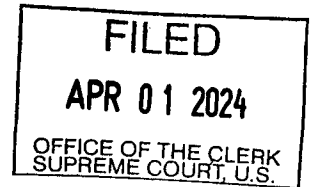
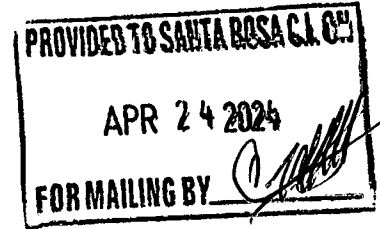


No. 23 - 7470



IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER L TAKHVAR — PETITIONER
(Your Name)

vs.

SECRETARY DEPARTMENT OF — RESPONDENT(S)
CORRECTIONS, et al

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

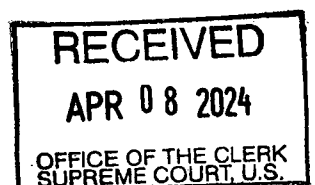
CHRISTOPHER L TAKHVAR
(Your Name) DC# F60391
Santa Rosa Correctional Institution Annex
5850 EAST MILTON ROAD
(Address)

Milton, FL 32583
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

- 1) In the appeal of the denial of a 28 USC 2254 Petition for Habeas Corpus, is "Miller-EL v Cockrell 537 US 322" the US SUPREME COURT "Precedent" case governing the issuance of a "Certificate of Appealability", and would the denial of a "Certificate of Appealability" with a citation to "Slack v McDaniels 529 US 473" and citing the requisite requirements for a "Certificate of APPEALABILITY" to issue in "Slack" of "both"
- 1) The merits of an underlying claim, and
 - 2) The procedural issues that he seeks to raise,
- Violate the established "Stare Decisis" created by the Supreme Court in "Miller-EL" (standard to determine a substantial showing of the denial of Constitutional right, 28 USC 2253(c)(2)) that jurists would find the claim at least debatable.
- 2) Does a request for Standby Counsel by a Pro-Se defendant in a criminal judicial proceeding, constitute the invoking of the sixth amendment right "to have the assistance of counsel for his defense" when the request is made by a citizen of the United States, and would denial of Standby counsel in a criminal judicial proceeding for a Pro-Se defendant violate the sixth Amendment US Constitution, and fourteenth amendment US Constitution, wherein the Pro-Se defendant's defense was hindered by the routine procedural or evidentiary obstacles and basic rules of courtroom protocol and procedure, resulting in a denial of Due Process by preventing a Pro-Se defendant from preparing and presenting his best possible defense.



LEGAL USE ONLY

3)

Do the following statements constitute an unambiguous request for counsel.

"I think I need a lawyer"
and two minutes later answering a question for clarity stating.

"I probably need to talk to a lawyer," and would continuation of custodial interrogation by state agent after the defendant answered a question by state agent (of a request for clarity) in the affirmative, violate the principles set forth in *Davis v. United States* 512 US 452; and would the continuation of custodial interrogation after the state agent declares an understanding of the defendant's request for counsel violate the 5th amendment and 14th amendment principles set forth in *Edwards v. Arizona* 451 US 477

Does being arrested and held on No Bond constitute the initiation of criminal proceedings, and mark the commencement of a criminal prosecution and are the guarantees of the sixth amendment applicable.

Wherein the probable cause arrest affidavit of the original arresting charge (Grand theft Auto) states:

"It should be noted this case is related to an active homicide investigation and for that reason I am requesting the defendant be held on No Bond," and would the denial of counsel before the start of the second custodial interrogation violate the Sixth amendment right to counsel, even though the defendant had not been charged with homicide yet, and homicide was the specific subject of the second custodial interrogation.

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:

SECRETARY FLORIDA DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL

v

CHRISTOPHER L TAKHVAR

RELATED CASES

TAKHVAR v SECRETARY DEPARTMENT OF CORRECTIONS, et al
US District Court Middle District of Florida Case 5:21-cv-207
Judgment entered on 3-1-2023

CHRISTOPHER TAKHVAR v SECRETARY FLORIDA DEPARTMENT OF CORRECTIONS, et al
US Court of APPEALS ELEVENTH CIRCUIT 23-10990-B
Judgment entered on 2-13-2024
Petition for Rehearing Denied 3-18-2024

CHRISTOPHER TAKHVAR v STATE OF FLORIDA
5TH Circuit Court IN MARION COUNTY FLORIDA 18 CF 3532
Judgment Entered on 5-23-2019

CHRISTOPHER TAKHVAR v STATE OF FLORIDA
5TH District Court of APPEAL 5D19-1250
Judgment entered on 8-11-2020

CHRISTOPHER TAKHVAR V STATE OF FLORIDA
5TH DISTRICT COURT OF APPEAL SD20-2306
Judgment entered on 2-15-2021

CHRISTOPHER TAKHVAR V STATE OF FLORIDA
FLORIDA SUPREME COURT SC21-520
Judgment entered on 4-8-2021

CHRISTOPHER TAKHVAR V STATE OF FLORIDA
SUPREME COURT OF THE UNITED STATES 20-8187
Certiorari denied on 10-4-2021

CHRISTOPHER TAKHVAR V STATE OF FLORIDA
5TH DISTRICT COURT OF APPEAL SD19-1221
Judgment entered on 5-14-2019

CHRISTOPHER TAKHVAR V STATE OF FLORIDA
FLORIDA SUPREME COURT SC19-981
Judgment entered on 6-14-2019

CHRISTOPHER TAKHVAR V STATE OF FLORIDA
5TH DISTRICT COURT OF APPEAL SD2134
Judgment entered on 3-23-2021

CHRISTOPHER TAKHVAR V STATE OF FLORIDA
FLORIDA SUPREME COURT 21-729
Judgment entered on 5-18-2021

CHRISTOPHER TAKHVAR V STATE OF FLORIDA
5TH DISTRICT COURT OF APPEAL SD21-1244
Judgment entered on 10-5-2021

CHRISTOPHER TAKHVAR V STATE OF FLORIDA
FLORIDA SUPREME COURT SC21-1463
Judgment entered on 10-25-2021

CHRISTOPHER TAKHVAR V STATE OF FLORIDA
5TH District Court of Appeal SD22-2898
Judgment entered on 4-4-2023

CHRISTOPHER TAKHVAR V STATE OF FLORIDA
FLORIDA SUPREME COURT SC2023 0865
Judgment entered on 6-13-2023

CHRISTOPHER TAKHVAR V STATE OF FLORIDA
5TH District Court of Appeal SD22-0923
Judgment entered on 8-16-2022

CIVIL CASES RELATED

CHRISTOPHER L TAKHVAR V WARNER BROS. DISCOVERY INC., et al
US District Court Middle District of Florida S:22-cv-576
Judgment entered on Aug 17, 2023

CHRISTOPHER L TAKHVAR V WARNER BROS. DISCOVERY INC., et al
US Court of Appeals Eleventh Circuit 23-12809-G
Judgment entered on Sept 28, 2023

CHRISTOPHER L TAKHVAR V WARNER BROS. DISCOVERY INC., et al
United States Supreme Court 23-6071
Certiorari denied on 1-22-2024
Petition for Rehearing denied on 3-18-2024

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Davis v United States 512 US 452	20
Edwards v Arizona 451 US 477	20
Jencks v United States 353 US 657	11
77 Sct 1007 1 LEJ 2J 1103 (1957)	
Miller-EL v Lockwell 537 US 322	16, 17
Rodriguez de Quijas v Shearson/AM Express Inc.	
490 US 471 484 109 Sct. 1917 104 LEJ 2J 526	17
SLACK v McDaniel 529 US 473	12, 15, 16
TAKHVAR v State 301 So3d 235	8
TOPPS v State 865 So2d 1253	8

STATUTES AND RULES

28 USC 2253(c)	5
28 USC 2253(c)(2)	15, 16, 17
28 USC 1254	18
28 USC 2254	9, 11, 12, 18, 20
Fla. R. App. P. 9.141(d)	8
Fla. R. Crim P. 3.850	8, 9, 10
Fla. R. Crim. P. 3.850(b)(1)	9, 11
Fla. R. Crim. P. 907.045 Habeas Corpus; Motion to Dismiss	7
Fed R Civ P Rule 59	11
Fed. R. Civ. P. Rule 60(a)	12
Fed. R. Civ. P. Rule 60(b)(3)	12
Fed. R. App. P. Rule 35	12
Fla. R. Crim. P. 3.800(c)	9

OTHER

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3-5
STATEMENT OF THE CASE.....	6-12
REASONS FOR GRANTING THE WRIT	13-21
CONCLUSION.....	22

INDEX TO APPENDICES

APPENDIX A	US Court of Appeals Order Denying "Certificate of Appealability"
APPENDIX B	US District Court Order Denying 28 USC 2254
APPENDIX C	Order Denying Rehearing En Banc US Court of Appeals.
APPENDIX D	Petition for Rehearing En Banc US Court of APPEALS
APPENDIX E	STATE DECISIONS
APPENDIX F	Denial of Fla. R. APP. P. 9.141(d) Ineffective Assistance of Appellate Counsel
APPENDIX G	Order denying Motion to Suppress Evidence Hearing.
APPENDIX H	Request for leave to file "Motion for Relief from Judgment or Order" in the US District Court.
APPENDIX I	Order denying Motion to Recuse Magistrate Judge. (filed in US District Court)
APPENDIX J	Docket US District Court
APPENDIX K	Request for Certificate of Appealability

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 B 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 _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; 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 2/13/2024.

☐ 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: 3/18/2024, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, 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

United States Constitution

Article I Section 9

"The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

Article III Section 2

"The judicial power shall extend to all cases, in law and equity arising under this constitution, the laws of the United States and treaties made, or which shall be made under their authority, to all cases of admiralty and maritime jurisdiction."

Amendment IV

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by Oath or Affirmation, and Particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

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

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense.

Amendment XIV section 1

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

28 USC 2253 APPEAL

(a) In a Habeas Corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from.

(A) The final order in a Habeas Corpus proceeding in which the detention complained of arises out of process issued by a state court; or

(B) The final order in a proceeding under section 2255

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

STATEMENT OF THE CASE

On Aug. 15, 2018 the petitioner was arrested by US Marshalls in Jefferson, TX for a Grand Theft warrant issued by Marion County, FL.

On Aug 21, 2018 the petitioner was interrogated in Marshall, TX by State Agent Aaron Levy

During the video recorded interrogation the petitioner made a direct request for counsel after the subject switched from Grand Theft Auto to homicide.

stating "I think I need a lawyer" and two minutes later stating "I probably need to talk to a lawyer"

After these two statements were made the state agent stands up and stands over the petitioner and assaults the petitioner. (assault defined as unwanted touch or strike) Standing over the petitioner (who is sitting) puts his hand directly on the shoulder of the petitioner and in a commanding action applies pressure, (almost like a priest would perform an "exorcism") until the petitioner will is overcome and the petitioner made a statement that should have been reserved for counsel,

stating "It was self defense, Bro". Regarding the homicide questions by the state agent.

After this statement, the state agent leaves the room for a few minutes, only to return and reinitiate interrogation knowing the petitioner had requested counsel.

After the first interrogation the petitioner waived extradition from TX to FL in an effort to trust the judicial process.

Upon first appearance in Marion County, FL on Sept 4, 2018 for the Grand Theft Auto charge. The same state agent Aaron Levy reinitiates contact and directly denies the assistance of counsel before the start of the second custodial interrogation.

The forementioned action is evidenced in the transcripts of the Motion to Suppress Evidence Hearing

After being granted a "Motion to terminate the Office of Public Defender" and Proceeding Pro-Se the Petitioner filed a "Motion to Suppress Evidence" regarding the Custodial interrogations with grounds of fifth and Sixth amendment violations US Constitution during the interrogation.

On April 8, 2019 the petitioner filed a Pro-Se Motion, Fla.R.Crim.P. 907.045 Habeas Corpus, Motion to Dismiss

On April 9, 2019 the court held the motion to Suppress Evidence Hearing.

The Petitioner requested standby counsel before the start of the Hearing. The request was denied by the Honorable Steven Rogers who declared the petitioner had no Constitutional right to standby counsel.

In the Motion to Suppress Evidence hearing the petitioner presented additional grounds of fourth amendment violation of an invalid Probable cause Arrest Affidavit.

On April 10, 2019 the Trial Judge Steven Rogers denied the Motion to Dismiss.

On April 12, 2019 the Trial Judge Steven Rogers denied the Motion to suppress evidence.

On April 18, 2019 the petitioner lost trial with the jury finding him guilty on both charges.

The petitioner was denied once again the assistance of Standby counsel, before the start of trial.

On May 23, 2019 the petitioner was again denied the assistance of standby counsel before sentencing.

The Petitioner was sentenced to natural life and five years to run concurrent.

The petitioner appealed the conviction with the following two grounds raised.

- 1) The trial court erred in denial of Motion to Suppress evidence.
- 2) Denial of standby counsel in Pre-Trial every day of Trial and sentencing.

The fifth district Court of Appeal denied the appeal with a per Curiam affirm decision.

TAKHIVAR V STATE 301 So 3d 235

The petitioner filed a Second Amended Fla R Crim P 3.850 after the first Amended 3.850 was stricken with 60 days to correct.

The second amended 3.850 was denied in a summary denial, and the fifth district court of Appeal denied the appeal in a Per Curiam Affirm decision.

The Florida Supreme Court dismissed the request for discretionary Jurisdiction on May 18, 2021

On Oct 29, 2020 the petitioner also filed a Fla. R. Crim. P. 9.141(b) Ineffective Assistance of Appellate Counsel (State Habeas Corpus)

The fifth district Court of Appeal denied the petition (Exhibit F) with a citation to *Topps v State* 865 So 2d 1253 wherein *Topps v State* dictates that the denial was without reaching the merits of the claims.

The petitioner filed for discretionary jurisdiction in the Florida Supreme Court, which was dismissed on 4-8-2021

The petitioner filed Certiorari to the US Supreme Court. Certiorari was denied on Oct 4, 2021

The petitioner filed a Second Fla R Crim P. 3.850 with two new grounds for Relief, and a detailed Statement regarding the need for the second filing, (Covid-19 lockdown and the limited access to legal material)

The petitioner appealed another summary denial, and the fifth District court of Appeal denied the appeal in a Per Curiam Affirm decision. on Oct 5, 2021

The Petitioner was denied review by the Florida Supreme Court of the claims on Oct 25, 2021

On March 8, 2022 the petitioner filed a Motion to Correct Illegal Sentence Fla R Crim P 3.800(a) which was denied on March 30, 2022

The fifth district Court of Appeal denied the Appeal in a Per Curiam Affirm Decision.

On Sept 18, 2022 the petitioner filed a Post Conviction Motion Fla R Crim P 3.850(b)(1) Newly Discovered Evidence On Nov. 21, 2022 the 5th Circuit Court denied the four grounds of Newly Discovered Evidence in a summary denial without reaching a valid conclusion of law.

The petitioner appealed the decision to the 5th District Court of Appeal, who denied the appeal in yet another Per Curiam Affirm Decision on 4-1-2023

The petitioner was denied review in the Florida Supreme Court on 6-13-2023.

The petitioner filed a 28 USC 2254 petition for writ of habeas corpus on 4-7-2021

The petition was transferred from Northern District of Florida to Middle District of Florida on 4-9-2021

On 5-18-2021 The US District Court issued an Order to show cause

i The petitioner has included a copy of the Docket in the APPENDIX

On 8-16-2021 the State responded to the Order
On 9-27-2021 the petitioner filed a reply to the Respondants Response

On 9-20-2021 and 12-17-2021 the petitioner filed two judicial notices to inform the US District Court of the pending petition for certiorari in the US Supreme Court.

On 1-10-2022 the petitioner filed a third judicial notice regarding the unlawful broadcast of the contested trial court evidence (custodial interrogations)

On 3-14-2022 the petitioner filed a Motion to Supplement the petition raising the grounds raised and denied in the second Fla R Crim P 3.850 and one new ground of Newly Discovered Evidence of a federal warrant that was withheld from the petitioner before and during trial by the state.

On 3-14-2022 the petitioner filed a Motion to Supplement the Record, entering two affidavits regarding the contested trial evidence, the false narrative broadcast

On 5-2-2022 the petitioner filed a Motion to Strike the respondents Response. due to a direct false statement to the US District Court regarding Prior Judicial Involvement.

On 7-25-2022 the petitioner filed a fourth judicial notice regarding unreliable witness testimony regarding fingerprint evidence in the criminal trial.

On 8-3-2022 the petitioner filed a Motion to Recuse the Magistrate Judge, as the magistrate Judge (Phillip R Lammers) was the judge that also authorized the federal search warrant that was withheld from the petitioner by the state.

On 10-31-2022 the Magistrate denied the motion to Recuse the magistrate Judge.

The search warrant the US magistrate signed was discussed in Trial as stated in The "Request for Certificate of Appealability"

wherein the warrant was the subject of testimony which government witness' testimony touched the subject matter of, at trial. *Jenks v United States* 353 US 657 77 S.2d 1007 1 LE2d 1103 (1957)

The search warrant is also the subject of claim Eleven in the 28 USC 2254 Petition - Brady Violation

The petitioner raised the subject in a Fla R Crim P 3.950(b)(1), Newly Discovered Evidence claim. (The claim was summarily denied)

The petitioner timely filed a Fed R Civ. P Rule 59, motion for Reconsideration of the denial of motion to Recuse the Magistrate Judge.

The US District Judge issued an Order denying everything pending in the case minus granting the "Motion to supplement the record," and the "Motion to supplement the petition".

The US District Court Order denied the following All claims raised in the 2254 Habeas Petition Motion to strike, Motion for Reconsideration, "COA"

The US District Judge dismissed the case with prejudice Dismissed on 3-1-2023

The US District Judge fails to address any of the judicial notices filed in the case.

The US District Judge denied a Motion to Appeal In forma Pauperis

The petitioner timely filed a "Notice of Appeal" and a "CIP" as well as Transcript order form, as required by the rules.

The petitioner timely filed a Motion to Appeal In forma Pauperis in the US District Court which was denied.

The petitioner then filed a timely Motion to proceed In forma Pauperis in the US Court of Appeals.

The petitioner then timely filed a "Request for Certificate of Appealability"

The petitioner also filed a "Request for Leave to file a "Motion for Relief from Judgment or Order" in the US District Court" addressing the Clerical errors or mistakes in the Order denying the 28 USC 2254 petition.

Also addressing Prosecutorial misconduct pursuant to Fed. R. Civ. P. Rule 60(a), Rule 60(b)(3)

The US Court of Appeals denied a "Request for Certificate of Appealability" on Feb 13, 2024, with a direct citation to Slack v McDaniel 529 US 473

The Order also denies "Motion to Proceed In forma Pauperis" and Request for leave to file "Motion for Relief from Judgment or Order in the US District Court."

The US Court of Appeals denied a timely filed Petition for Rehearing En Banc, addressing the legally sufficient and timely filed Petition for Rehearing En Banc (Pursuant to Fed. R. App. P. Rule 35) as a Motion for reconsideration

The denial of the Petition for Rehearing En Banc is only decided by two Judges "Newsome" and "Lick"

REASONS FOR GRANTING THE PETITION

The US Court of APPEALS has so far departed from accepted and usual course of judicial proceedings, and has sanctioned such departure by the U.S. District Court as to call for an exercise of this court's supervisory power.

- In its Order dated Feb 13, 2024 the US Court of Appeals denied a request for "Certificate of Appealability" with a citation to an incorrect requisite requirement for the review, to issue a "Certificate of Appealability," and citing the US Supreme Court case *Slack v. McDaniel* 529 US 473
- The US Court of Appeals denied a timely filed "Petition for Rehearing En Banc"
- The denial was only reviewed by two judges "Newsom" and "Luck"
- The denial addresses the Petition for Rehearing En Banc as a Motion for Reconsideration
- The US Court of Appeals denied a legally sufficient "Request for leave to file Motion for Relief from Judgment or Order in the US District Court."
- The request for leave to file "Motion for Relief..." outlines numerous judicial or clerical errors to include miscitation to the record in claim 9 (10 citations do not exist)
- The request for leave to file "Motion for Relief..." outlines Substantive Due Process violation by the State when it published Contested Trial court evidence and directly violated Florida Rules of Court (Federal)
- The order denying the "COA" by the US Court of Appeals fails to address the "Motion to Strike."
- The "Motion to Strike" was denied in the US District Court and raised in a Notice of Appeal and the Request for "Certificate of Appealability."

• The Order Denying the "COA" by the 10th Court of Appeals misapprehends the "Motion for Reconsideration" filed in the U.S. District Court (regarding Denial of Motion to Recuse Magistrate Judge) and raised in a Notice of Appeal and the "Request for Certificate of Appealability."

The petitioner would like to simplify an otherwise convoluted argument in support of Question # (1), specifically regarding the issuance of a "COA" for the review of the denial of the claims raised in the 28 USC 2254 petition.

The US Court of Appeals has misapprehended the facts of the petitioners Habeas Corpus claims to which the petitioners timely filed request for "COA" addresses but is overlooked.

The request for "COA" in the instant case is for the petitioners only, timely filed 28 USC Habeas Corpus Petition

The U.S. Court of Appeals ELEVENTH CIRCUIT has incorrectly cited *Slack v McDaniel* 529 US 473 wherein "Slack" addresses a Second or successive Habeas Corpus petition. "Slack" also requires "both" regarding the requisite requirements for a "COA" to issue. Which was later addressed and corrected in "Miller-EL".

The Order issued on Feb. 13, 2024 states,

To merit a "certificate of appealability" movant must show that reasonable jurists would find debatable both

1) The merits of an underlying claim, and
2) The procedural issues he seeks to raise
see 28 USC 2253(c)(2) *Slack v McDaniel*
529 US 473, 484 (2000)

Federal statute 28 USC 2253(c)(2) requires "a substantial showing of the denial of a constitutional right."

The US SUPREME COURT sought to clarify and define the term used in 28 USC 2253(c)(2) "a substantial showing of the denial of a constitutional right," three years after "Slack" and the current request for a "COA" is governed by the "stare Decisis" of *Miller El v Lockrell* 537 US 322, 336-37 123 S.Ct. 1024 154 LEd. 2d 931

When a Habeas Corpus applicant seeks permission to initiate appellate review of the dismissal of his petition, the court of appeals should limit its examination to a threshold inquiry into the underlying merits of his claims.

A prisoner seeking a "COA" need only demonstrate "a substantial showing of denial of Constitutional right." A Petitioner satisfies this standard by demonstrating that:

- 1) Jurists of reason could disagree with the district courts resolution of the Constitutional claims; or
- 2) That jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.

A petitioner is not required to establish that the appeal would succeed.

Slack v McDaniel dictates a different standard of review to establish the requisite, wherein *Slack* requires

- 1) Jurists of reason would find it debatable whether the petition states a valid claim of denial of Constitutional right; and that
- 2) jurists of reason would find it debatable whether the district court was correct in its ruling.

The forementioned standard of review in "Slack" is a misapplication of improperly stated rule of law.

The Supreme Court should accept Certiorari to clarify the requisite standard for the issuance of a "Certificate of Appealability"

The Supreme Court stated in

Rodriguez de Quijas v Shearson/AM Express Inc.
490 US 471, 484 109 S.Ct. 1977, 104 LEd 2d 526

"If a precedent of this court has direct application in a case yet appears to rest on reasons rejected in some other line of decisions, the court of appeals should follow the case which directly controls, leaving this court the prerogative of overruling its own decisions."

If the construct of a law or standard is so convoluted that the US Court of Appeals gets it wrong, how is the layman citizen to know what the law is.

The following is cited from the legal authority for research
Black's law Brian Garner Edition (p. 280)

"CERTIFICATE OF APPEALABILITY"

In an appeal from the denial of federal Habeas Corpus Relief a document issued by a United States Circuit Judge certifying that the prisoner showed that a constitutional right may have been denied. 28 USC 2253(c)(2)

The prisoner does not have to show that the case would succeed on the merits, only that reasonable jurists would find the claim at least debatable.

Miller-EL v Cockrell 537 US 322, 377 123 S.Ct 1029, 1039 (2003)

The fifth circuit Court in Marion County, FL has decided an important federal question of law that has not been but should be decided by this court.
(In regards to question #2)

- The petitioner was denied direct request for Standby Counsel in Pre-Trial (Motion to Suppress Evidence Hearing) Trial (all three days) and during Sentencing, with the trial Judge Steven Rogers stating that the petitioner did not have a right to standby counsel, and that he would provide the petitioner with a case [citation]
- No case was ever provided.

- The petitioner raised this ground on direct appeal with the fifth District Court of appeal denying the appeal without an opinion citing Per Curiam Affirm. The claim was preserved for federal review of the merits.

- The US District Court stated in its written opinion denying the forementioned claim (6) in the 28 USC 2254 petition stating,

"There is no Supreme Court precedent clearly establishing a constitutional right to standby counsel."

- The forementioned question was presented to the US Court of Appeals in the "Request for Certificate of Appealability" as a direct request to certify the question of constitutional law to the US Supreme Court pursuant to 28 USC 1254(2)

- The US Court of Appeals fails to address the direct request for certification of Question #2

The following facts are evidenced "Prima facie" in the record supporting a denial of Due Process by failing to provide standby Counsel.

- The Petitioner requested transcripts during trial (not trial) this request was denied by the trial court.
(Transcripts are necessary to impeach a witness on a prior inconsistent statement)
- Evidence was entered into trial that was in violation of "fourth amendment" Evidence was seized the day before the search warrant was issued on the deceased house. (This fact was not available until trial)
- Problem with a Juror selected, the petitioner was unfamiliar with the rules of voir Dire.
- Prosecutorial misconduct, statements made during closing argument improperly shifted the burden of proof.
The petitioner objected twice and the judge does not correct.
- Denial of Deposition of State witness Donald Boie
- The petitioner requested specific jury instructions regarding Grand Theft auto when permission is given, The petitioner even provided specific case law.
The Trial Judge does not include the requested jury instructions.

The fifth circuit court in Marion County, FL has decided an important federal question of law in a way that conflicts with relevant decisions of this court (in regards to Questions #3)

- It remains the position of the petitioner that he was denied his constitutional right to counsel (6th amendment) and right against self incrimination (5th amendment) in custodial interrogations. The petitioner made unequivocal request for counsel stating "I think I need a lawyer" and two minutes later answering a question of clarity by affirming a statement "I probably need to talk to a lawyer"
- The defendant in the US SUPREME COURT case Davis v United States 512 US 452 answered a question (by officers) of clarity in the "negative".
- The fifth District Court of Appeal denied the claim in direct appeal issuing a Per Curiam Affirm decision.
- The US District Court miscites the record 12 times in its written opinion denying the 28 USC 2254 petition (10 of the citations do not exist) claim 9 in the petition.
- The exhaustion requirements met by being raised on direct appeal. A certificate of Appealability should have issued
- The order by the US District court concedes that the petitioner clearly stated he did not understand the consequences of any waiver of rights.
- [p. 29] of the District Courts Order of denial states the detective interrupted him and reminded him that he had previously requested an attorney and left the room to allow TAKHVAR to make sure he wanted to continue the interview.
- The state agent re-initiated interrogation in violation of Edwards v Arizona 451 US 477
- The Order of denial by the US District Court fails to address the denial of fifth amendment right against being a witness against oneself.

The Petitioner and the petitioner's family does not have the money to pay for a lawyer to facilitate what should be a standard Post Conviction process for Relief.

What the petitioner's family does have is "Respect," Respect for the Constitution and laws of the United States.

The petitioner's Uncle (Grandmother's Brother) William Osborn was one of the 67 survivors of the USS Arizona, in Pearl Harbor attack.

While he did survive, my uncle "Bill" as he liked to be called, was Blown up in the attack, and wore a catheter since the age of 18 years old. He literally gave his manhood for this country. Uncle Bill lived into his 60's.

Donald F. Stork wrote the National Wildlife and Invasive Species Protection Act, and he delivered the federal law in Person to Congress in 1970. Donald F. Stork was my grandfather and died in 1980.

The petitioner is not asking for special treatment. The petitioner only asks that the United States Constitution which his family has protected and fought for, be "respected" and followed.

The petitioner who is indigent, and proceeding pro-se has done his best, to successfully comply with all the procedural rules, and strict time deadlines to bring this case forward in the Post Conviction Process in federal Court, only to be denied Due Process once again.

The petitioner seeks the Supreme Court's supervisory power to prevent a manifest of injustice.

CONCLUSION

The US SUPREME COURT should grant certiorari as the questions presented present tremendous public value. This case is very unique and granting certiorari would establish clarification on three areas of law.

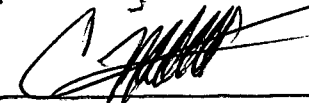
The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: March 31, 2024

Respectfully Re-Submitted,



Date April 24, 2024