

Case No. 24-5583

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IN THE
SUPREME COURT OF THE UNITED STATES

CARLOS SANCHEZ
Petitioner

vs.

RICKY DIXON, SEC., FLA.DOC
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT

**AMENDED
MOTION FOR REHEARING**

Carlos Sanchez
Petitioner, pro se
DC# 412856
Everglades Corr. Inst.
1599 SW 187th Avenue
Miami, Florida, 33194

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SUPREME COURT, U.S.

COMES NOW, the Petitioner, Carlos Sanchez, in accordance with United States Supreme Court Rule 44, and respectfully moves this honorable Court for Rehearing on the denial of Petition for Writ of Certiorari, and for good grounds will show:

1. As a preliminary matter, this motion is presented in good faith and not for purpose of delay.

2. On or about August 9, 2024, Petitioner filed a Petition for Writ of Certiorari in this Court raising two questions for this Court's consideration:

Whether the law permits conflict counsel to file for continuance which in effect denied Petitioner his right to speedy trial

Whether the Eleventh Circuit Court of Appeals is in conflict with the Ninth Circuit Court of Appeals on the issue of when an evidentiary hearing is required to be held on a §2254 petition for writ of habeas corpus

3. This Court denied the Petition for Writ of Certiorari on November 18, 2024.

4. Petitioner respectfully contends that the denial of relief warrants rehearing when considering the Constitutional and statutory provisions involved, precisely, Petitioner's Fifth, Sixth and Fourteenth Amendment Rights to due process, speedy trial, fair trial, effective assistance of counsel, to be afforded conflict free counsel, and to be provided an evidentiary hearing.

BASIS FOR REHEARING

Petitioner's first question to this Court was whether the law permits conflict counsel to file for continuance which in effect denied Petitioner his right to speedy trial. In support of relief Petitioner detailed the facts of his case and then based his question on the fact that it is a well established precedent of law that a criminal defendant has a right to effective assistance of counsel, which includes the right to conflict free counsel. See *Cuyler v. Sullivan*, 446 U.S. 335 (1980).

The facts of this case establish that conflict counsel was responsible for seeking and gaining unwanted continuance(s) in this case, effectively depriving Petitioner of his right to a speedy trial. Consequently, Petitioner asked this Court to grant certiorari review and make a finding that conflict free counsel does not have the authority to file for a continuance and effectively deprive a defendant of his right to a speedy trial, and reverse and remand with instructions to immediately release Petitioner from unlawful custody.

The Court ultimately denied review, leading Petitioner to respectfully request rehearing on the basis of the Eleventh Circuit's holding will continue to establish an unlawful foundation of it being proper for a conflict

counsel to file for continuance which in effect denied Petitioner his right to speedy trial.

Petitioner's second question to this Court was whether the Eleventh Circuit Court of Appeals is in conflict with the Ninth Circuit Court of Appeals on the issue of when an evidentiary hearing is required to be held on a §2254 petition for writ of habeas corpus.

Petitioner acknowledges that under federal review, movants who have failed to develop a factual basis for relief in state court face difficult barriers in obtaining an evidentiary hearing in federal court. However, "if the habeas applicant did not receive a full and fair evidentiary hearing in a state court, either at the time of trial or in a collateral proceeding," the Supreme Court has established that a federal court "must hold an evidentiary hearing" to resolve any facts that "are in dispute." *Townsend v. Sain*, 372 U.S. 293, 312, 83 S. Ct. 745, 9 L. Ed. 2d 770 (1963). The Court further explained the controlling criteria by enumerating six circumstances in which such an evidentiary hearing would be required:

- (1) the merits of the factual dispute were not resolved in the state hearing; (2) the state factual determination is not fairly supported by the record as a whole; (3) the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing; (4) there is a substantial allegation of newly discovered evidence; (5) the material facts were not adequately developed at the state-court hearing; or (6) for any

reason it appears that the state trier of fact did not afford the habeas applicant a full and fair fact hearing.

Id., 372 at 313, 83 S. Ct. 745. Three years later, in 1966, Congress enacted an amendment to the federal habeas statute that was an almost verbatim codification of the standards delineated in *Townsend*, *supra*; see also *Miller v. Fenton*, 474 U.S. 104, 111, 106 S. Ct. 445, 88 L. Ed. 2d 405 (1985). That codification read in relevant part as follows:

In any proceeding instituted in a Federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination ... of a factual issue, made by a State court of competent jurisdiction ... shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit --

(1) that the merits of the factual dispute were not resolved in the State court hearing; (2) that the fact-finding procedure employed by the State court was not adequate to afford a full and fair hearing; (3) that the material facts were not adequately developed at the State court hearing; (4) that the State court lacked jurisdiction of the subject matter or over the person of the applicant in the State court proceeding; (5) that the applicant was an indigent and the State court, in deprivation of his constitutional right, failed to appoint counsel to represent him in the State court proceeding; (6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; or (7) that the applicant was otherwise denied due process of law in the State court proceeding; (8) or unless ... the Federal court on a consideration of [the relevant] part of the record as a whole concludes that such factual determination is not fairly supported by the record." §2254(d).

Id. at 474 U.S. at 111, 106 S. Ct. at 450.

As is clear from the statutory text quoted above, if any “one of the eight enumerated exceptions...applies” then “the state court’s fact-finding is not presumed correct.” *Jefferson v. Upton*, 560 U.S. 284, 130 S. Ct. 2217, 2220-2222, 176 L. Ed. 2d 1032 (2010) (“Under 28 U.S.C. §2254(d), state-court findings of fact ‘shall be presumed to be correct’ in a federal habeas corpus proceeding unless one of eight enumerated exceptions applies”); see also 1 R. Hertz & J. Liebman, *Federal Habeas Corpus Practice and Procedure* § 20.2c, pp. 915-918 (5th Ed. 2005). Petitioner contends that much of the statutory text quoted above are apparent in the instant case, thus requiring an evidentiary hearing.

The record in this case reveals that the Eleventh Circuit Court of Appeals disavows the foregoing law. In contrast, the Ninth Circuit has consistently held that state court findings that were made without an evidentiary hearing are nothing more than conclusory suppositions and assumptions that should not be relied upon to either consider the claims nor deny them without first affording Petitioner his right to an evidentiary hearing.

Based on the foregoing, Petitioner asked this Court to find the conflict in favor of the Ninth Circuit’s holdings, and order the Eleventh Circuit to comply. However, This Court ultimately denied review, leading Petitioner to

respectfully request rehearing on the basis of the Eleventh Circuit's holding will continue to establish an unlawful foundation of it being proper for reviewing courts to rely on factual findings that were made without first affording a movant the right to an evidentiary hearing.

CONCLUSION

WHEREFORE, Petitioner prays this Honorable Court will find good cause has been shown to grant rehearing, and grant all appropriate relief to include granting the Petition for Writ of Certiorari.

Respectfully submitted,



Carlos Sanchez
Petitioner, pro se
DC# 412856
Everglades Corr. Inst.
1599 SW 187th Ave.
Miami, FL. 33194-2801

CERTIFICATE OF COMPLIANCE

I hereby certify that the grounds raised herein are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously raised.



Carlos Sanchez

CRIMINAL DIVISION

CASE NO.: F10029468

SECTION: F018

JUDGE: MIGNA SANCHEZ-LLORENS

THE STATE OF FLORIDA,
Plaintiff,

v.

CARLOS SANCHEZ,
Defendant.

MOTION TO WITHDRAW AND CERTIFICATION
OF CONFLICT OF INTEREST

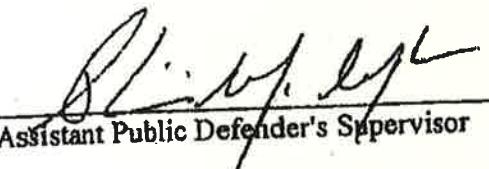
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11TH JUDICIAL CIRCUIT
FLORIDA
1320 NW 14TH STREET
MIAMI, FL 33125
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The undersigned attorney hereby certifies to this Court that the interests of the Defendant in this cause and the Office of the Public Defender are so hostile that the Defendant cannot be counseled by the Public Defender or his staff without conflict of interest.

I CERTIFY that a copy of this Motion to Withdraw and Certification of Conflict of Interest has been hand-delivered to the Office of the State Attorney, 1350 NW 12 AVE, Miami FL 33136 on May 23, 2011
Respectfully submitted,

Carlos J. Martinez
Public Defender
Eleventh Judicial Circuit of Florida
1320 NW 14th Street
Miami, Florida 33125
305.545.1600

By:


Assistant Public Defender's Supervisor

By:


Michael Mayer
Assistant Public Defender
Florida Bar No: 0048134

MEMORANDUM

To: GEORGE, JOSEPH JR
1501 N.W. NORTH RIVER DR
MIAMI, FL 33125

Date: 06/07/2011

CLERK, CIRCUIT, 12-14-1948
DABE COUNT, FLA.
CIRCUIT CRIMINALS

From: HARVEY RUVIN, Clerk
Circuit Court, Criminal Division

*Re: Appointment as
Regional Conflict
Attorney
to represent*

Defn Name: **SANCHEZ, CARLOS**

Case #: F10029468

On 06/06/2011 Judge MIGNA SANCHEZ-LLORENS
appointed you as *Regional Conflict Attorney* to represent
the above name individual.

The case is set for **REPORT**

on 06/21/2011

A copy of the Certificate of Conflict of Interest and Order appointing attorney is enclosed (if available at time of processing). A copy of the case information is also enclosed.

RECEIVED

CC: Justice Administration Commission

JUN 21 2011
BY:

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT OF
FLORIDA
IN AND FOR MIAMI-DADE COUNTY.

CRIMINAL DIVISION

CASE NO.: F10-29468

JUDGE: Migna Sanchez-Llorens

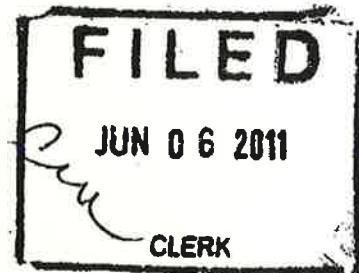
DIVISION: 18

THE STATE OF FLORIDA

Plaintiff,

vs. Carlos Sanchez

Defendant,



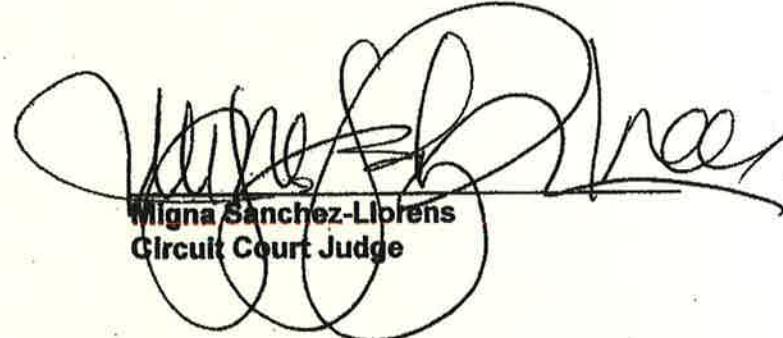
ORDER DISCHARGING THE PUBLIC DEFENDER
AND APPOINTING THE OFFICE REGIONAL COUNSEL

THIS CAUSE came before the Court to determine if Court Appointed Counsel is necessary, and if so, who that counsel should be.

A showing of indigence being made, this court appoints the Public Defender, who says they cannot accept appointment because of a Conflict of Interest.

THEREFORE, the Office of the Public Defender is discharged and the Office of Regional Counsel is appointed.

DONE AND ORDERED in Miami-Dade County this 10th day of June,
2011.


Migna Sanchez-Llorens
Circuit Court Judge

Copies Furnished:
Office of Regional Counsel – Division 06
Office of the State Attorney
Justice Administrative Commission (JAC)

IN THE
SUPREME COURT OF THE UNITED STATES

CARLOS SANCHEZ
Petitioner
vs.

RICKY DIXON, SEC., FLA.DOC
Respondent

PROOF OF SERVICE

I, Carlos Sanchez, do swear or declare that on this date, January 24, 2025, as required by Supreme Court rule 29 I have served the enclosed MOTION FOR REHEARING on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Office of Attorney General
Sun Trust International Center
One S.E. Third Ave., Ste. 900
Miami, Florida 33131

Executed on January 24, 2025.



Carlos Sanchez