No. 24-5799

IN THE

SUPREME COURT OF THE UNITED STATES

MARIA NAVARRO MARTIN - PETITIONER
(Your Name)

vs.

STATE OF FLORIDA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

MARIA NAVARRO MARTIN
(Your Name)

FWRC: 3700 NW - 111th Place
(Address)

Ocala Fl. 34482
(City, State, Zip Code)

DC# G30340
(Phone Number)

QUESTION(S) PRESENTED

(1) WHETHER THE ADHERENCE TO AN UNCONSTITUTIONAL STATE LAW IS NOT MANDATE BY A FEDERAL LAW UNDER AN UNCONSTITUTIONAL STATE STATUTE OF CONVICTION THAT "VIOLATE DUE PROCESS. ART. I, 9, FLA. CONST. ACCORD U.S. CONST. AMEND. XIV", DOES THE POLICY OF EXHAUSTION IN FEDERAL HABEAS CORPUS ACTIONS, REQUIRE THE EXHAUSTION OF INADEQUATE REMEDIES?

(2) IN THE LIGHT OF THIS COURT PRECEDENT IN ROSE V. LUNDY, 455 U.S. 509, 522, 102 S. CT. 1198, 71 L. ED. 2D 379 (1982). DOES THE DISTRICT COURT SHOULD DISMISS THE PETITION WITHOUT PREJUDICE TO ALLOW EXHAUSTION AND THE CIRCUIT COURT WAS INCORRECT IN NOT INQUIRING WHETHER A "SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT" HAD BEEN PROVED ?

LIST OF PARTIES

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

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

- State of Florida, Office of the Attorney General 444 Seabreese Blvd. Daytona Beach Fl. 32812

- Solicitor General of United States, Room 5616, Department of Justice, 950 Pennsylvania Av. N.W. Washington D.C. 20530-0001.

RELATED CASES

Navarro-Martin v Florida, Eleventh Circuit Court of Appeal Case No. 23-13123-F; District Court case No. 6:23-CV-00149-RBD-EJK; L.T. Case No. 2017-CF-010498-A-O.

TABLE OF AUTHORITIES CITED

STATUTES AND RULES:

28 U.S.C. 2254(b)(1)(B)(ii)
28 U.S.C. 2254(d)(1)
28 U.S.C. 2253(c)(2)

OTHER
Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR OF CERTIORARI

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

OPINIONS BELOW

[X] 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,
[X] is unpublished.

The opinion of the United States district court of appeals appears at Appendix _____C_____to the petition and is

[ ] Reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was MAY, 2, 2024

[ ] No petition for Rehearing was timely filed in my case

[X] A timely petition for rehearing was denied by the united States Court of Appeals on the following date: August 6, 2024, 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. s. 1254(1).

[ ] For cases from State courts:

The date on which the United States Court of Appeals decided my case was_____

[ ] 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:_____, 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. s. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Statutes ⊏ 108 - prevention of unconstitutionality

> Only when it is utterly unavoidable should the United States Supreme Court interpret a federal statute to require an unconstitutional result. It is the duty of federal courts to construe a statute, narrowly when appropriate, so as to save it from constitutional infirmities.

L Ed Digest: Courts ⊏ 777.7; Statutes ⊏ 108

> Treating decisions as substantive under Teague if they involve statutory interpretation, but not if they involve statutory invalidation, would produce unusual outcomes. It has long been the U.S. Supreme Court's practice, before striking a federal statute as impermissibly vague, to consider whether the prescription is amenable to a limiting construction. A decision that saves a vague statute by adopting a limiting construction is substantive, so anyone who falls outside the limiting construction can use that decision to seek relief on collateral review.

L Ed Digest: Courts ⊏ 93; Statutes ⊏ 108

> The U.S. Supreme Court may impose a limiting construction on a statute only if it is readily susceptible to such a construction. The Court will not rewrite a law to conform it to constitutional requirements.

Statutes, ⊏⊏ 228, 230, 231 a implied repeal by conflicting or substitute legislation.

> A statute is impliedly repealed by a later one to the extent to which their provisions are in irreconcilable conflict or if the later act covers the whole subject of the earlier one and is clearly intended as a substitute; but in either case the intention of the legislature to repeal must be clear and manifest, otherwise the later act is generally to be construed as the continuation of, and not a substitute for, the first act, and will continue to speak, so far as the two acts are the same, from the time of the first enactment.

Statutes, ⊏ 250 a later statute as mere continuation of earlier one repealed by it.

> Even in the face of a repealing clause, circumstances may justify the conclusion that a later act repealing provisions of an earlier one is a continuation, rather than an abrogation and re-enactment, of the earlier act.

Cases and Questions Certified ⊏ 4.5; Courts ⊏ 757.5 - federal court abstention - certification of state question to state courts

> A federal court may not properly ask a state court if it would care in effect to rewrite an allegedly unconstitutional statute, nor may the federal court certify the entire constitutional challenge to the state court.

Courts ⊏ 757; States ⊏ 46 - exhaustion of state remedies.

A state remedy does not foreclose suit in the federal courts where the most the state remedy could produce is a state court action that would have no such effect.

Habeas Corpus ⊏ 14.5 ⧺ in federal court ⧺ where state law affords successive or alternative remedies.

Section 2254 of the Revised Judicial Code, which requires exhaustion of remedies available in state courts as a prerequisite of the grant by a federal district court of a state prisoner's application for habeas corpus, ... does not require repeated attempts to invoke the same state remedy nor more than one attempt where there are alternative state remedies.

Habeas Corpus ⊏ 26 ⧺ by state prisoner ⧺ in federal court ⧺ discretion where same issues were raised in state court.

The Judicial Code of 1948 does not restrict the discretion of a district court, as exercised before the adoption of the Code, to entertain petitions for habeas corpus from state prisoners which raised the same issues raised in the state courts.

Habeas Corpus ⊏ 14.5 - exhaustion of other remedies

It is appropriate to grant an indigent petitioner relief in federal habeas corpus proceedings without requiring him to resort to further state court proceedings, where (1) his claim that the denial of a free transcript of a preliminary hearing violated his constitutional rights has been unsuccessful in the state courts. (2) there is no substantial state interest in ruling again on the petitioner's case; and (3) the petitioner had adequately made known his desire to obtain the transcript of the preliminary hearing.

Courts ⊏ 709 - securing rights protected by Federal Constitution - responsibility of state courts

State courts are equally bound to guard and protect rights secured by the United States Constitution.

Statutes ⊏ 254 ⧺ repeal of statute conferring jurisdiction ⧺ effect on pending cases.

When a law conferring jurisdiction is repealed without any reservation as to pending cases, all such cases fall with the law.

Constitutional Law ⊏ 500 - equal protection - indigence

To interpose any financial consideration between an indigent prisoner of the state and his exercise of a state right to sue for his liberty is to deny that prisoner the equal protection of the laws.

Judgment ⊏ 145 ⫷ state decisions as res judicata in federal habeas corpus proceedings.

State adjudications as to whether one convicted of crime has been deprived of federal constitutional rights are not res judicata in habeas corpus proceedings in federal courts.

Habeas Corpus ⊏ 14 ⫷ in federal court ⫷ failure to appeal from state court conviction ⫷ when excusable.

Even though a prisoner failed to appeal from his conviction in a state court within the time prescribed by state law, federal habeas corpus is available.

Appeal and Error ⊏ 399 ⫷ review by Supreme Court of state habeas corpus proceedings, despite failure to appeal from conviction.

The United States Supreme Court will review state habeas corpus proceedings even though no appeal was taken by the prisoner from his conviction, if the state treated habeas corpus as permissible.

Habeas Corpus ⊏ 26 - claim reviewed by state court

A state prisoner who developed a claim in state court-and who can prove that the state court's decision was contrary to, or an unreasonable application of, clearly established federal law as determined by the United States Supreme Court-is not barred by 28 USCS ⊏ 2254(d)(1) from obtaining federal habeas corpus relief on that claim.

Statutes ⊏ 18 - criminal - vagueness

The constitutional requirement of definiteness is violated by a criminal statute which fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute; the underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.

Courts ⊏ 775 - adherence to decision

United States Supreme Court decisions remain binding precedent until the Supreme Court sees fit to reconsider them, regardless of whether subsequent cases have raised doubts about the decisions' continuing vitality.

Courts ⊏ 766 - precedent

Once the United States Supreme Court has decided to reconsider a particular rule, the court is remiss if it does not consider the consistency with which the rule has been applied in practice.

STATEMENT OF THE CASE

Comes Now, the petitioner Maria Navarro Martin, pro se , and respectfully invoke the jurisdiction of this honorable court under S.C. Rule 10(c) and Rule 14, since that The Eleventh Circuit Court of Appeals has decided in the case No. 23-13123-F, an important question of federal law that has not been, but should be settled by this court, and has decided an important federal question in a way that conflicts with relevant decisions of this court. The 28 U.S.C. s. 2403(b) may apply and shall be served in the Attorney General of the State of Florida whether the constitutionality of the State Statute of Conviction 914.22(1)(a) Fla. Stat., is drawn into question.

Ms. Navarro-Martin, a Florida state prisoner proceeding pro se, appeals the district court's dismissal of her 28 U.S.C. 2254 habeas corpus petition for failure to exhaust state remedies. Ms. Navarro-Martin, who filed this 2254 petition while she was still in state custody, due to alleged lengthy delays in adjudicating her still-pending state post-conviction motion under an Unconstitutional State Statute of Conviction. The district court sua spont dismissed the case with Prejudice in exhaustion grounds, and without a record of sufficient-completeness of Ms. Navarro-Martin's state post-conviction proceedings. In appeal, A certificate of appealability ("COA") was denied by the Eleventh Circuit Court of Appeals. And in support of this petition, are the followings Question(S) Presented:

BACKGROUND

I. Introduction

Florida, convicted to the petitioner under a Florida Statute of Witness Tampering, previously declared Unconstitutional "under the XIV Amend of the United States Constitution" See State v. Cohen 568 So.2d 49, 1990 Fla. LEXIS 1173 (Fla. 1990), on March 13, 2019 and Sentenced in September 20, 2019 to 7 years in State prison.

The petitioner appealed her conviction and Sentence, under case No. 5D19-3088, treated as duplicated because a former defendant's lawyer filed a appeal when they were not defendant's lawyer at

time, and no Mandate was issued. If "No mandate was Issued", the Florida Supreme Court also held: a "convictions that are not yet final that is convictions for which an appellate court mandate has not yet issued" Falcon v. State 162 So. 3D 954 (Fla. 2015). The defendant's conviction is not yet final.

The petitioner filed a post-conviction Motion, which was denied by the trial court without a Record refuting the petitioner's allegations on July 9, 2021. The petitioner filed a pro-se Second Motion for Post- Conviction relief in the Trial Court on July 30, 2021; against the post-conviction counsel which was not responded by the trial court. The State conceded "the trial court docket does not reflect the filing of an order by the trial court in the Motion" (see Doc 13, page 3 – Case No. 6:23-CV-00149-RBD-EJK).

An appeal of the first post-conviction Motion was filed by the post-conviction counsel counsel. A new appellate counsel was designated and him filed a Non-Initial Brief. The district Court allowed filed defendant's pro-se pleadings on September 2, 2021. The appeal of the First post-conviction was affirmed without a written opinion on February 11, 2022. The Florida Supreme Court denied a discretionary review and the United States Supreme Court denied Certiorari review.

II.- State Habeas Proceedings

The petitioner filed a First Petition for Writ of habeas Corpus to disqualification of the trial judge on September 14, 2022. The trial Court did not respond with 30 days to the petition as required by the Florida Law. Defendant's disqualification motion is deemed to have been granted because not ruled on within 30 days.

A second Petition was filed in October 11, 2022 in the trial Court, which was denied in November 30, 2022, Under this precedents, The judge of the Trial Court Alvaro Chad, had been previously "barred from further participation in the case. Fla. R. Jud. Admin. 2.160(f), he no longer had jurisdiction to entertain any other motions, the action was void.

The Trial Court entered on April 24, 2023 an Order denying the First State Habeas application for Writ of Habeas Corpus to disqualification of trial court judge and recall the Mandate, and a Motion Preserving the issues for appeal, treated as a rule 3.800. The Federal Habeas Court jurisdiction had been previously invoked on January 27, 2023, and an order to show cause was rendered by the Federal Court.

The trial Court entered on April 24, 2023 the order(s) denying the petitions previously filed in September 14, 2022 an February 13 2023, in procedural grounds and treated as a rule 3.850 and 3.800. At time, the Trial Court lacked of jurisdiction. Under current Florida law, the trial court's April 24, 2023, order "has no legal effect as it was issued more than 60 days after Appellant's 3.800 motion," and that she is therefore "entitled to the relief she seeks." A 3.800 motion is deemed denied, and the trial court's jurisdiction ends, once 60 days elapse without rendition of an order ruling on the motion" Sessions v. State, 907 So. 2d 572, 573 (Fla. 1st DCA2005) and "preserved the contentions for appellate review" Hart v. State, 773 So. 2d 1263, 1264 (Fla. 1st DCA2000). An contemporaneous objection is actually under review by the District Court of Appeal of the State of Florida under case No. 6D23-2748 since May, 2023. All subsequent proceedings in the Trial Court were not only erroneous but absolutely Void.

III.- Federal Habeas Proceedings

Under AEDPA's limits the petitioner seek Federal Habeas review. A first Application was denied without prejudice in the District Court by means to proceed in Forma Pauperis upon the case No.6:22-CV-00804-RBD-LHP on May 31, 2022.

A Second Application in Federal Court, case No. 6:22-CV-01691-PGB-DCI, was denied without prejudice in procedural grounds on September 27, 2022, and which a Judgment was not rendered according to the requirements of the Fed. R. Civ. P. 58 and 79. Because this order did not enter judgment on the counts against petitioner, the period for appeal did not begin to run. In United States v. F. & M. Schaefer Brewing Co., 356 U.S. 227, 78 S. Ct. 674, 2 L. Ed. 2D 721 (1958), the Supreme Court suggested in dicta that a substantive docket entry is necessary to start the clock for filing a notice of appeal. The rule "must be mechanically applied in order to avoid new uncertainties as to the date on which judgment is entered." United States v. Indrelunas, 411 U.S. 216, 220-22, 93 S. Ct. 1562, 1564-65, 36 L. Ed. 2D 202 (1973) (per curiam). This Application is actually in Appeal in the Circuit Court and which the State did not respond to the same defendant's allegations in the Unconstitutionality of the Statute of Conviction. The State Waived the Exhaustion requirements of the same claims upon the case No. 23-12412-A.

A Third Application was filed upon the case No. 6:23-CV-00149-RBD-EJK on the District Court on January 27, 2023, and being now the above-styled cause under review, which was denied a requests to open the previous application (See Doc # 20, 21) and was denied the application (See Doc # 31) in exhaustion grounds "with prejudice" on September 15, 2023. The Circuit Court denied a Certificate of Appealability on May 2, 2024 and a rehearing in the petition, was denied on August 6, 2024 by the Eleventh Circuit Court of **Appeal.**

IV.- "Other Crimes" Evidence

Newly discovered evidence was entered on February 14, 2024 by the prosecution in the "Official Proceeding" case No. 2017-CF-001585-B-O and "element of the crime" as stated in the charging document, which was found "Nolle Prosequi".; rendering the indictment fatally defective, since it failed to charge an essential element of the crime defined by the statute, "upon perjured evidence" showing a charge as case No. 2017-CF-001585-B-O which was Void ab Initio, actually the indictment and State's Exhibit 1, presented to the jury at trail upon sustained defense objection, could not stand.

A fundamental miscarriage of justice occur(ed) if a constitutional violation has probably resulted in the conviction of someone who is "actually innocent." Schlup v. Delo, 513 U.S. 298, 327, 115 S. Ct. 851, 130 L. Ed. 2D 808 (1995). To meet the "fundamental miscarriage of justice" exception, the petitioner should show constitutional error coupled with "new reliable evidence (as the charging document presented at trial which was Void ab initio), whether exculpatory scientific evidence as the State's Exhibit 3 and evidence receipt presented at trail, was a fabricated false document where the signature is of a person different to the gave by the State's witness testimony at trial; that trustworthy eyewitness were concealed by the State before the trial (as the Testimony of Erika Pena who had been previously interviewed) and that critical physical evidence-that was not presented at trial in the form of a "Nolle prosequi" filed in the State's Exhibit 1 on February 14, 2024,which render the "element of the crime "first degree felony" a "Nullity", and it was not presented to the jury.

"Where the state chose to nolle prosse the original charges, which "effectively ends the proceeding and any subsequent action is a nullity...Nolle prosequi...Upon entry on the record, it amounts to a dismissal or nullification of the particular indictment or information (emphasis supplied) and renders nugatory any proceedings carried on subsequently under the same indictment or information". Matos v. State, 961 So. 2d 1077, 1077 (Fla. 4th DCA2007) "A nolle prosequi effectively ends the proceeding and any subsequent action is a nullity". See, e.g., State v. Vazquez, 450 So. 2d 203, 204 (Fla. 1984).

Moreover, A Detainer was impose by the Trial Court in the Florida Dpt. Of Corrections which was not a term of the sentence and is the "Tainted fruit of a immunized testimony" which constitute a violation of petitioner's constitutional right to self-incrimination. Under the case(s) No. MFC-14-00525 and MFC-16-00603, the petitioner was called to testify before the Office of the Attorney General (Medicaid Fraud Control Unit) in the "Official Proceeding" and subsequently the petitioner was convicted of Witness Tampering and necessary to obtain a Conviction under the Section 914.22(2)(d) Fla. Stat.

The Section 914.04 Fla. Statute "is self-executing. The statute automatically grants use... immunity to one who testifies under the circumstances it delineates" Jenny v. State, 447 So.2d 1351 (Fla. 1984). "Immunity precludes the exercise of a court's jurisdiction over a person granted immunity. Accordingly, immunity, like double jeopardy, is a fundamental issue that may be raised post-trial. Meek v. State, 566 So. 2d 1318, 1321 n.1 (Fla. 4th DCA1990). The privilege against self-incrimination ``is an exception to the general principle that the Government has the right to everyone's testimony." Garner v. United States, 424 U.S. 648, 658, n. 11, 96 S. Ct. 1178, 47 L. Ed. 2D 370 (1976). "The immunity was based upon a provision of the Organized Crime Control Act of 1970 stating that neither the compelled testimony nor any information directly or indirectly derived from such testimony could be used against the witness." Kastigar v. United States, 406 U.S. 441, 448, 92 S. Ct. 1653, 32 L. Ed. 2D 212 (1972).

The Petitioner is invoking a Fifth Amendment privilege in all the proceedings executed by Trial Court, which is enforcing or executing a court order which is intrinsically associated with a judicial proceeding 2017-CF-001585-B-O, which was a "Void process and will not constitute legal authority within this rule." Id. Examples of void process include a warrant issued by a judge who lacked jurisdiction" Montejo v. Martin Mem'l Med. Ctr., 935 So. 2d 1266 (Fla. 4th DCA2006). The hold imposed should be Collaterally estopped in the basis of a Petitioner's previously granted Use Immunity in the "Official proceeding". "These allegations are enough to make out a claim for falsearrest. See Jibory v. City of Jacksonville, 920 So. 2d 666, 667 n.1 (Fla. 1st DCA2005) "In an appropriate case a habeas petition may be construed as a section 1983 complaint." Wilwording v. Swenson, 404 U.S. 249, 251, 92 S. Ct. 407, 30 L. Ed. 2D 418 (1971).

GROUND No. 1

WHETHER THE ADHERENCE TO AN UNCONSTITUTIONAL STATE LAW IS NOT MANDATE BY A FEDERAL LAW UNDER AN UNCONSTITUTIONAL STATE STATUTE OF CONVICTION THAT "VIOLATE DUE PROCESS. ART. I, 9, FLA. CONST. ACCORD U.S. CONST. AMEND. XIV", DOES THE POLICY OF EXHAUSTION IN FEDERAL HABEAS CORPUS ACTIONS, REQUIRE THE EXHAUSTION OF INADEQUATE REMEDIES?

LAW: This Supreme Court also clearly had established: "Adherence to an Unconstitutional State Law is not Mandate by a Federal Law" Branch v Smith, 538 US 254, 155 L Ed 2d 407, 123 S Ct 1429 (2003). and the section 2254(d)(1) defines two categories of cases in which a state prisoner may obtain federal habeas relief with respect to a claim adjudicated on the merits in state court. Under the statute, a federal court may grant a writ of habeas corpus if the relevant state-court decision was either (1) "contrary to . . . clearly established Federal law, as determined by the Supreme Court of the United States," or (2) "involved an unreasonable application of . . . clearly established Federal law, as determined by the Supreme Court of the United States." and under 28 U.S.C. s. 2254(b)(1)(B)(i)(ii) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall be granted if it appears that: (i) There is an absence of available State corrective process; and (ii) circumstances exist that render such process ineffective to protect the rights of the applicant. Also the Section 2254(e)(2) provides that, if a prisoner ``has failed to develop the factual basis of a claim in State court proceedings," a federal court may hold ``an evidentiary hearing on the claim" in only two limited scenarios. The claim must rely on "a factual predicate that could not have been previously discovered through the exercise of due diligence." 2254(e)(2)(A)(i), (ii). If a prisoner can satisfy these exception, she should show that further fact finding would demonstrate, ``by clear and convincing evidence," that ``no reasonable fact finder" would have convicted her of the crime charged. 2254(e)(2)(B), Here the exhaustion requirements should constitute an Adherence to an Unconstitutional State Law, which is not Mandate by a Federal Law, as follow:

I.- There is an absence of available State corrective process where adherence to an Unconstitutional State Law is not Mandate by a Federal Law :

The Florida Supreme Court found that, The Florida Statute of conviction, 914.22(1)(a) Witness tampering, was unconstitutional under the XIV Amend of the United States, and it violate(d) petitioner's constitutional rights to the Due Process which she is in custody in violation of the Constitution or laws or treaties of the United States, and held:

> "The portions of the statute at issue today violate due process. Art. I, 9, Fla. Const. Accord U.S. Const. amend. XIV ...we conclude as a matter of Florida law that this statute has failed to create a genuine affirmative defense. Moreover, the apparent attempt to use this "affirmative defense" to narrow the language of subsection 914.22(1)(a) is done in such a way as to impermissible shift the burden of proof to the defendant and quite possibly to render this burden of proof impossible to meet. The statute criminalizes any attempt to "influence" a potential witness and then requires the defendant to prove the "influence" was not criminal. This is a catch-22. In light of the foregoing analysis, we also must conclude that subsection 914.22(1)(a) is unconstitutionally vague because it fails to distinguish lawful from unlawful conduct in a way adequate to give notice as to the requirements of the law." State v. Cohen 568 So.2d 49, 1990 Fla. LEXIS 1173 (Fla. 1990).

ARGUMENT: The constitutional requirement of fair warning was not satisfied. 'The . . . principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." Bouie v City of Columbia, 378 US 347, 351, 12 L Ed 2d 894, 84 S Ct 1697 (1964). This Court should applied similar reasoning in State v. Cohen, 568 So. 2D 49 (Fla. 1990). In reviewed a statutory affirmative defense to Florida's witness-tampering statute.

The affirmative defense required that Ms. Navarro Martin to prove that she engaged in lawful conduct and that her sole intention was to encourage, induce, or cause the witness (Judith Benech) to testify truthfully. This Court should concluded that the supposed affirmative defense was merely an illusory affirmative defense. The purported affirmative defense was illusory because Ms. Navarro-Martin could not logically both raise the affirmative defense and concede the elements of the crime. By

attempting to prove the affirmative defense that she had acted lawfully with the intent to encourage the witness (Judith Benech) to testify truthfully, Ms. Navarro-Martin would necessarily negate the State's theory that she illegally contacted a witness (Judith Benech), as opposed to conceding the State's charges. Thus, the purported affirmative defense unconstitutionally placed a burden on Ms. Navarro-Martin as a defendant to refute the State's case.

Long-recognized "[a]mong the attributes of due process is the requirement that the state must prove an accused guilty beyond a reasonable doubt. Here, the purported affirmative defense unconstitutionally placed a burden on Ms. Navarro-Martin, and not in the State, which the state failed to "Proof beyond a reasonable doubt... every element of the crime, every fact necessary to constitute the crime with which [the accused] is charged. It, nevertheless, remains impermissible to shift the burden of proof of an element of the offense to the defendant. Cohen, 568 So. 2d at 51, which the "Failure to exhaust is an affirmative defense that may be waived by the state's failure to rely upon the doctrine.

A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the 14th Amendment. It is well settled that federal courts are bound by the state court's interpretation of state laws, see, e.g., Mullaney v. Wilbur, 421 U.S. 684, 691, 95 S. Ct. 1881, 44 L. Ed. 2D 508 (1975). The....clause of the statute being invalid upon its face, the conviction of the appellant, which so far as the record discloses may have rested upon that clause exclusively, must be set aside" STROMBERG v. CALIFORNIA 283 US 359 75 LED 1117 (1931).

> "Prior to 1991, subsection 914.22(1)(a), Florida Statutes, provided that it was unlawful for a person to offer pecuniary benefit or gain to "[i]nfluence the testimony of any person in an official investigation or official proceeding," and subsection 914.22(3), Florida Statutes,

> provided that it was "an affirmative defense . . . that the conduct consisted solely of lawful conduct and that the defendant's sole intention was to encourage, induce, or cause the other person to testify truthfully." In State v. Cohen, 568 So. 2d 49, 52 (Fla. 1990), our supreme court determined that these portions of the statute were unconstitutional. The court noted the "statute criminalize[d] any attempt to 'influence' a potential witness and then require[d] the defendant to prove the 'influence' was not criminal. This is a catch-22." Id. The court also concluded subsection 914.22(1)(a) was "unconstitutionally vague because it fail[ed] to distinguish lawful from unlawful conduct in a way adequate to give notice as to the requirements of the law...[T]he language contained in subsection (3) at least suggests that the legislature, when it enacted subsection (1)(a), intended only to criminalize acts that encourage witnesses to testify falsely. This is because, on its face, subsection (3) attempts to establish an "affirmative defense" that the conduct in question was meant to induce truthful testimony from the witness. Yet simultaneously, subsection (3) is so inherently illogical and ineffectual as to cast serious doubt on this first-blush assumption. Thus, paragraph (a) of subsection (1) is facially vague. Here, we cannot determine whether the legislature in subsection (1), paragraph (a), intended to criminalize efforts to influence only untruthful, or both truthful and untruthful, testimony. Id. In 1991, subsections 914.22(1)(a), and subsection 914.22(3), Florida Statutes, **were repealed** in response to Cohen. See Ch. 91-223, 12, at 2167, Laws of Fla. " Williams v. State, 145 So. 3d 997, 2014 Fla. App. LEXIS 13724 (Fla. 1st DCA2014).

"The statute was never constitutionally enacted, so long as there is no supreme court ruling on the issue... statute was never legally enacted. If a statute is void ab initio, a defendant can never be legally sentenced pursuant to that statute" Here, "An implied repeal will.. be found where provisions in two statutes are in "irreconcilable conflict," (and) where the latter Act covers the whole subject of the earlier one and "is clearly intended as a substitute." Posadas v National City Bank, 296 US 497, 503, 80 L Ed 351, 56 S Ct 349 (1936).

"An enactment is void for vagueness under the Due Process Clause of the Fourteenth Amendment if it fails to draw reasonably clear lines between lawful and unlawful conduct. Vague statutes fail to provide citizens with fair notice or warning of statutory prohibitions so that they may act in a lawful manner....The magistrate was not precluded from considering the unconstitutionality of the ...statute on collateral review under the Teague analysis as the state prisoner's claim involved the substantive law, not procedural law....in the context of a claimed procedural default, a petitioner is excused from complying with state procedural requirements if he can make a persuasive showing that he is actually innocent of the charges against him, because to hold otherwise would effect a fundamental miscarriage

of justice....It is well settled that if the statute under which appellant has been convicted is unconstitutional, he has not in the contemplation of the law engaged in criminal activity; for an unconstitutional statute in the criminal area is to be considered no statute at all. Although courts have framed the actual innocence factor differently, the core idea is that a federal habeas petitioner may have been imprisoned for conduct that was not prohibited by law.

Clearly, "for purposes of federal habeas review the incarceration of one whose conduct is not criminal inherently results in complete miscarriage of justice....In the context of a federal habeas petition, failure to exhaust is an affirmative defense that may be waived by the state's failure to rely upon the doctrine." ALEXANDER v. JOHNSON 217 F. Supp. 2d 780; 2001 U.S. Dist. LEXIS 24348 (U.S. S.D. Tx. 2001).

"It is clear, that when the jurisdiction of a cause depends upon a statute the repeal of the statute takes away the jurisdiction....when a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall with the law" BRUNER vs. UNITED STATES 343 US 112, 96 L Ed 786, 72 S Ct 581 (1952).

The state court identifies the correct governing legal rule from this Court's cases during the closing argument as ordered in Arthur Andersen LLP v. United States, 544 U.S. 696, 125 S. Ct. 2129, 161 L. Ed. 2D 1008 (2005), but unreasonably applies it to the facts of the particular state prisoner's case, the state-court decision falls within that provision's "unreasonable application" clause.

> "There was not enough in the record to negate an inmate's claim that he was actually innocent of tampering with a witness involved in an official proceeding. Accordingly, the district court had jurisdiction to consider the inmate's 28 U.S.C.S. 2241 petition and provide him with an opportunity to establish his actual innocence under the official proceeding provisions...The Supreme Court's decision in Arthur Andersen required that for the government to satisfy the...witness intimidation section's "official proceeding" requirement, ... it must prove a "nexus"

between the defendant's conduct and a foreseeable particular proceeding. Arthur Andersen, 544 U.S. at 707-08. Specifically, the government must prove that the defendant sought to interfere with evidence or a witness and acted "in contemplation [of a] particular official proceeding." Id. at 708. "[I]f the defendant lacks knowledge that his actions are likely to affect the [official] proceeding," then "he lacks the requisite intent to obstruct." Id. (internal quotation marks omitted)...., had rendered (her) conduct non-criminal." United States v. Tyler, 732 F.3d 241, 246 (3d Cir. 2013).

II.- There is an absence of available State corrective process where the petitioner had been barred in State Court to filed pro se pleadings.

The Circuit Court had established, "if the state court failed to commence a hearing within 30 days of petitioner's request, petitioner was excused from exhausting her state remedies". Cook v. Florida Parole & Probation Comm'n, 749 F.2d 678, 680 (11th Cir. 1985) ("State remedies will be found ineffective and a federal habeas petitioner will be excused from exhausting them in the case of unreasonable, unexplained state delays in acting on the petitioner's motion for state relief.") Here, the petitioner filed a Motion requesting a hearing in the trial Court which was denied on September 25, 2024. And where the petitioner was barred of filed pro se pleading in the Trial State Court, which the petitioner cannot return to State Court to exhaust her State Remedies.

"Because all issues raised by (The Petitioner) in her habeas petition were either totally exhausted in state court or were already procedurally barred from further consideration in state court, we address the claims in the petition that were exhausted." Snowden v. Singletary, 135 F.3d 732, 736 (11th Cir. 1998) ("[W]hen it is obvious that the unexhausted claims would be procedurally barred in state court due to a state-law procedural default, we can forego the needless 'judicial ping-pong' and just treat those claims now barred by state law as no basis for federal habeas relief."). In connection with a federal habeas corpus petition, claims are technically exhausted when state relief is no longer available, without regard to whether the claims were actually exhausted by presentation to the applicable state courts.

In Harris v Reed, 489 US 255, 103 L Ed 2d 308, 109 S Ct 1038 (1989) This Court held: "Because the Illinois Appellate Court did not "clearly and expressly" rely on waiver as a ground for rejecting Harris' ineffective assistance of counsel claims, the Long presumption applied and Harris was not barred from federal habeas. Harris, supra, at 266. Also "if the decision of the last state court to which the petitioner presented his federal claims fairly appeared to rest primarily on resolution of those claims, or to be interwoven with those claims, and did not clearly and expressly rely on an independent and adequate state ground, a federal court may address the petition" See Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546, 2555, 115 L. Ed. 2d 640(1986) (claims are "technically" exhausted when state relief is no longer available, without regard to whether the claims were actually exhausted by presentation to the applicable state courts).

Where the petitioner no longer had any available means for pursuing grounds one and two in state court. Thus, she meets the technical requirements of exhaustion. See Coleman, 501 U.S. at 731-33 (claims are technically exhausted when state relief is no longer available, without regard to whether the claims were presented to the state courts). Here the claims were technically exhausted because further state relief was barred. See Also, Habeas Corpus s. 14.5, 17 "if the court to which the accused would be required to present the accused's federal claims in order to meet the exhaustion requirement would now find the claims to be procedurally barred, then there is a procedural default for purposes of federal habeas corpus review of the claims, regardless of the decision of the last state court to which the accused actually presented the claims"

III.- Circumstances exist that render such process ineffective to protect the rights of the applicant, where the bias on the part of the State Appellate judge(s) Paetra Brownlee and Keith White, ``is too high to be constitutionally tolerable'', since that they rendered the decision(s) in the State Trial Court and which are actually being review by them in appeal.

LAW: The Supreme Court's precedents setting forth an objective standard that requires recusal when the likelihood of bias on the part of the judge ``'is too high to be constitutionally tolerable.''' Caperton v. A. T. Massey Coal Co., 556 U. S. 868, 872, 129 S. Ct. 2252, 173 L. Ed. 2D 1208 (2009) "The fact that the interested judge's vote was not dispositive may mean only that the judge was successful in persuading most members of the court to accept his or her position. When the objective risk of actual bias on the part of a judge rises to an unconstitutional level, the failure to recuse cannot be deemed harmless" Williams v. Pennsylvania 579 U.S. 1; 136 S. Ct. 1899; 195 L. Ed. 2D 132 (2016).

At issue in this case is whether Florida Rule of Judicial Administration 2.160 requires the automatic granting of a motion for disqualification when a judge fails to rule immediately on the motion. "Because a motion to disqualify constituted record activity regarding a claim of failure to prosecute, and the trial court's failure to act immediately on the motion to disqualify violated Fla. Stat. ch. 38.10 (1993) and Fla. R. Jud. Admin. 2.160, as did the trial court's ruling on the motion" Fuster-Escalona v. Wisotsky, 781 So. 2D 1063 (Fla. 2001) was on April 23, 2024 (after 220 days) "Defendant's disqualification motion is deemed to have been granted because not ruled on within 30 days". Schisler v. State, 958 So. 2D 503 (Fla 3rd Ca 2007).

ARGUMENT: On September 19, 2019, The honorable Keith White was the judge presiding the appellant's trial in the above-styled cause Case No. 2017-CF-010498-A-O and denied the first-part of

the First Motion for Post-Conviction relief on July 30, 2020, which remains in review by the Federal Circuit Court, and executed decisions of the State appellate court where the honorable Keith White was an interested judge's vote. The honorable Keith White was appointed as judge of this Sixth District Court of Appeal of the State of Florida.

On May 19, 2023, The honorable Paetra Brownlee was the judge presiding the defendant's case No. 2017-CF-001585-B-O. The Florida Supreme Court and Federal Courts should review a case on appeal rendered by this court (Per Curiam) of an order executed and where the honorable Paetra Browlee, was an interested judge's vote. The honorable Paetra Browlee was appointed as judge of this Sixth District Court of Appeal of the State of Florida.

Under this precedents, The judge of the Trial Court Alvaro Chad, had been previously "barred from further participation in the case. Fla. R. Jud. Admin. 2.160(f).... he no longer had jurisdiction to entertain any other motions....the action was void " Jenkins v. Motorola, Inc., 911 So.2d 196, 2005 Fla. App. LEXIS 14827 (Fla. 3rd DCA2005), dismissed, 939 So.2d 1073, 2006 Fla. App. LEXIS 18855 (Fla. 3rd DCA2006).

As there was no ruling on the motion for disqualification within the thirty-day period provided by Florida Rule of Judicial Administration 2.330(j), until April, 24 2023, Ms. Navarro-Martin served her motions for an order directing the clerk to disclosed of the records on Appeal in the pending appeal proceedings at time. Instead, in the lower tribunal criminal cases, Judge Chad issued orders dated on November 30, 2022, and entered an Order denying the pleadings filed by the defendant on October 11, 2022 in the case No. 2017-CF-010498-A-O, which rendered without jurisdiction. All subsequent proceedings in the Trial Court were not simply erroneous but absolutely Void.

The honorable Paetra Brownlee, was appointed as substitute of the Judge Alvaro Chad in the Trial Court. All subsequent proceeding rendered by The honorable Paetra Brownlee (now appellate judge),

in the case No. 2017-CF-0001585-B-0 of the trial court, were Void, as well as, she was participating in the subsequent proceeding in error, acting without jurisdiction, and which are being now reviewed in Appeal by the same honorable Paetra Brownlee in this Sixth District Court of Appeal.

"No....officer reasonably aware of the law could have failed to appreciate that confining (the petitioner) until she agreed to forfeit the right to sue violated her civil rights." Hall v. Ochs, 817 F.2d 920, 925 (1st Cir. 1987). Nevertheless, even judicial immunity may be lost when the judge acts in the clear absence of all jurisdiction. See Farish v. Smoot, 58 So. 2D 534 (Fla. 1952); Waters v. Ray, 167 So. 2D 326 (Fla. 1st DCA1964).

The presumption of prejudice by the affected members, the honorable Keith White and Paetra Brownlee, " supports the existence of the constitutional right violation...actual prejudice can be shown in order to obtain relief..."The exhaustion requirement should not be applied "if the state court has unreasonably or without explanation failed to address petitions for relief." Hollis v. Davis, 941 F.2d 1471, 1475 (11th Cir. 1991). "A federal habeas petitioner will be excused from exhausting them in the case of unreasonable, unexplained state delays in acting on the petitioner's motion for state relief." Cook v. Fla. Parole & Prob. Comm'n, 749 F.2d 678, 680 (11th Cir. 1985); "inordinate and unjustified delay in the state corrective process may well result in the frustration of petitioner's rights and be such a circumstance as to render [the exhaustion] process ineffective," and remanding the case to the district court to determine whether a 19-month delay in state court was justifiable). Claudio v. Sec'y, Fla. Dep't of Corr. 578 Fed. Appx. 797, 2014 U.S. App. LEXIS 15976 (11th Cir. Fla., 2014).

WHEREFORE, This honorable Court should find that, Due the affected members the honorable Keith White and Paetra Brownlee, presence in the appellate State District Court, the process in State Court would have been "ineffective to protect the rights of the applicant. It also constitute an "absence of available State corrective process", Because Petitioner's disqualification motion "is deemed to have

been granted" where the Petitioner had requested the disqualification of Judges from participation in the decisions in her case(s), based on Violations of her civil rights and the due process of the Law.

IV.- Circumstances exist that render such process ineffective to protect the rights of the applicant, where the state has waived the non-exhaustion defense:

LAW: "The defense of non-exhaustion is waived by the failure of the state's legal officer to raise it at the proper time. Waiver may thus be implicit as well as explicit, the former being more properly termed a forfeiture or a concession...and failed to raise the exhaustion issue in its appellate briefs, the court found that the state waived its exhaustion defense" McGee v. Estelle, 722 F.2d 1206, 1214 (5th Cir. 1984). "Failure to exhaust is an affirmative defense that may be waived by the state's failure to rely upon the doctrine." Magouirk v. Phillips, 144 F.3d 348, 357 (5th Cir. 1998). Which "The prisoner was entitled to a hearing on his second motion because the second motion made factual allegations which might entitle the prisoner to relief and which were neither decided adversely to (her) on the merits on the first motion nor conclusively shown by the files and records of the case not to entitle the prisoner to relief" Sanders v. United States, 373 U.S. 1, 18, 83 S. Ct. 1068, 1078, 10 L. Ed. 2D 148 (1963). Here, (Warden of the Fla. Dpt of Correction) failed to plead this defense and, in fact, conceded that the defense was unavailable. Thus, (Warden of the Fla. Dpt of Correction) has waived the non-exhaustion defense and may not belatedly rely on it to preclude relief." ALEXANDER v. JOHNSON 217 F. Supp. 2d 780; 2001 U.S. Dist. LEXIS 24348 (U.S. S.D. Tx. 2001).

ARGUMENT: The Circuit Court cannot determine whether the district court correctly dismissed the case (See Doc. 21) because there is no factual record or factual findings on which to evaluate the dismissal under the Second petition, case No. 6:22-CV-01691-PGB-DCI. The record was inadequate to

permit meaningful review.

The facts were stated in the Motion file (Doc. 20), as a Motion for special leave to reinstate the case Transferred from Ocala Division. New dicovered evidence filed in the Case No. 23-12412-A, should demonstrated that the Warden of the Fla. Dpt of Correction's did not filed a response to Ms. Navarro-Martin's first federal petition as ordered by the Circuit Court, through her motion for summary judgment in the instant case, the Warden of the Fla. Dpt of Correction has conceded exhaustion of this claim.

The petitioner may still be able to obtain federal court review by establishing that the "ends of justice" so require, where she can seek to show that there is newly discovered evidence that was not available at the time of her original filing. "From (Warden of the Fla. Dpt of Correction's) initial response to (Ms. Navarro-Martin's) first federal petition through his motion for summary judgment in the instant case, (Warden of the Fla. Dpt of Correction) has conceded exhaustion of this claim. Indeed, (Warden of the Fla. Dpt of Correction) apparently did not raise a non-exhaustion defense to the sufficiency of the evidence claim when he appealed to the...Circuit on the issue of non-exhaustion of the sua sponte raised claim. Had (Warden of the Fla. Dpt of Correction) raised the issue, (Ms. Navarro-Martin) could also have exhausted that claim in her second state habeas application.

The record was inadequate to permit meaningful review....In connection with a federal habeas corpus petition, claims are technically exhausted when state relief is no longer available, without regard to whether the claims were actually exhausted by presentation to the applicable state courts....In the habeas context, the existence of a procedural default does not destroy the jurisdiction of the federal court. Moreover, procedural default is an affirmative defense that may be waived if the state fails to raise the defense in its pleadings.

Here, the State of Florida lack of a "corrective processes" that should allow the redress of constitutional injuries, the petitioner should show Cause and Prejudice, as follow:

CAUSE: Some objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule.

Counsel's ineffectiveness in failing properly to preserve a claim for state-court review will suffice as cause, and that ineffectiveness itself constitutes an independent constitutional claim. The inmate's attorney Ryan Belanger filed a Notice of No Initial Brief in the initial post-conviction proceeding, on September 1, 2021

> State prisoner's failure to raise ineffective-assistance-of-trial-counsel claims in only proceeding-initial-review collateral proceeding-in which state allowed such claims held not to bar federal habeas corpus court from hearing claims, if prisoner had no, or ineffective, counsel in proceeding... filed a notice akin to an Anders brief...it did not stop its use to establish ``cause" to excuse procedural default" MARTINEZ v. RYAN 566 U.S. 1 132SCT1309, 182 LED2D 272 (2012).

Here, "attorney simply failed to recognize a valid defense, in which instance ineffective assistance may have been provided...(under) application of a facially unconstitutional statute is fundamental error....Fundamental error may be raised at any time, including in a motion for postconviction relief." Bell v. State, 585 So. 2d 1125; 1991 Fla. App. LEXIS 9058 (Fla. 2nd Dca 1991).

Federal courts may excuse procedural default, if a prisoner ``can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law." Here, actual prejudice as a result of the alleged violation of federal law exist where the options are now, not available to the petitioner in State Court, and which the post-conviction counsel designated failed in preserve, as follow:

(1) The option to take a direct appeal even without a conformed copy of the order pursuant to Florida Rule of Appellate Procedure 9.110(d); The Appellate post-conviction counsel designated, had

acknowledgment that a Mandate had not be issued in the case No. 5D19-3088, if "No mandate was Issued", the Florida Supreme Court also held: a "convictions that are not yet final that is convictions for which an appellate court mandate has not yet issued " Falcon v. State 162 So. 3D 954 (Fla. 2015) "such decisions apply in all cases to convictions that are not yet final that is convictions for which an appellate court mandate has not yet issued." Hughes v. State, 901 So. 2d 837, 839 (Fla. 2005) (citing Smith v. State, 598 So. 2d 1063, 1066 (Fla. 1992).

The appeal of this cause was initiated by a Non-defendant lawyer at time, since that the Trial Court had appointed a public defender in September 19, 2019. A Non-defendant lawyer whom filed the Notice of Appeal and paper in the Court of Appeal prejudiced her appeal, because her appeal was found as duplicated. The former counsel(s) had deprived the scheduling of a hearing date in a previous Motion To Dismiss Filed at time in the "Official Proceeding" before the sentence, which seek demonstrated that the "first degree felony" should be dismissed before the sentence hearing, and was found "Nolle Prosequi" on February 14, 2024, which the terms of the sentence should be found in excess of the statutory limits.

"The proper method for raising the issue of deprivation of direct appeal is by petition for habeas corpus" State v. Wooden, 246 So.2d 755 (Fla. 1971) where the petitioner had been coerced to dismiss her appeal due to a pending scheduled of a hearing time pending Motion to Dismiss by her former lawyers. However, The appellate counsel is under an obligation to file a motion to recall the mandate where a conviction and sentence are not final, because "the act of instructing the jury that it could find the defendant guilty of a nonexistent crime pursuant to an unconstitutional statute is fundamental error of the worst sort." Christian v. State, 272 So.2d 852 (Fla. 4th DCA1973).

(2) The option to file a motion to correct an illegal sentence pursuant to Florida Rule of Criminal Procedure 3.800(b); was rendered by the trial court on April 23, 2024, after 69 days. The appellant

filed in the trial court a motion preserving the issues for appeal which was treated pursuant to Florida Rule of Criminal Procedure 3.800.

On April 24, 2023, the trial court entered an order denying the motion(s). Under current Florida law, the trial court's April 24, 2023, order "has no legal effect as it was issued more than 60 days after Appellant's 3.800 motion," and that she is therefore "entitled to the relief she seeks." A 3.800 motion is deemed denied, and the trial court's jurisdiction ends, once 60 days elapse without rendition of an order ruling on the motion" Sessions v. State, 907 So. 2d 572, 573 (Fla. 1st DCA2005). See Campbell v. State, 789 So. 2D 1213 (Fla. 1st DCA2001), and "preserved the contentions for appellate review" Hart v. State, 773 So. 2d 1263, 1264 (Fla. 1st DCA2000). State remedies will be found ineffective and a federal habeas petitioner will be excused from exhausting them in the case of unreasonable, unexplained state delays in acting on the petitioner's motion for state relief, which "Defendant's disqualification motion is deemed to have been granted because not ruled on within 30 days". Schisler v. State, 958 So. 2D 503 (Fla 3rd Ca 2007).

PREJUDICE: The errors at her trial worked to her actual and substantial disadvantage, infecting her entire trial with errors of constitutional dimensions.

To show "prejudice," The petitioner should show that there is at least a reasonable probability that the result of the proceeding would have been different. Henderson, 353 F.3d at 892. after newly discovered evidence was entered on February 14, 2024 by the prosecution in the "Official Proceeding" case No. 2017-CF-001585-B-O and "element of the crime" as stated in the charging document, and was found "Nolle Prosequi", which the indictment was fatally defective, Since it failed to charge an essential element of the crime defined by the statute, the indictment could not stand.

> "The (Circuit) Court erred in considering the involuntariness of the statements petitioner made (and presented to the jury as State's Exhibit 2).... The habeas petition raised no independent due process claim, and the record is devoid of any indication that petitioner consented under Federal

Rule of Civil Procedure 15(b) to the determination of such a claim. [Since that the district court ordered the removal of the court records (See Doc. #2)] Moreover, petitioner was manifestly prejudiced by the court's failure to afford her an opportunity to present evidence bearing on that claim's resolution. Withrow v. Williams 507 US 680 113 SCT 1745, 123 LED2D 407 (1993).

Which there is: (1) great, immediate, and irreparable injury that cannot be addressed by a defense to the criminal prosecution; (2) a repetitive and abusive prosecution; and (3) a prosecution under a statute that flagrantly violates the Constitution, which a "federal courts (should) enjoining pending state criminal proceedings under extraordinary circumstances where the danger of irreparable injury is great and immediate", Younger v. Harris, 401 U.S. 37, 41, 91 S. Ct. 746, 27 L. Ed. 2D 669(1971), as follow:

(1) A great, immediate, and irreparable injury that cannot be addressed by a defense to the criminal prosecution;

An irreparable injury would occur, since that, The Florida Dpt of Corrections is executing a Sentence imposed upon a Unconstitutional Statute pursuant, plaintiff remains incarcerated solely under the authority of an unconstitutional statute, "the statute violated the due process clauses of Fla. Const. art. I, 9, and U.S. Const. amend. XIV." State v. Cohen, 568 So. 2d 49, 51 (Fla. 1990). A violation of constitutional rights, specifically unconstitutional confinement, raises presumption of irreparable harm. There is a presumption of irreparable injury that flows from a violation of constitutional rights. In any event, it is the alleged violation of a constitutional right that triggers a finding of irreparable harm. In addition, although the plaintiff's claim is statutory rather than constitutional, the denial of the plaintiff's right is a harm that cannot be adequately compensated monetarily. See Jolly v. Coughlin, 76 F.3d 468, 1996 U.S. App. LEXIS 1757, (2d Cir. 1996). Here, Plaintiffs' injury is irreparable because prosecution and continuous application of a detainer over the plaintiff, cause "stigmatic harm." Croson, 109 S. Ct. at 722. Damages don't remedy stigmatic harms. The issue isn't that damages could never work everyone has their price. See Sampson v. Murray, 415 U.S. 61, 90, 94 S. Ct. 937, 39 L. Ed. 2d 166 (1974) ("The key word in this consideration is irreparable. Mere injuries, however substantial, . . . are not enough. The possibility that adequate compensatory or other relief will be available at a later date . . . weighs heavily against a claim of irreparable harm."). Rather, an "irreparable" injury lacks clear metrics to compute damages. Janvey v. Alguire, 647 F.3d 585, 600 (5th Cir. 2011); see Deerfield Med. Ctr. v. City of Deerfield Beach, 661 F.2d 328, 338 (5th Cir. 1981) (noting irreparable injuries "cannot be undone by money damages" or are "especially difficult" to compute). And no standards could compute Plaintiffs' damages here. See Janvey, 647 F.3d at 600; Deerfield Med. Ctr., 661 F.2d at 338.

(2) There is a repetitive and abusive prosecution where the trail court enhanced penalties and imposed a hold and detainer in the Fla. Dpt. of Correction:

"The State's Attorney, were guilty of the nondisclosure. if the police allow the State's Attorney

> to produce evidence pointing to guilt without informing her of other evidence in their possession which contradicts this inference, state officers are practicing deception not only on the State's Attorney but on the court and the defendant...The court reversed the denial of the inmate's petition for a writ of habeas corpus" Barbee v. Warden, Maryland Penitentiary, 331 F.2d 842 (4th Cir.1964). "The Court finds that petitioner's allegations of suppression of favorable evidence by the state presents a factual issue which must be determined by a hearing. The state has not in its response denied the existence of this evidence (in the case No. 23-12412-A) nor has it denied that it was not revealed to petitioner or his counsel" Nash v. Purdy, 283 F. Supp. 837 (S.D.Fla.1968). "The record of petitioner's conviction, while regular on its face, manifestly does not controvert the charges that perjured evidence was used" Pyle v. Kansas, 317 U.S. 213, 216, 63 S. Ct. 177, 87 L. Ed. 214 (1942); see also Mooney v. Holohan, 294 U.S. 103, 112, 55 S. Ct. 340, 79 L. Ed. 791, (1935) (the state may not obtain conviction by "deliberate deception"); Haley v. City of Boston, 657 F.3d 39, 50 (1st Cir. 2011) (same). "An evidentiary hearing was required on the defendant's postconviction motion claims of newly discovered evidence" McLin v. State, 827 So. 2d 948, 954 (Fla. 2002).

Here, The petitioner was convicted upon a charging document which contained perjured evidence, upon the presentation to the jury of a State's Exhibit No. 1, 2 and 3, as "Charging document" of the case No. 2017-CF-001585-B-O. It also was described as an "element of the Crime" and "First Degree felony", which was found "Nolle prosequi" as Void ab Initio, infecting her entire trial with an error of constitutional dimensions.

> "In a habeas corpus proceeding arising out of a claim that a person has been convicted in a state court upon insufficient evidence, a federal court, rather than restricting its inquiry merely to whether there is any evidence to support the conviction, must consider whether there is sufficient evidence to justify a rational trier of the facts to find guilt beyond a reasonable doubt, and therefore, in a challenge to a state court conviction under 28 USCS ⊏ 2254, the applicant is entitled to habeas corpus relief, assuming settled procedural prerequisites for such relief have otherwise been satisfied, if it is found that upon the record evidence adduced at trial no rational trier of facts could have found proof of guilt beyond a reasonable doubt in terms of the substantive elements of the criminal offense as defined by state law" JACKSON v VIRGINIA 443 US 307 99 SCT 2781, 61 LED2D 560 (1979).

Moreover, The Trial State Court acted beyond the scope of its own policies when it enhanced penalties and imposed a hold and detainer in the Fla. Dpt. of Correction which was not a term of the sentence. Petitioner's liberty interest is subject to due process protection. The "passage of the release date is a necessary event for invoking (federal) jurisdiction...(The Trial State Court) acted beyond the scope of its own policies when it (imposed a hold and detainer in the Fla. Dpt. of Correction which was

not a term of the sentence). The Supreme Court has recognized a liberty interest subject to due process protection even when that interest was not created by the Constitution....There is an absence of available State corrective process and exhaustion of state remedies is therefore inapplicable and excused." Galbraith v. Hooper 85 F.4th 273 (5th Cir. 2023).

Moreover, A Detainer was impose by the Trial Court in the Florida Dpt. Of Corrections which was not a term of the sentence and is the "Tainted fruit of a immunized testimony" which constitute a violation of petitioner's constitutional right to self-incrimination. Under the case(s) No. MFC-14-00525 and MFC-16-00603, the petitioner was called to testify before the Office of the Attorney General (Medicaid Fraud Control Unit) in the "Official Proceeding" and subsequently the petitioner was convicted of Witness Tampering and necessary to obtain a Conviction under the Section 914.22(2)(d) Fla. Stat.

> The Section 914.04 Fla. Statute "is self-executing. The statute automatically grants use... immunity to one who testifies under the circumstances it delineates" Jenny v. State, 447 So.2d 1351 (Fla. 1984). "Immunity precludes the exercise of a court's jurisdiction over a person granted immunity. Accordingly, immunity, like double jeopardy, is a fundamental issue that may be raised post-trial. Meek v. State, 566 So. 2d 1318, 1321 n.1 (Fla. 4th DCA1990). The privilege against self-incrimination ``is an exception to the general principle that the Government has the right to everyone's testimony." Garner v. United States, 424 U.S. 648, 658, n. 11, 96 S. Ct. 1178, 47 L. Ed. 2D 370 (1976). "The immunity was based upon a provision of the Organized Crime Control Act of 1970 stating that neither the compelled testimony nor any information directly or indirectly derived from such testimony could be used against the witness." Kastigar v. United States, 406 U.S. 441, 448, 92 S. Ct. 1653, 32 L. Ed. 2D 212 (1972).

The Petitioner is invoking a Fifth Amendment privilege in all the proceedings executed, which is enforcing or executing a court order which is intrinsically associated with a judicial proceeding 2017-CF-001585-B-O, which was a "Void process and will not constitute legal authority within this rule." Id. Examples of void process include a warrant issued by a judge who lacked jurisdiction" Montejo v. Martin Mem'l Med. Ctr., 935 So. 2d 1266 (Fla. 4th DCA2006). The hold imposed should be Collaterally estopped in the basis of a Petitioner's previously granted Use Immunity in the "Official

proceeding". "These allegations are enough to make out a claim for falsearrest. See Jibory v. City of Jacksonville, 920 So. 2d 666, 667 n.1 (Fla. 1st DCA2005)

(3) There is a prosecution under a statute that flagrantly violates the Constitution.

The jury was erroneously instructed in the elements of the crime of the Fla. Statute of conviction, 912.22(1)(a), which has been previously declared Unconstitutional in State v. Cohen 568 So.2d 49, 1990 Fla. LEXIS 1173 (Fla. 1990). ("A facial challenge to a statute's constitutional validity may be raised for the first time on appeal... if the error is fundamental."). State v. Johnson, 616 So. 2d 1, 3 (Fla. 1993) "The act of instructing the jury that it could find the defendant guilty of a nonexistent crime pursuant to an unconstitutional statute is fundamental error of the worst sort." Christian v. State, 272 So.2d 852 (Fla. 4th DCA1973).

(4) The policy underlying the exhaustion of remedies doctrine, does not require the exhaustion of inadequate remedies, See previous precedents:

(a) Where further procedure... was void, "One whose constitutional rights are being invaded, and to whom a statute denies a supersedeas in the state tribunals, may properly base his application for equitable relief in the Federal courts on the effect of the statute and the presumption of its validity, and is not required to establish that it is valid under the state Constitution." PacificTel. & Tel. Co. v Kuykendall 265 U.S. 196 68 LED 975 (1924).

(b) Where the "Statute....violated the equal protection clause of the Federal Constitution...the petitioner was entitled to relief in federal habeas corpus proceedings without being required to resort to further state court proceedings... In Brown v Allen, 344 US 443, 97 L ed 469, 73 S Ct 397 (1953), we considered the statutory requirement, under 28 USC □ 2254, that a petitioner exhaust his state remedies before applying for federal habeas corpus relief. We concluded that Congress had not intended "to require repetitious applications to state courts." 344 US, at 449, note 3, 97 L ed 484. We declined to rule that the mere possibility of a successful application to the state courts was sufficient to bar federal" ROBERTS v LaVALLEE 389 US 40 88 SCT 194, 19 LED2D 41 (1967).

(c) Where, "The essential remedy in the state courts does not emerge from the probability that the statute expressly prohibiting it may hereafter be declared ineffective....Appellant...would state causes of action within the jurisdiction of the Federal court." MOUNTAIN STATES POWER CO. v. PUBLIC SERV. COM. 299 US 167 81 LED 99 (1936).

(d) "Federal courts have power under the federal habeas corpus statute to grant relief despite the applicant's failure to have pursued a state remedy not available to him at the time he applies... the petitioner's failure to appeal was not a failure to exhaust "the remedies available in the courts of the State" which would preclude federal habeas corpus relief under 28 USC c 2254, that requirement referring only to a failure to exhaust state remedies still open to the applicant at the time he files his application for habeas corpus in the federal court" Fay v Noia, 372 US 391, 435, 9 L Ed 2d 837, 83 S Ct 822, 24 Ohio Ops 2d 12 (1963).

"The decision of the highest court of a state, that statutes of that state do... conflict with its Constitution, is conclusive on the Federal Supreme Court" Carstairs v. Cochran, 193 U. S. 10, 48 L. ed. 596, 24 Sup. Ct. Rep. 318. (1904). Here, The Florida Supreme Court held "The portions of the statute at issue today violate due process. Art. I, 9, Fla. Const. Accord U.S. Const. amend. XIV" State v. Cohen 568 So.2d 49, 1990 Fla. LEXIS 1173 (Fla. 1990). Also this Supreme Court also clearly had established: "Adherence to an Unconstitutional State Law is not Mandate by a Federal Law" Branch v Smith, 538 US 254, 155 L Ed 2d 407, 123 S Ct 1429 (2003). and as "The Attorney General has no authority to demand compliance with Section...., hereby deemed unconstitutional" City of Chicago v. Sessions, 321 F. Supp. 3d 855 (7th Cir. 2018), The District Court's articulated justification for its holding that it lacks jurisdiction was the failure of the petitioner either to exhaust her state remedies, whatever they may be, or to show that these remedies were inadequate. In the instant case, principles of federalism not only do not preclude federal intervention, they compel it.

Under Statutes 108 - Prevention of Unconstitutionality, Only when it is utterly unavoidable should the United States Supreme Court interpret a federal statute to require an unconstitutional result. Here, the "adherence to state policy . . . detract[s] from the requirements of the Federal Constitution." White v Weiser, 412 US 783, 795, 37 L Ed 2d 335, 93 S Ct 2348 (1973). Virginia v. American Booksellers Assn. 484 US 383 108 SCT 636, 98 LED2D 782 (1988). "Statutes 108 - curtailing personal liberty...The constitutionality of the statute ...should be judged on its face..." Aptheker v Secretary Of State 378 US 500 84 SCT 1659, 12 LED2D 992 (1964).

WHEREFORE, As the Adherence to an Unconstitutional State Law is not Mandate by a Federal Law, this honorable court should find that, The policy underlying the exhaustion of remedies doctrine, does not require the exhaustion of inadequate remedies as to require an unconstitutional result.

GROUND TWO

IN THE LIGHT OF THIS COURT PRECEDENT IN ROSE V. LUNDY, 455 U.S. 509, 522, 102 S. CT. 1198, 71 L. ED. 2D 379 (1982). DOES THE DISTRICT COURT SHOULD DISMISS THE PETITION WITHOUT PREJUDICE TO ALLOW EXHAUSTION AND THE CIRCUIT COURT WAS INCORRECT IN NOT INQUIRING WHETHER A "SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT" HAD BEEN PROVED ?

LAW: This honorable court held: If a petitioner fails to exhaust state remedies, "the district court should dismiss the petition without prejudice to allow exhaustion." Rose v. Lundy, 455 U.S. 509, 519-20, 102 S. Ct. 1198, 71 L. Ed. 2D 379 (1982). Also, a federal court may stay - or dismiss without prejudice - a habeas case to allow a petitioner to return to state court to exhaust a claim. Rhines v. Weber, 544 U.S. 269, 125 S. Ct. 1528, 161 L. Ed. 2D 440 (2005). Here, AEDPA requires Federal-court decisions to be measured against this Court's clearly established holdings.

ARGUMENTS: The processing of petitioner's motion in state court commences in September 14, 2022, within 136 days of petitioner's request, after the petitioner seek federal habeas review, the trial court rendering a decision on April 24, 2023 denying a petition for Writ of Habeas Corpus filed in September 14, 2022, which was treated as a Motion under the rule 3.850 and denied when the factual matters alleged about the disqualification of the trail judge had been deemed accepted. "Defendant's disqualification motion is deemed to have been granted because not ruled on within 30 days". Schisler v. State, 958 So. 2D 503 (Fla 3rd Ca 2007). And "Because the prisoner had "no adverse final order for her state habeas claim...upon which a (state) habeas court did not rule....and so is not required as part of 28 U.S.C.S. 2254(b)(1)'s exhaustion requirement." Mancill v. Hall, 545 F.3d 935, 939 (11th Cir.2008).

A.- Reasonable jurists would find the district court's assessment denying the petition with prejudice in exhaustion grounds and under a constitutional claims debatable, as follow:

Several decisions of the Circuit courts had established: "A federal district court must dismiss a petition without prejudice if the petitioner has not exhausted all his claims in state court. Jimenez v Fla. Dept of Corr., 481 F.3d 1337, 1342 (11th Cir. 2007). (citing Rose v. Lundy, 455 U.S. 509, 522, 102 S. Ct. 1198, 71 L. Ed. 2D 379 (1982), "The court reversed the order of the district court that dismissed plaintiff prisoner's complaint with prejudice because plaintiff was entitled to a dismissal without prejudice as a matter of right" Matthews v. Gaither, 902 F.2d 877, 881 (11th Cir. 1990).

And the Eleventh circuit court also allowed a COA in the same grounds, See Claudio v. Sec'y, Fla. Dep't of Corr. 578 Fed. Appx. 797, 2014 U.S. App. LEXIS 15976 (11th Cir. Fla., 2014). King v. Chase, 384 Fed.Appx. 972, 974 (11th Cir. 2010).

In the event that such a dismissal would result in any subsequent petition being barred from federal habeas review, the district court has discretion to employ a "stay-and-abeyance" procedure, whereby the court would stay the timely filed petition and hold it in abeyance while the petitioner returns to state court to exhaust all of his previously unexhausted claims. Rhines v. Weber, 544 U.S. 269, 275-79, 125 S. Ct. 1528, 1533-35, 161 L. Ed. 2D 440 (2005). Which a New habeas corpus procedure "should be available" when: (1)There was good cause for the petitioner's failure to exhaust his claims first in state court, (2) The unexhausted claims are not plainly meritless, and (3) There is no indication that the petitioner engaged in intentionally dilatory litigation tactics.

The district court failed to resolve all claims for relief raised in a □ 2254 petition for habeas corpus, regardless of whether habeas relief is granted or denied. Clisby, 960 F.2d at 936. which "The District Court improperly applied the abstention doctrine as the questions in plaintiff's case were all federal questions, and, therefore, there were no state issues to be decided and no construction of any statute that would modify the constitutional questions... There has been a failure of due process... where

it cannot be said that the procedure adopted fairly ensures the protection of the interests of parties who are bound by it. " Moreno v. Henckel, 431 F.2d 1299, 1308 (5th Cir. 1970) which If a petitioner fails to exhaust state remedies, "the district court should dismiss the petition without prejudice to allow exhaustion".

B.- There is an unreasonable application of a clearly established federal law as established in miller-el v. cockrell, 537 u.s. 322, 327, 123 s. ct. 1029, 154 l. ed. 2d 931 (2003), the circuit court was incorrect finding "the resolution of that debate" .

LAW: Considering whether this may be a case in which the limited exception to the exhaustion requirement set forth in 28 U.S.C. 2254(b)(1)(B)(ii) should be applied due to delays in the state court procedures and the relative length of Ms. Navarro-Martin's prison sentence. Here, The petitioner:

> "satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of her case or that the issues presented were adequate to deserve encouragement to proceed further....She need not convince a judge, or, for that matter, three judges, that she will prevail, but must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong...the District Court did not give full consideration to the substantial evidence petitioner put forth in support of the prima facie case....it incorrectly merged the clear and convincing evidence standard of 2254(e)(1), which pertains only to state-court determinations of factual issues, rather than decisions, and the unreasonableness requirement of □ 2254(d)(2), which relates to the state-court decision and applies to the granting of habeas relief....More fundamentally, the court was incorrect in not inquiring whether a "substantial showing of the denial of a constitutional right" had been proved, as □ 2253(c)(2) requires. The question is the debatability of the underlying constitutional claim, not the resolution of that debate....the issues presented are adequate to deserve encouragement to proceed further," Miller-El v. Cockrell, 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2D 931 (2003).

(1) The issues are debatable among jurists of reason, Reasonable jurists have found the district court's assessment excusing exhaustion of the constitutional claims debatable, as follow:

> See, e.g., Evans v. Wills, 66 F.4th 681, 682∃86 (7th Cir. 2023) (excusing exhaustion because delay in state postconviction proceedings twenty years and counting is beyond the pale and indefensible, and is attributable to the state". Carter v. Buesgen, 10 F.4th 715, 716, 723∃24 (7th Cir. 2021) (exhaustion is excused because intractable delay in state courts is concerned, is ineffective to protect rights secured by the United States Constitution. Phillips v. White, 851 F.3d 567, 576 (6th Cir. 2017) (Phillips clearly qualifies for the inordinate delay exception to the exhaustion rule. He presented his ineffective-assistance-at-sentencing claim to the state trial

court in 2002, received only a request for additional evidence from the court in June 2008" Jackson v. Duckworth, 112 F.3d 878, 881 (7th Cir. 1996), cert. denied, 522 U.S. 955 (1997) (Inordinate, unjustifiable delay in a state-court collateral proceeding excuses the requirement of petitioners to exhaust their state-court remedies ...open possibility of challenges based on equal protection clause or other constitutional provisions); Montgomery v. Meloy, 90 F.3d 1200, 1205ǂ06 (7th Cir.), cert. denied, 519 U.S. 907 (1996) (inordinate state court delay may excuse exhaustion requirement; inexcusable delay in processing may be subject to attack under equal protection clause or other constitutional provisions); Carpenter v. Young, 50 F.3d 869, 870ǂ71 (10th Cir. 1995) (delay in adjudicating a direct criminal appeal beyond two years creates a presumption that the state appellate process is ineffective"; Harris v. Champion, 48 F.3d 1127, 1132 (10th Cir. 1995) (establishing general rule that if the state has been responsible for a delay) Farmer v. Circuit Ct., 31 F.3d 219 (4th Cir. 1994) (given impossibility of incarcerated petitioner's satisfaction of local requirement that she appear personally in state court to utilize remaining state remedies, exhaustion would be excused if state courts refuse to honor her written waiver of personal appearance); Taylor v. Hargett, 27 F.3d 483, 485 (10th Cir. 1994) (per curiam) (delay of more than two years in state appellate process is presumptively sufficient to deem state remedy futile and excuse exhaustion); Story v. Kindt, 26 F.3d 402, 404ǂ07 (3d Cir. 1994), cert. denied, 513 U.S. 1024 (1995) (exhaustion excused...by deficient court docket management procedures); Harris v. Champion, 15 F.3d 1538, 1556 (10th Cir. 1994) (state appellate process should be presumed to be ineffective and, therefore, exhaustion should presumptively be excused, when a petitioner' s appeal has been pending for two years without resolution absent a constitutionally sufficient justification by the State); Hendricks v. Zenon, 993 F.2d 664, 672 (9th Cir. 1993) (exhaustion requirement excused because state appeals court's unconstitutional denial of appellate counsel prevented petitioner from presenting claims to state court". Hill v. Mance, 598 F. Supp. 2d 371, 375ǂ76 (W.D.N.Y. 2009) (this is a situation where requiring Hill to return to state court and initiate state court exhaustion proceedings at this stage of the proceedings would render such process ineffective to protect the rights of the prisoner under section 2254(b)(1)(B) because Hill has already served almost the entire five years of post-release supervision that was illegally imposed and undue delay in the state courts risks mooting the petitioner's federal rights before he reaches the federal courts (quoting above text of FHCPP)); Perry v. Vaughn, 2005 U.S. Dist. LEXIS 5299, at *16*18 (E.D. Pa. March 31, 2005) (excusing exhaustion requirement because prisoner's maximum sentence will be completed and because of possibility of prejudice to Petitioner by further delay (quoting above text of FHCPP)); United States ex rel. Shakur v. McGarth, 303 F. Supp. 303 (S.D.N.Y.), affd, 418 F.2d 243 (2d Cir. 1969), cert. denied, 397 U.S. 999 (1970). "a failure to exhaust may be excused . . . where there has been 'substantial delay in the state criminal appeal process'" because such delay renders the state appeals process ineffective. Roberites v. Colly, 546 F. App'x 17, 19 (2d Cir. 2013) (quoting Cody v. Henderson, 936 F.2d 715, 718 (2d Cir. 1991)); see also Phillips v. White, 851 F.3d 567, 576 (6th Cir. 2017) (waiving the exhaustion requirement due to state appellate court's excessive delays); Washington v. James, 996 F.2d 1442, 1449 (2d Cir. 1993) ("[W]here nonexhaustion is primarily the fault of the state court system itself, comity and federalism cannot require blind deference."); 17B Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. c 4264.2 (3d ed.) ("[I]f there is undue delay between the prisoner's application to the state courts and final disposition of it there, the federal courts consider that the state corrective process is ineffective to protect the rights of the prisoner and will pass on a habeas corpus petition.").

(2) The Eleventh Circuit had resolve the issues in a different manner, as follow:

> "A federal habeas petitioner need not wait until his state petitions for relief are exhausted, if the state court unreasonably or without explanation fails to address petitions for relief....When a state admits the futility of further resort to its own courts, it waives the exhaustion requirement." Hollis v. Davis, 941 F.2d 1471 (11th Cir. 1991).
> "The difference between a request for an evidentiary hearing and a request for more substantial relief, both premised on the same constitutional claim, is not material to the exhaustion inquiry... application for a COA to appeal the district court's determination that (petitioner) failed to exhaust his constitutional claims in state court, we uphold the grant of a COA" Henry v. Dep't of Corr., 197 F.3d 1361, 1366 (11th Cir. 1999).

In her motion(s) filed in the District Court (Doc 20 and Doc 26), Ms. Navarro-Martin alleged circumstances that may have rendered exhaustion of her claims in state court ineffective to protect her rights. However, The Circuit Court cannot determine whether the district court correctly dismissed the case because there is no factual record which was removed by court order, all the documents, petition, memorandums and court orders filed by the petitioner, of the docket sheet, (See Doc. 2) or factual findings on which to evaluate the dismissal, as to find:

First, The magistrate judge, in denying the motion for failure to exhaust, with prejudice, bar Petitioner's federal claims. Here The primary dispute centers on the question whether Petitioner, took the wrong procedural path by filing under a habeas petition (See Doc 1, in the district Court which was removed of the docket Sheet) and failing to present her application directly to the State Court of Appeals. She instead filed in the trial court of her conviction a petition for writ of habeas corpus which was deemed to have been granted. "Defendant's disqualification motion is deemed to have been granted because not ruled on within 30 days". Schisler v. State, 958 So. 2D 503 (Fla 3rd Ca 2007), and which the same grounds were raised, and exhausted.

Second, a petitioner may obtain federal habeas review of a procedurally defaulted claim, to correct a fundamental miscarriage of justice. It has long been settled that 28 U.S.C. □ 2254" does not erect

insuperable or successive barriers to the invocation of federal habeas corpus." Wilwording v. Swenson, 404 U.S. 249, 249, 92 S. Ct. 407, 30 L.(1971) "The exhaustion-of-state-remedies rule should not be stretched to the absurdity of requiring the exhaustion of ... separate remedies when at the outset a petitioner cannot intelligently select the proper way, and in conclusion she may find only that none of the [alternatives] is appropriate or effective."

Third, whether, the district court failing to address Ms. Navarro-Martin's claim that she was entitled to be excused from the exhaustion requirement, pursuant to 28 U.S.C. 2254(b)(1)(B); and whether the court erred in determining, without obtaining the state record or holding an evidentiary hearing, that Ms. Navarro-Martin had not shown circumstances that demonstrate that she should be excused from exhaustion pursuant to 2254(b)(1)(B); and whether the court erred in failing to hold the claims in abeyance, rather than dismiss them with prejudice.

Which a certificate of appealability should be granted, and the District Court's orders vacated, by the failure to obtain the state court record in appellant's criminal case and reconsider the habeas petition as to exhaustion and procedural default, as appropriate, the merits of appellant's claims. See Duttry v. SCIP Superintendent Petsock, 878 F.2d 123, 124 (3d Cir. 1989); Adams v. Holland,330 F.3d 398, 406 (6th Cir. 2003) and, which for purposes of summary denial, the trial court was required to accept these facts as true to the extent they were not refuted by the record, on the post-conviction Motion denied on July 8, 2021 by the honorable Alvaro Chad. "Appellant was entitled to a full hearing due to the trial court's failure to both state its rational for the denial of relief and to attach those parts of the record that directly refuted appellant's claims. Appellant was also entitled to the requested records as well" Hoffman v. State, 571 So. 2D 449 (Fla. 1990).

> "Plaintiff asserted that he made several records requests to the court clerk and the court reporter and that they failed to provide, and denied him access to, the records. The clerk stated that he was not the custodian of the requested records. The reporter did not respond. The

> appellate court found that although plaintiff might have been mistaken in his belief that the requested records were in the possession of the clerk or the reporter, his mandamus petition stated a facially sufficient claim. An unresolved issue existed as to whether either the clerk or the reporter had possession of the requested records under Fla. Stat. chs. 28.13, 119.01(1), (3), 119.011(1), (2), 119.07(1)(a) (2003). Because the trial court did not issue an alternative writ requiring the clerk and the reporter to show cause why the writ should not be issued and because there was no sworn evidence refuting plaintiff's allegations, the trial court erred in dismissing his petition" RADFORD v. BROCK, 914 So. 2d 1066 (Fl.2nd DCA 2005)

Here, the trial court did not attached record documents conclusively refuting it, "because the allegations that the state had withheld exculpatory evidence were sufficient to require an evidentiary hearing" Lightbourne v. Dugger, 549 So. 2d 1364, 1365 (Fla. 1989). "A denial of access to state attorney records as she requested under chapter 119, Florida Statutes (1987). and by opinions in State v. Kokal, 562 So.2d 324 (Fla. 1990), and Provenzano v. Dugger, 561 So.2d 541 (Fla. 1990). Under these opinions, Ms Navarro-Martin clearly was entitled to access these records. Petitioner's assertions with respect to her attempt and her inability to secure the necessary records show that she made the requisite good faith effort (see Doc. #2, 13, 20, 26, 27, 29).

[I]n a post-conviction case, the district court must develop a record sufficient to facilitate our review of all issues pertinent to an application for a COA and, by extension, the ultimate merit of any issues for which a COA is granted.

> "Plaintiff's cause of action invokes the jurisdiction of this court to secure and protect constitutional rights allegedly guaranteed to her under the United States Constitution she should not be denied her day in this court while she undertakes to exhaust inadequate or ineffective state remedies. McNeese v. Board of Education, 373 U.S. 668, 10 L. Ed. 2d 622, 83 S. Ct. 1433 (1963).

(3) The questions are adequate to deserve encouragement to proceed further since that undue delay in the state courts risks mooting the petitioner's federal rights

"While a COA ruling is not the occasion for a ruling on the merit of petitioner's claim," Miller-El,

supra, at 331, 154 L Ed 2d 931, 123 S Ct 1029, here, the circuit Court rendered on May 2, 2024 a decision denying a motion for COA, the circuit court's summary denial of such claim was adjudication on merits, finding "the resolution of that debate" as follow:

> 1.- "Here, reasonable jurists would not debate the district court's denial of Martin's 2254 petition for failure to exhaust the claim... She did not raised it in her Fla. R. Crim. P. 3.850 motion or on appeal from the denial of that motion"

Here, the petitioner presented to the State Trial Court the Claim. On review of the record at this stage, this Court should concludes that the District Court did not give full consideration to the substantial evidence petitioner put forth in support of the prima facie case. There has been an "inordinate delay" in the adjudication of Petitioner's petition for disqualification where also was alleging the unconstitutionality of the Statute of Conviction, on Petition filed on September 14, 2022 and had produced adequate evidence that "Defendant's disqualification motion is deemed to have been granted because not ruled on within 30 days". Schisler v. State, 958 So. 2D 503 (Fla 3rd Ca 2007), she "properly filed" the appeal of this motion in District Court of Florida, all of which is set forth in detail in the Federal District court's September 15, 2023 Report and Recommendation (Doc. #28 and 35). She represents that she mailed the motion at the same time she mailed another motion that was placed on the docket (Doc.2) which were removed of the court docket by court order; she made various inquiries and other filings with the Florida Supreme Court and filed as exhibits in the Federal District Court (Doc. 30), but it still was not ruled by the District Court of Florida Case N0. 6D23-2748, Yet, a rule in the initial brief did not appear on the docket of her criminal case when she filed the present COA's petition in 2023 in the circuit court, and apparently nothing has changed since that time. There is no indication that the situation will change. If this claim had been denied on the merits on direct review in

the Florida state courts, and no procedural bar had been imposed by the Florida Supreme Court in denying a petition for review, then the claim would be reviewed under AEDPA's deferential standard in a federal habeas proceeding.

Notwithstanding the obvious quandary Petitioner faces concerning exhausting her state remedies, Respondent has not even acknowledged the statutory exception to the exhaustion requirement, let alone made an argument as to why it should not apply here. Respondent has made no effort to demonstrate why Petitioner "should continue to wait for Godot," LEE v. STICKMAN, 357 F.3d 338 (3rd Cir 2004) (characterizing petitioner's eight-year wait for resolution of a state habeas petition), nor can this court discern one. For whatever reason the District Court of of Appeal of Florida Sixth District did not receive and/or docket Petitioner's Initial Brief, and has not made a rule in the Motions filed in the Case No. 6D23-2748, it appears that "circumstances exist that render [the State corrective] process ineffective to protect the rights of the applicant." 28 U.S.C. 2254(b)(1)(B)(ii). Due to the unusual facts of this case, Petitioner should be excused from exhausting her state remedies and her ⊏ 2254 petition should be considered on the merits. See Lee, 357 F.3d at 343 (holding that petitioner was excused from exhausting state remedies and remanding the case to the district court for consideration of the merits of the petition).

WHEREFORE, The circuit court had made an unreasonable application of a clearly established federal law as established in Miller-El v. Cockrell, 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2D 931 (2003), finding "the resolution of that debate", without a Trial Court Record of sufficient completeness to review the petitioner's claims.

REASONS FOR GRANTING THE WRIT

The petitioner Maria Navarro Martin, pro se , and respectfully invoke the jurisdiction of this honorable court under S.C. Rule 10(c) since that The Eleventh Circuit Court of Appeals has decided in the case No. 23-13123-F, an important question of federal law that has not been, but should be settled by this court, and has decided an important federal question in a way that conflicts with relevant decisions of this court, which resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.

This honorable court should find as a matter of law and of rights, that Ms. Navarro-Martin as a state prisoner satisfies the proper COA standard by demonstrating that jurists of reason could (a) disagree with a District Court's resolution of the prisoner's federal constitutional claims, and (b) conclude the issues presented are adequate to deserve encouragement to proceed further in the light of the decision rendered by this court in Miller-El v. Cockrell, 537 U.S. 322, 335-36, 123 S. Ct. 1029, 1039, 154 L. Ed. 2D 931 (2003) and Rose v. Lundy, 455 U.S. 509, 519-20, 102 S. Ct. 1198, 71 L. Ed. 2D 379 (1982), and should find that:

(1) The decision of the circuit court was "contrary to" a clearly established federal law as determined by the supreme court of the united states in miller-el v. Cockrell, 537 u.s. 322, 335-36, 123 s. Ct. 1029, 1039, 154 l. Ed. 2d 931 (2003)

(2) The decision of the district court was an "unreasonable application of" a clearly established federal law, as determined by the supreme court of the united states in rose v. Lundy, 455 u.s. 509, 519-20, 102 s. Ct. 1198, 71 l. Ed. 2d 379 (1982)

(3) The adherence to an unconstitutional state law is not mandate by a federal law under an

unconstitutional state statute of conviction that "violate due process. Art. I, 9, fla. Const. Accord u.s. Const. Amend. Xiv", and the policy of exhaustion in federal habeas corpus actions, did not require the exhaustion of inadequate remedies.

(4) In the light of this court precedent in rose v. Lundy, 455 u.s. 509, 522, 102 s. Ct. 1198, 71 l. Ed. 2d 379 (1982), the district court erred dismissing the petition with prejudice to allow exhaustion. And the circuit court was incorrect in not inquiring whether a "substantial showing of the denial of a constitutional right" had been proved.

CONCLUSION

This petition for a Writ of Certiorari should be granted