUIRE THAT A CLAIM OF INEFFECTIVENESS OF POSTCONVICTION COUNSEL AS "CAUSE" FOR A DEFAULT BE ITSELF RAISED IN STATE COURT. MARTINEZ DOES NOT SEEM TO REQUIRE THAT A CLAIM OF INEFFECTIVENESS OF POST-CONVICTION COUNSEL AS "CAUSE" FOR DEFAULT BE ITSELF EXHAUSTED.

ON APRIL 13, 2023, THE DISTRICT COURT DENIED MEANS' "MOTION TO ALTER OR AMEND JUDGMENT UNDER RULE 59(e) FEDERAL RULE OF CIVIL PROCEDURE, BECAUSE MEANS WAS NOT ENTITLED TO THE RELIEF HE SEEKS.

5. PETITIONER'S MOTION TO REOPEN

ON AUGUST 11, 2023, PETITIONER FILED HIS MOTION TO REOPEN, BASED UPON NEW DISCOVERED SCIENTIFIC EVIDENCE THAT HAD A DIRECT BEARING ON HIS CLAIM OF ACTUAL INNOCENCE AND REQUESTED A EVIDENTIARY HEARING, UNDER RULES 4(a)(6), 12(b)(1), AND 60(b)(2).

MEANS ARGUED IN HIS MOTION THAT ON FEBRUARY 9, 2023, AT THE DIRECTION OF COUNSEL, A FORENSIC PSYCHOPHYSIOLOGICAL DETECTION OF DECEPTION TEST (PDD) WAS CONDUCTED ON THE PETITIONER JERRY MEANS, BY THE MIAMI POLYGRAPH SERVICE.

THE TEST RESULT WAS THAT 0.996 (NINETY-NINE AND SIX TENTHS PERCENT) AS THE PROBABILITY THE RESULT WAS PRODUCED BY A TRUTHFUL PERSON. THE TEST WAS CONDUCTED BY SCOTT A. WIEGMANN, FEDERAL BUREAU OF INVESTIGATION, SPECIAL AGENT, 1983-2010.

ON OCTOBER 5, 2023, MEANS FILED HIS AMENDED MOTION TO REOPEN AND ADDED THE GROUNDS NECESSARY TO FORM NEWLY DISCOVERED EVIDENCE.

THE DISTRICT COURT HAS NOT OF THIS DATE ADJUDICATED MEANS MOTION TO REOPEN.

ON MAY 10, 2023, THE DISTRICT COURT AFTER MEANS HAD FILED A TIMELY NOTICE OF APPEAL, DENIED A CERTIFICATE OF APPEALABILITY AND MEANS' REQUEST TO PROCEED IN FORMA PAUPERIS ON APPEAL.

ON SEPTEMBER 25, 2023, THE COURT OF APPEALS ISSUED A ONE JUDGE OPINION AFFIRMING THE JUDGMENT OF THE DISTRICT COURT, IN CASE NUMBER 23-11587. THE COURT OF APPEALS RULING WAS BASED ON ITS CONCLUSION THAT MEANS DID NOT SHOW THAT REASONABLE JURISTS WOULD NOT DEBATE THE DISTRICT COURT'S DENIALS OF MEANS' RULE 60(b) AND RULE 59(e) MOTIONS. THAT THE DISTRICT COURT PROPERLY EXERCISED ITS DISCRETION IN DENYING HIS MOTION AS UNTIMELY, HE SOUGHT RELIEF MORE THAN TEN YEARS TO LATE. NOTWITHSTANDING THAT MEANS HAD FILED INEFFECTIVE ASSISTANCE OF FIRST POSTCONVICTION IN HIS COURT CONSTRUED FIRST POSTCONVICTION PROCEEDING, WHERE HE LACKED A FIRST POSTCONVICTION COUNSEL, IS INNOCENT AS A MATTER OF STATE LAW, FACTUALLY AND ACTUALLY INNOCENT, AND PROVIDED THE DISTRICT COURT WITH NEWLY DISCOVERED EVIDENCE IN THE FORM OF A FBI CONDUCTED POLYGRAPH EXAMINATION, AND PROVED THAT THE DISTRICT COURT VIOLATED HIS DUE PROCESS, FIRST AMENDMENT FREEDOM OF SPEECH AND BREATHING SPACE RIGHTS DURING HIS SECTION 22.54 PROCEEDINGS.

MEANS' timely PETITION FOR RECONSIDERATION,
NOTWITHSTANDING INCLUDING A COPY OF HIS FEBRUARY 9, 2023,
FORENSIC PSYCHOPHYSIOLOGICAL DETECTION OF DECEPTION TEST
(PDD) WAS DENIED ON DECEMBER 5, 2023.

REASONS FOR GRANTING THE PETITION

THE PETITION SHOULD BE GRANTED BECAUSE PETITIONER IS INNOCENT AS A MATTER OF STATE LAW. SEE STEPHENSON V. RICE, 574 So.2d 286 (Fla. 2d DCA 1991) (HEARSAY TESTIMONY CONCERNING STATEMENTS MADE BY CHILD VICTIMS WAS INSUFFICIENT TO ESTABLISH PROBABLE CAUSE TO BELIEVE THAT PETITIONER HAD COMMITTED OFFENSE OF SEXUAL BATTERY WHERE NO CORROBORATIVE TESTIMONY WAS PRESENTED); BAUGH V. STATE, 961 So.2d 198 (Fla. 2007); (AFFIDAVIT, EXHIBIT (6)), page 8, last paragraph.

THE PETITIONER IS FACTUALLY AND ACTUALLY INNOCENT, AND HAS SUFFERED A FUNDAMENTAL MISCARRIAGE OF JUSTICE, MANIFEST INJUSTICE, AND THE STATE AND FEDERAL COURTS LACKED SUBJECT-MATTER JURISDICTION, BECAUSE OF THE LACK OF PROBABLE CAUSE, AND IT IS MORE LIKELY THAN NOT THAT NO REASONABLE JUROR WOULD HAVE CONVICTED PETITIONER IN LIGHT OF THE NEW FEBRUARY 9, 2023, POLYGRAPH EXAMINATION RESULTS EVIDENCE. SEE BARTON V. STATE, 704 So.2d 569 (Fla. 1st DCA 1997); RICHARDS V. STATE, 738 So.2d 415 (Fla. 2d DCA 1999) (IN ORDER TO CONSTITUTE A VIOLATION OF Fla. STAT. § 794.011(2), THERE MUST BE ACTUAL PENETRATION OF THE VICTIM'S VAGINA.); STATE V. CONTRERAS, 979 So.2d 896 (Fla. 2008) (AS THE VIDEO WAS THE ONLY EVIDENCE OF PENETRATION, ITS ADMISSION WAS NOT HARMLESS AS TO SEXUAL BATTERY CHARGE, WHICH REQUIRED PROOF OF PENETRATION.).

THE PETITIONER IS FACTUALLY AND ACTUALLY INNOCENT BECAUSE A PRIOR INCONSISTENT STATEMENT STANDING ALONE IS INSUFFICIENT AS A MATTER OF LAW TO PROVE GUILT

BEYOND A REASONABLE DOUBT, WHEN COMPARED TO OTHERS WHO HAVE OBTAINED RELIEF ON THIS TYPE OF CLAIM.

BRIDGES V WIXON, 65 S. CT. 1443 (1945); STATE V. GREEN, 667 So.2d 756 (Fla. 1995); BEBER V. STATE, 887 So.2d 1248 (Fla. 2004).

IT IS FUNDAMENTAL THAT STATE COURTS BE LEFT FREE AND UNFETTERED BY THE UNITED STATES SUPREME COURT IN INTERPRETING THEIR STATE CONSTITUTION, BUT IT IS EQUALLY IMPORTANT THAT AMBIGUOUS OR OBSCURE ADJUDICATIONS BY STATE COURTS DO NOT STAND AS BARRIERS TO A DETERMINATION BY THE SUPREME COURT OF THE VALIDITY UNDER THE FEDERAL CONSTITUTION OF STATE ACTION, AND THE INTELLIGENT EXERCISE OF THE SUPREME COURT'S APPELLATE POWERS COMPELS THE COURT ASK FOR THE ELIMINATION OF THE OBSCURITIES AND AMBIGUITIES FROM THE OPINIONS IN SUCH CASES, COMPARE MEANS V. STATE, 814 So.2d 1136 (Fla. 1st DCA 2002) TO BRIDGES, GREEN, AND BEBER, ID.

IN MATTERS OF STATE LAW, FEDERAL COURTS ARE BOUND BY THE RULINGS OF THE HIGHEST STATE COURT. IN RENDERING A DECISION BASED UPON THE SUBSTANTIVE LAW OF FLORIDA, A FEDERAL COURT MUST DECIDE A CASE THE WAY IT APPEARS THE HIGHEST STATE COURT WOULD. SEE GREEN, BEBER, AND CONTRERAS V. STATE, 979 So.2d 896 (Fla. 2008).

THE PETITION SHOULD BE GRANTED, BECAUSE CLAIMS OF THE LACK OF FIRST POSTCONVICTION COUNSEL UNDER MARTINEZ ONLY APPLY TO FEDERAL HABEAS PROCEEDINGS AND DO NOT PROVIDE AN INDEPENDENT BASIS FOR RELIEF IN STATE OF FLORIDA COURT PROCEEDINGS. CLAIMS OF

INEFFECTIVE ASSISTANCE OF POSTCONVICTION COUNSEL OR LACK OF A FIRST POSTCONVICTION COUNSEL ARE NOT COGNIZABLE IN THE STATE OF FLORIDA. *BANKS V. STATE*, 150 So.3d 797 (Fla. 2014).

ADEQUACY, MUCH LIKE CAUSE, IS A DOCTRINE ROOTED IN EQUITY. IF EQUITY CONCERNS MOTIVATED THE MARTINEZ COURT TO HOLD THAT STATES HAD TO PROVIDE ADEQUATE POSTCONVICTION COUNSEL TO DEFENDANTS WHO WERE DE JURE FORCED TO RAISE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN COLLATERAL REVIEW PROCEEDINGS FOR THEIR PROCEDURAL DEFAULTS TO BE ENFORCED IN FEDERAL COURT, THOSE SAME EQUITY CONCERNS SHOULD FIND A STATE PROCEDURAL SCHEME THAT DEFACTO FORCES DEFENDANTS TO RAISE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIMS IN POSTCONVICTION PROCEEDINGS WITHOUT THE ASSISTANCE OF EFFECTIVE FIRST POSTCONVICTION COUNSEL TO BE INADEQUATE, AND DISCRIMINATES AGAINST THE DEFENDANTS SIXTH AMENDMENT RIGHT TO AN EFFECTIVE TRIAL ATTORNEY BY FAILING TO AFFORD THEM A REASONABLE OPPORTUNITY TO EVER CHALLENGE THEIR TRIAL ATTORNEYS' PERFORMANCE.

AS THE MARTINEZ COURT RECOGNIZED, WITHOUT AN EFFECT ATTORNEY, DEFENDANTS WILL NOT BE ABLE TO VINDICATE THEIR INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIMS, BECAUSE SUCH CLAIMS OFTEN REQUIRE EXTRARECORD INVESTIGATION AND AN UNDERSTANDING OF TRIAL STRATEGY. AS A RESULT, STATES THAT MAKE A CONSCIOUS CHOICE TO MOVE TRIAL INEFFECTIVENESS CLAIMS OUTSIDE OF THE DIRECT APPEAL PROCESS, WHERE COUNSEL IS CONSTITUTIONALLY GUARANTEED, AND THEN

REFUSE TO APPOINT COUNSEL TO AID DEFENDANTS IN RAISING THE CLAIMS IN INITIAL COLLATERAL REVIEW PROCEEDINGS ARE SIGNIFICANTLY COMPROMISING DEFENDANTS' ABILITIES TO FILE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIMS. ADEQUACY DOCTRINE IS DESIGNED TO ADDRESS STATE PRACTICES THAT PLACE PRECISELY THIS TYPE OF UNDUE BURDEN ON THE EXERCISE OF A FEDERAL RIGHT. GIVEN THAT THE RIGHT AT ISSUE IS THE FUNDAMENTAL RIGHT TO EFFECTIVE COUNSEL, WHICH THE MARTINEZ COURT DESCRIBED AS A "BEDROCK PRINCIPLE IN OUR JUSTICE SYSTEM" AND THE "FOUNDATION OF OUR ADVERSARY SYSTEM," THE FEDERAL COURTS SHOULD BE PARTICULARLY RESISTANT TO STATE PROCEDURES THAT PROHIBIT ENFORCEMENT OF THE RIGHT.

THE PETITION SHOULD BE GRANTED BECAUSE NEITHER THE DISTRICT COURT NOR THE COURT APPEALS ADDRESSED PETITIONER'S MARTINEZ CLAIM, HIS RULE 12(b)(1) CLAIMS AND FAILED TO HOLD THE REQUIRED HEARING, FAILED TO CONSIDER HIS INEFFECTIVE ASSISTANCE CLAIMS, AND FAILED TO ADDRESS THE LACK OF SUBJECT-MATTER JURISDICTION. THIS COURT THEREFORE SHOULD REVERSE THE JUDGMENT OF THE COURT OF APPEALS AND REMAND WITH DIRECTIONS TO REQUIRE THE DISTRICT COURT TO CONSIDER THE MERITS OF PETITIONER'S CLAIMS, AND NEITHER THE DISTRICT COURT NOR THE COURT OF APPEALS HAS ADDRESSED MEANS CLAIM OF ACTUAL AND FACTUAL INNOCENCE, AND THAT IT IS MORE LIKELY THAN NOT THAT NO REASONABLE JUROR WOULD HAVE CONVICTED HIM IN LIGHT OF THE FEBRUARY 9, 2023, NEW EVIDENCE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jeffrey Means
Jeffrey Means

Date: February 8, 2024