

24-5168

Application No.: 23-12933

**IN THE
SUPREME COURT OF THE UNITED STATES**

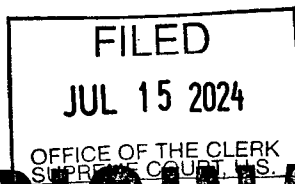
EDWARD NICHOLAS REEDER – PETITIONER

v.

**SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS
FLORIDA ATTORNEY GENERAL - RESPONDENTS**

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

PETITION FOR WRIT OF CERTIORARI



ORIGINAL

Submitted by:

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QUESTION PRESENTED

- 1. Was trial counsel ineffective for failing to object and request that the lower court to address the disposition of Reeder's motion to withdraw plea by ensuring that the trial court rendered and attached a written final order demonstrating that the motion had been voluntarily dismissed.**

LIST OF PARTIES

_____ All parties appear in the caption of the case on the cover page.

- X 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:

Bondi, Pamela J.	Asst. Atty. General (Dir Appeal)
Borello, Hon. Mark	Judge (VOP Plea Hearing/Postcon 3.850)
Cooper, Hon. Mallory D.	VOP Plea Hearing Judge
Corrigan, Hon. Timothy J.	U.S. District Court Judge (Fed Habe)
Feuer, Aaron	VOP Plea Prosecutor (Asst State Atty)
Huband, Christopher	VOP Plea Prosecutor (Asst State Atty)
Jay III, Hon. Harvey L.	1st Dist Ct of Appeal Judge (Dir Appeal)
Jenkins, Kevin A.	VOP Plea Defense Counsel (Asst Pub Def)
Kuhn, Amanda	VOP Plea Defense Counsel (Reg Conflict Atty)
Moody, Ashley B.	Asst. Atty. General (9.141 Denial/3.850 App)
Moore, Jennifer J.	Asst. Atty. General (Fed Habe)
Osterhaus, Hon. Timothy D.	1st Dist Ct of Appeal Judge (Dir Appeal)
Reeder, Edward N.	Petitioner/Defendant/Appellant
Reynolds, Damaris E.	Asst. Atty. General (Fed Habe)
Richardson, Hon. Monte C.	U.S. District Court Magistrate (Fed Habe)
Roberts, Hon. Bradford L.	1st Dist Ct of Appeal Judge (9.141 Denial)
Roberts, Hon. L. Clayton	1st Dist Ct of Appeal Judge (3.850 Appeal)
Rowe, Hon. Lori S.	1st Dist Ct of Appeal Judge (9.141 Denial)
Seliger, Steven L.	VOP Plea Dir App Appellate Counsel
Thomas, Hon. D. Winokur	1st Dist Ct of Appeal Judge (3.850 Appeal)
Winsor, Hon. Allen	1st Dist Ct of Appeal Judge (Dir Appeal)
Wolf, Hon. James R.	1st Dist Ct of Appeal Judge (9.141/3.850 App)

RELATED CASES

- *Reeder v. State of Florida*, 222 So.3d 1211 (Fla. 1st DCA 2017), First District Court of Appeal, Tallahassee, Florida (Direct Appeal). Opinion entered January 12, 2017; Mandate issued February 7, 2017.
- *Reeder v. State of Florida*, 289 So.3d 1274 (Fla. 1st DCA 2020), First District Court of Appeal, Tallahassee, Florida (Postconviction Appeal). Opinion entered January 31, 2020. Mandate issued February 28, 2020.
- *Reeder v. Sec'y FDOC*, 3:20-cv-00478-TJC-MCR (M.D. Fla., July 5, 2023)
- *Reeder v. Sec'y*, FDOC, 23-12933 (11th Cir. 2024), Eleventh Circuit Court of Appeal, Atlanta, Georgia (Certificate of Appealability). Opinion entered April 19, 2024.

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- **Reeder v. State**, April 6th, 2023 (4th Jud. Cir. Fla. 2023), Hon. Mallory Cooper, Case No. 2018-CF-2054-A, 4th Judicial Circuit Court, in and for Marion County, Florida Order Denying Defendant's Motion for Postconviction Relief. This is the last reasoned opinion from the State courts on the issue raised in this Petition for Writ of Certiorari
- **Reeder v. State of Florida**, 222 So.3d 1211 (Fla. 1st DCA 2017), First District Court of Appeal, Tallahassee, Florida (Direct Appeal). Opinion entered January 12, 2017; Mandate issued February 7, 2017.
- **Reeder v. State of Florida**, 289 So.3d 1274 (Fla. 1st DCA 2020), First District Court of Appeal, Tallahassee, Florida (Postconviction Appeal). Opinion entered January 31, 2020. Mandate issued February 28, 2020.
- **Reeder v. Sec'y FDOC**, 3:20-cv-00478-TJC-MCR (M.D. Fla., July 5, 2023)

- *Reeder v. Sec'y*, FDOC, 23-12933 (11th Cir. 2024), Eleventh Circuit Court of Appeal, Atlanta, Georgia (Certificate of Appealability). Opinion entered April 19, 2024.

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☒ For cases from **Federal** courts:

- ☐ 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 R** to the petition and is:

- ☒ reported Reeder v. State, 289 So.3d 1274 (Fla. 1st DCA 2020) or
- ☐ has been designated for publication but is not yet reported; or
- ☐ is unpublished.

The opinion of the lower tribunal (Circuit Court) appears at **Appendix U** to the petition and is:

- ☒ reported at Reeder v. State, Case No. 2018-CF-2054-A (Fla. 1st DCA 2020) (4th Jud. Cir. Fla. March 8, 2018), Hon. Mallory Cooper, 4th Judicial Circuit Court, in and for Duval County, Florida Order Denying Defendant's Motion for Postconviction Relief
- ☐ has been designated for publication but is not yet reported; or
- ☐ is unpublished.

JURISDICTION

☒ For cases from **Federal** courts:

The date on which the Eleventh Circuit Court of Appeals decided my case was April 19, 2024. A copy of that decision appears at **Appendix A. Reeder v. Sec'y, FDOC**, 23-12933 (11th Cir. 2024)

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

☐ A timely Petition for Rehearing was denied by the U.S. Circuit Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix ____.

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

☒ 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 February 20, 2020. A copy of that decision appears at **Appendix R. Reeder v. State**, 289 So.3d 1274 (Fla. 1st DCA 2020).

☐ 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 writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Issues Involved

The Fourteenth Amendment of the U.S. Constitution provides, in pertinent part, as follows:

“No State shall make or enforce any law which will 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 the law; nor deny any person within its jurisdiction the equal protection of the laws.”

The Sixth Amendment of the U.S. Constitution provides as follows:

“In all criminal prosecutions, the accused shall enjoy the right to ... to have the effective assistance of Counsel for his defense.”

STATEMENT OF THE CASE

On or about January 23, 2015, the Defendant, Edward N. Reeder was arrested in Duval County, Jacksonville, Florida, and charged with Strong Armed Robbery contrary to Fla. Stat. §812.13(2)(c). **Appendix I (Information & Arrest Report).**

On October 25, 2015, Petitioner, entered an open plea of guilty to the sole charge of Strong Armed Robbery. **Appendix J (Plea Agreement).**

The corresponding October 26, 2015 Plea Hearing was conducted in front of Hon. Mallory D. Cooper, in the 4th Judicial Circuit Court, in and for Duval County, Florida. **Appendix K (Pre-Plea Hearing).**

On November 19, 2015, a preliminary sentencing hearing was scheduled in front of Hon. Mallory D. Cooper. **Appendix L (Preliminary Sentencing Hearing).** Petitioner was represented by Assistant Public Defender (“APD”) Kevin A. Jenkins (**Appx. L2**). The State informed the Court that Mr. Reeder desired to withdraw his plea (**Appx. L4**). Sentencing was cancelled and the judge placed the Petitioner under oath (**Appx. L5**). The Defendant challenged the State’s use of an arrest on January 16, 2003 for predicate felonies as to his F.S. 775.084(1)(b) HVFO designation, claiming they were incorrect because that arrest resulted in a VOP and not for any new crime charges or convictions (**Appx. L5**). Judge Cooper told Reeder that his Motion to Withdraw Plea had to be filed in writing, and that a hearing on that motion would need to occur (**Appx. L 6-7**). The Petitioner stated on the record that he was letting Defense Counsel know that he needed to file the Motion to Withdraw Plea (**Appx. L7**). The sentencing was cancelled and court was adjourned (**Appx. L 7-8**).

On November 23, 2015, the Petitioner filed a pro se Motion to Withdraw Plea with the trial court and served it on the Public Defender's Office and the State Attorney's Office **Appendix M (Pro Se Withdraw Hearing).**

On January 11, 2016, Defense Counsel Amanda Kuhn filed an "Amended Motion to Withdraw Plea of Guilty in the Court" **Appendix N (Amended Motion to Withdraw Plea).** Counsel Kuhn worked for the Office of Regional Conflict and was appointed after Mr. Reeder filed a motion to withdraw his plea. The motion alleged that Reeder was misadvised by Defense Counsel APD Kevin A. Jenkins at his October 26, 2015 Plea Hearing. Reeder claimed Counsel Jenkins advised him that if he entered into an open plea to the Court, the Petitioner would be sentenced to a non-HVFO CPC guideline sentence (between 40.5 months and 15 years in prison)

On January 19, 2016, a hearing was conducted in front of Hon. Mark Borello. **Appendix O (Motion to Withdraw Plea Status Hearing).** Petitioner was represented by Conflict Counsel Amanda M. Kuhn. Counsel asked for a continuance stating she was in negotiations with the State and that "I think it's possible we may be able to work this out". (**Appx. O4**).

On February 1, 2016, another hearing was conducted in front of Hon. Mark Borello **Appendix P (Motion to Withdraw Plea Status Hearing).** Petitioner was represented by Attorney Amanda M. Kuhn. Counsel asked for another continuance stating she was hoping to come back with a negotiated plea agreement with the State after they talked to the victim (**Appx. P4**).

On February 8, 2016, a hearing was held conducted in front of Hon. Mark Borello **Appendix Q (Motion to Withdraw Plea Status Hearing).** Petitioner was represented by Attorney Amanda M. Kuhn. Counsel informed the judge that Reeder was here to decide if he was going to go forward on his motion to withdraw plea. Defense Counsel stated "He has told

me today that he would like to go ahead and be sentenced this week". Counsel stated that Reeder was waiving his right to be sentenced in front of Judge Cooper and would like Judge Borello to sentence him (**Appx. Q3**).

On February 10, 2016, sentencing on the open plea was held before Judge Hon. Mark Borello **Appendix R (Sentencing Hearing)**. Petitioner was represented by Attorney Amanda M. Kuhn. Petitioner agreed to proceed with sentencing without a PSI Report, consistent with his earlier waiver. The HVFO hearing began. Defense Counsel Kuhn stated Reeder was stipulating to his identity as the perpetrator on the State's 1993 prior felony conviction paperwork, but was not stipulating to his HVFO designation. The State presented a September 23, 1993 Nassau County judgment with fingerprints in Case Number 1992-CF-575 and the same for a violation of probation ("VOP") in 2003 that matched the current offense fingerprints **Appendix M (Judgment)**. The Judgment in Case Number 1992-CF-575 was for two offenses: Count I Attempted 1st-Degree Murder and Count II Armed Robbery. Count III was nolle prossed.

The Court accepted the September 23, 1993 Nassau County judgment and designated Reeder as a Habitual Violent Felony Offender (HVFO). (**Appx. R25**).

Defense Counsel argued that in Case Number 1992-CF-575, the Petitioner was sentenced in Nassau County to (20) years in prison, followed by two years for a crime of attempted 1st-degree murder (**Appx. R6**). The Petitioner was released on community control in 2001 after serving 8 years of that sentence (**Appx. R6**). The Petitioner was subsequently arrested in Nassau County for a technical violation (curfew) that resulted in a VOP of his community control. As a result of that arrest, no new convictions resulted.

Nevertheless, on January 16, 2003, Reeder was resentenced by Nassau County Judge Hon. Robert M. Foster to 22 years in prison for the VOP with all prior gain-time earned revoked

Appendix S (Resentencing Hearing Transcript). On January 9, 2011, Reeder was released from his 1993 and 2003 VOP sentences.

On January 23, 2015, Reeder was arrested on his instant unarmed Robbery offense and Counsel noted that in his instant 2015 offense, Reeder handed the victim a note, got the money and left the Dollar General Store and did not carry any weapon (**Appx. R17**). Counsel argued the current offense did not represent the violence warranted as an HVFO designee (**Appx. R17**). Counsel finally argued that Reeder only scored out to a guideline sentence of 40.5 months (just over 3 years), and that the 10-30 year HVFO range was excessive in that light (**Appx. R17**). Judge Borello issued a sentence of 22 years in prison as an HVFO with a 10-year minimum mandatory **Appendix U (February 10, 2016 Judgment)**.

On January 12, 2017, the 1st DCA per curiam affirmed the judgment and the mandate issued on February 7, 2017 (see Reeder v. State, 222 So.3d 1211 (Fla. 1st DCA 2017). **Appendix U (PCA & Mandate)**.

On February 1, 2018, the Petitioner filed his original Rule 3.850 Motion for Postconviction Relief. **Appendix H (Fla. R. Crim. P. 3.850)**. On March 11, 2019, the postconviction court entered an order summarily denying all six (6) grounds raised. **Appendix G (3.850 Denial Order)**. On April 20, 2019, the postconviction court entered an order denying Reeder's motion for rehearing. On April 30, 2019, the Petitioner filed a timely notice of appeal. On February 28, 2020, the 1st DCA mandate issued on the per curiam affirmed opinion. **Appendix F (PCA & Mandate)**. On January 10, 2019, the Petitioner filed his Petition Alleging Ineffective Assistance of Appellate Counsel under Fla. R. App. Rule 9.141(d). **Appendix E (9.141)**.

On July 22, 2020, the Appellant filed his 28 USC §2254 Petition and Memorandum of Law with the Middle District of Florida (Jacksonville Division). **Appendix D (§2254)**. On July 05, 2023, Hon. U.S. District Court Judge Timothy J. Corrigan issued his Order denying the Petition and denying a Certificate of Appealability. **Appendix C (§2254 Denial Order)**. On July 28, 2023, Appellant filed his Notice of Appeal. On December 12, 2023, Appellant filed a Certificate of Appealability (“COA”). **Appendix B (COA)**. On April 19, 2024, the Eleventh Circuit Court of Appeals denied the COA. **Appendix A (COA Denial)**.

REASONS FOR GRANTING THE PETITION

GROUND ONE:

Defense Counsel Amanda Kuhn was ineffective by failing to object and request the lower court to address the disposition of Reeder's motion to withdraw plea by forcing the trial court to conduct a waiver colloquy to ensure voluntariness and for failing to ensure that the trial court rendered and attached a written final order demonstrating that the motion had been voluntarily dismissed.

This error violated the Petitioner's 14th Amendment right to due process and his 6th Amendment right to a fair trial and to the effective assistance of counsel under the U.S. Constitution.

Facts and Argument

This claim was not raised in Petitioner's state post-conviction motion pursuant to Fla. R. Crim. P. 3.850. It was therefore unexhausted. This claim however was raised in Petitioner's 28 U.S.C. §2254 and memorandum of law under the exception created by Martinez v. Ryan, 566 U.S. 1 (2012). Petitioner's argument is that his judgment and sentence is not final because Defense Counsel Amanda Kuhn was ineffective for failing to push the lower court to formally address his *Pro-se* Motion to Withdraw his Plea and for failing to push the lower court into attaching a written final order demonstrating that the motion had been voluntarily dismissed and because the motion to withdraw his plea was not addressed, his resulting open plea to the court is void, which in turn has rendered his sentence and judgment and all subsequent proceedings in this case also void.

Petitioner claimed in his §2254 memorandum of law that Martinez applies to him because "he was not represented by an attorney at any point, during, or even on the appeal of his post-conviction motions." Further, that the claim was substantial. On February 8, 2016, just two days before sentencing on Petitioner's open plea, a hearing was conducted in front of Hon. Mark

Borello Appendix K (Plea Hearing). Petitioner was represented by ASA Amanda Kuhn (**Appx K, p.25**). Counsel informed the judge that Reeder was here to decide if he was going to go forward on his motion to withdraw plea (**Appx. K, p.6**). Defense Counsel then stated, “He has told me today that he would like to go ahead and be sentenced this week” (**Appx. K, p.26**). Counsel stated that Petitioner was waiving his right to be sentenced in front of Judge Cooper and would like Judge Borello to sentence him (**Appx. K, p.26**).

On January 11, 2016, Counsel Kuhn filed a formal “Amended Motion to Withdraw Plea” on behalf of Petitioner alleging among other things that “Defendant asserts that his plea was involuntary as he was misadvised as to a point on which he based his decision to plea guilty. ... that his attorney promised him that he would be sentenced in accordance with the Florida Sentencing Guidelines.” **Appendix G, (p.1)**. During the ensuing month, there were (2) additional hearings where counsel advised the court that plea negotiations were ongoing. See **Appendix H & I**. After prior plea negotiations failed, at the February 10, 2016, Sentencing Hearing, counsel Kuhn advised the court that ‘Reeder indicated that he does want to go forward with sentencing.’ (**Appx. K6**).

The Middle District factually found that “At a pretrial hearing on February 8, 2016, Kuhn informed the court that Reeder wanted to be sentenced that week rather than move forward with his motion to withdraw plea. **Appendix P, (p.8)**. The Court understood Counsel’s statement as a waiver of the Amended Motion to Withdraw Plea. However, the trial Court did not conduct a colloquy between the court and Petitioner as to whether or not he was indeed voluntarily dismissing his pending motion to withdraw plea. **Appendix K**. Even if Petitioner wished to go forward with sentencing, [which Petitioner does not concede] immediately after advising the Court that Petitioner wished to go forward with sentencing, trial counsel should have reminded

the Court that it needed to conduct a colloquy on the record. Counsel Kuhn unreasonably failed to advise the Court that a colloquy needed to be conducted in order to legally dispose of her Amended Motion to Withdraw Plea. Most importantly, the court failed to further address Petitioner's motion to withdraw plea or attach any final written order disposing of it. In essence, the trial court completely ignored Petitioner's constitutional due process rights to withdraw his plea. Counsel Kuhn had a Sixth Amendment duty to remind the court that it had a legal obligation under Fla. R. Crim. P. 3.170(I) to dispose of the motion before entertaining an open plea sentencing procedure. As such, Petitioner's judgment and sentence has never become final and the lower court was without authority to adjudicate the Petitioner guilty or to issue the corresponding judgment and sentence.

Moreover, if a judgment and sentence is not final then the state appellate court was without jurisdiction to hear any subsequent appeal. See Iriarte v. State, 119 So.3d 528, 529 (Fla. 2nd DCA 2013) ("The court also noted that although Iriarte filed a timely motion to withdraw plea after sentencing, he admitted in his Rule 3.850 motion that he later voluntarily dismissed it. The court delved no further into this issue despite the fact that a motion to withdraw plea under Florida Rule of Criminal Procedure 3.170(I) "delays rendition of the judgment and sentence until the court files a signed, written order disposing of the motion" (citing to Haber v. State, 961 So.2d 1098 (Fla. 2nd DCA 2007)). Because the court failed to further address Iriarte's motion to withdraw plea or attach any order disposing of it, the date his judgment and sentence became final cannot be determined from the record, and the timeliness of his current rule 3.850 motion remains unclear. Accordingly, ... if the motion to withdraw plea has not been formally disposed of, the court shall again dismiss Iriarte's Rule 3.850 motion – as his judgment and sentence never became final – and rule upon his motion to withdraw plea. See id."). See also Williams v. State,

215 So.3d 642, 643-644 (Fla. 5th DCA 2017) (“To explain our resolution of this case, we first briefly examine the interplay between rules 3.170(I) and 3.850. A timely rule 3.170(I) motion to withdraw plea, as was filed here, defers or delays rendition of the judgment and sentence until the trial court files a signed, written order disposing of the motion. See *Wilson v. State*, 128 So.3d 898 (Fla. 4th DCA 2007) (citing Fla. R. App. P. 9.020(h)(1)(I); see *Haber v. State*, 961 So.2d 1098, 1099 (Fla. 2nd DCA 2007) (citations omitted); also *Smallwood v. State*, 911 So.2d 849, 850 (Fla. 1st DCA 2005) (citations omitted) ... “Returning to the present case, once Williams filed his motion to withdraw plea, rendition of his judgment and sentences was suspended, and thus, they were not final. Therefore, William’s two Rule 3.850 motions, filed prior to the court ruling on his motion to withdraw plea, were premature... The circuit court should have dismissed the two Rule 3.850 motions without prejudice, rather than denying them on the merits, because the judgment and sentences were not and could not have been final (see *Wilson* at 899; *Haber* at 1098 and *Canon v. State*, 57 So.3d 972, 974 (Fla. 3rd DCA 2011) (holding, that “it is improper to consider a rule 3.850 motion before the underlying judgment is final.”).

The Middle District Court of Jacksonville denied this ground on the basis that ... “Reeder also claims his criminal judgment is not final under Florida Rule of Criminal procedure 3.170(1) because his motion to withdraw plea remains pending.” However, “state procedural issues are not cognizable on federal habeas review. See *Estelle v. McGuire*, 502 U.S. 62, 67 (1991). Petitioner cannot dispute this argument. Nevertheless, Petitioner’s primary argument is not directed at whether the trial court erred in following “state procedural issues”, but that trial counsel violated the Sixth Amendment when she was ineffective in failing to ensure that the trial court followed through with Petitioner’s Fourteenth Amendment Due Process rights to have his convictions rendered under state procedural law. See *Nieves v. Sec’y*, 2020 U.S. App. LEXIS

6989 (11th Cir. 2020), Mr. Nieves raised claims involving allegations that his plea was involuntary and because so he filed a motion to withdraw his plea pursuant to Fla. R. Crim. P. 3.170(1). The state court denied that motion, finding, after an evidentiary hearing, that the plea was voluntary. Mr. Nieves raised these claims under state law on direct review, and the DCA affirmed their denial without a written opinion. On habeas review, the federal district court found that these issues present issues only of state law and as such are not cognizable on federal habeas review. See Branan v. Booth, 861 F.2d 1507, 1508 (11th Cir. 1988) “While Mr. Nieves's petition for a COA now states that these claims involve violations of the Due Process Clause of the Fourteenth Amendment, he did not raise any due process claim on direct review.” Thus, Mr. Nieves did not fairly apprise the state court that these claims presented federal constitutional issues. Because he has neither alleged, nor shown, cause for and actual prejudice from the default, or a fundamental miscarriage of justice, these claims are procedurally defaulted. See Duncan v. Henry, 513 U.S. 364 (1995).

The difference between Petitioner and Nieves is that Petitioner did in fact raise his claim under the Sixth and Fourteenth Amendment and that it was excused as not procedurally defaulted under Martinez.

This claim is a substantial one under Martinez, because trial counsel’s Kuhn’s failure to object and move to have the trial court follow through with its procedural obligations to make sure that Petitioner’s judgment and sentence was final was unreasonable assistance of counsel under AEDPA’s standards. Because Petitioner’s judgment and sentence is not final, the state appellate court was without jurisdiction to affirm the judgment and sentence. It is beyond debate that “finality of judgment is required as a predicate for federal appellate jurisdiction” United States v. MacDonald, 435 U.S. 840 (1978). The Middle District Court and Eleventh Circuit

Court of Appeals did not have to give deference to Petitioner's state trial court Due Process procedural application because the trial court did not follow the mandatory language required under Fla. R. App. P. 9.020(h)(1)(i) that states, "an order is rendered when a signed, written order is filed with the clerk of the lower tribunal and motion to withdraw a plea after sentencing under Florida Rule of Criminal Procedure 3.170(1) tolls rendition unless another applicable rule of procedure specifically provides to the contrary").

Under Martinez, trial counsel Kuhn's failure to object to the judge imposing a judgment and sentence without a written order disposing of Petitioner and Counsel's Motions to Withdraw his Plea allowed Petitioner to be convicted and committed to prison without finality and deprived the appellate court of jurisdiction to affirm hear and affirm his direct appeal. Petitioner's constitutional right to effective assistance of counsel and Due Process was clearly and unreasonably violated.


CONCLUSION

This Court should grant the instant writ of certiorari and find that trial counsel was ineffective under Strickland¹ for failing to adhere to her Sixth Amendment obligations of making sure that the lower court addressed with the mandatory procedures of determining whether Petitioner was voluntarily waiving his motion to withdraw plea and in failing to ensure the lower court attached a written final order demonstrating that the motion had been voluntarily dismissed.

¹ *Strickland v. Washington*, 466 U.S. 668 (1984)

OATH

Under penalty of perjury, I certify that all of the facts and statements contained in this document are true and correct and that on the day of **July 15th 2024**, and that I have handed this Writ of Certiorari and exhibits to a prison official for mailing to this Court and the appropriate Respondents with pre-paid postage.

/s/ 
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