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No. _____

Application No. 24A413

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SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Edvin Santiagomazariegos – Petitioner

v.

Ricky D. Dixon, Secretary,
Florida Department of Corrections et al – Respondent.

APPEAL NUMBER: 24-10356-D

PETITION FOR WRIT OF CERTIORARI

Edvin Santiagomazariegos, DC# X93255
Tomoka Correctional Institution
3950 Tiger Bay Road
Daytona Beach, Florida 32124
Petitioner, Pro Se

QUESTIONS PRESENTED

WHETHER TRIAL COUNSEL'S PERFORMANCE DEPRIVED PETITIONER OF HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS MADE APPLICABLE BY THE FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS OF THE LAW AND UNITED STATES SUPREME COURT PRECEDENT?

WHETHER THE UNITED STATES [MIDDLE] DISTRICT COURT OF FLORIDA'S DECISION WAS CONTRARY TO OR UNREASONABE APPLICATION OF UNITED STATES SUPREME COURT PRECEDENT?

LIST OF PARTIES

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

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

RELATED CASES

Santiagomazariegos v. State, 224 So3d 246 (Fla. 5th DCA 2017)

Santiagomazariegos v. State, 311 So3d 858 (Fla. 5th DCA 2021)

Santiagomazariegos v. Ricky D. Dixon, Case No. 6:21-cv-696-GAP-LRH (MD Fla. Jan. 8, 2024)

Santiagomazariegos v. Ricky D. Dixon, Case No. 24-10356-D (11th Cir. August 7, 2024)

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[ ] For cases from **federal courts**:

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

[ ] reported at _____; or,

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

[ ] unpublished.

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

[ ] reported at _____; or,

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

[ ] unpublished.

[X] For cases from **state courts**:

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

[X] reported at *Santiagomazariegos v. State*, 224 So3d 246 (Fla. 5th DCA 2017; or,

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

[ ] 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,

[X] unpublished.

JURISDICTION

[ ] For cases from **federal 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. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was March 5, 2021. A copy of that decision appears at **Appendix A**.

[ ] A timely petition for rehearing was thereafter denied on the following date: and a copy of the order denying rehearing appears at Appendix _____.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Violation of sixth amendment right to effective assistance of counsel and impartial trial as made applicable by the fourteenth amendment right to due process/equal protection of the law.

STATEMENT OF THE CASE

1. On January 8, 2024 Appellant's Petition for Writ of Habeas Corpus and Certificate of Appealability were denied.

2. On February 1, 2024 Appellant filed a timely Notice of Appeal.

3. On March 1, 2024 Appellant filed a Certificate of Interested Persons and Corporate Disclosure Statement and a Motion for Enlargement of Time to file a Motion to Proceed Informa Pauparis.

4. On March 8, 2024 Appellant filed a Motion to Proceed Informa Pauparis and a Certificate of Interested Persons and Corporate Disclosure Statement.

5. On March 12, 2024 the 11th Circuit Court of Appeal granted Appellant an enlargement of time up to and including April 8, 2024.

6. On August 7, 2024 the 11th Circuit Court of Appeal denied COA thereby rendering all pending motions moot.

7. On October 29, 2024 this Court granted an enlargement of time up to and including December 5, 2024.

REASONS FOR GRANTING A WRIT OF CERTIORARI

GROUND ONE

WHETHER PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT OF THE U.S. CONSTITUTION WHEN COUNSEL FAILED TO CONVEY A PLEA OFFER TO THE PETITIONER

Prior to a pre-trial hearing, held on June 6, 2016, defense counsel never conveyed that the State had extended a plea offer. During the June 6, 2016 pre-trial hearing the following discourse occurred in open court:

> **Court:** The State has offered to allow you plea to attempted sexual battery. Have you discussed that with your attorney,
>
> **Petitioner:** No.

After this conversation defense counsel, Mr. Felicier, admitted to the court that he had not discussed the plea offer with Petitioner. After defense counsel's admission the Trial Court asked him to discuss the State's plea offer with the Petitioner.

During a brief discussion off the record Mr. Felicier told the Petitioner that the State had offered him five (5) years imprisonment followed by ten (10) years probation. The Petitioner informed his counsel that he wanted to talk to his family about the plea and counsel told the Petitioner: "*There is no time for that. You are not going to accept the plea. You have a good case that we have a good chance of winning and they have no evidence. You are not taking this plea*". Based on trial counsel's advice Petitioner rejected the State's offer. Following these discussions trial counsel notified the Court that Petitioner was rejecting the State's offer. The Court then asked the Petitioner if he had decided to reject the plea offer. Petitioner did not know what to say and simply nodded his head and said: "Yes" even though he wanted to discuss, accepting the plea offer with his family, but he

was afraid to go against his counsel's advice so he rejected the offer. Had Petitioner been properly advised that circumstantial evidence was sufficient to substantiate a conviction. In other words, had counsel explained that the victim's testimony, alone, was enough evidence to convict as opposed, to trial counsel's advice Petitioner would have accepted the State's offer and would not have proceeded to trial. The record clearly establishes that State would not have withdrawn the offer and the Trial Court would have accepted Petitioner's plea. Furthermore, the acceptance of the plea offer would have resulted in a less severe sentence of five (5) years imprisonment – opposed to the four (4) life sentences Petitioner is currently serving as a result of trial counsel's failure to [timely] convey the plea offer. The record clearly shows that the state court decisions were contrary to or an unreasonable application of the United States Supreme Court's holdings in *Lafler v Cooper*, 566 US 156, 132 S Ct 1376 (2012) (Which holds: Where a defendant rejects a plea bargain upon erroneous advice of counsel and is convicted at trial, the defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances, that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed); and *Missouri v. Frye*, 566 US 134, 132 S Ct 1399 (2012) (Which holds: Trial counsel, "as a general rule, has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused". The Supreme Court applied the Strickland test in the context of failure to convey a plea. A defendant is required to

demonstrate a reasonable probability that (1) he would have accepted a plea offer but for counsel's ineffective assistance; (2) the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it; and (3) the plea would have resulted in a lesser charge or a lower sentence. See *Frye*, 566 U.S. @ 147; *Lafler*, 566 U.S. @ 164. Therefore, even if the prosecution had made a formal plea offer, and even if counsel should have conveyed the plea, Petitioner must demonstrate that the prosecution would not have canceled it and the trial court would have accepted it) applying *Strickland v. Washington,* 104 S. Ct. 2052 (1984). Petitioner avers that, on the face of the record, he has established the criteria ie that: 1) trial counsel failed to convey a plea offer, 2) the State would have allowed Petitioner to plea to attempted sexual battery; 3) Petitioner rejected the favorable offer based on counsel's misadvice; 4) the State would not have withdrawn the offer; and 5) the Trial Court would have accepted the plea as set forth in *Lafler,* and *Frye* as well as the deficiency and prejudice prongs set forth in *Strickland.*

Petitioner contends that the state court's findings were an unreasonable application of and/or contrary to the United States Supreme Court's holding in Strickland. The Petitioner has established both the deficiency and prejudice prongs of Strickland; warranting federal habeas relief.

GROUND TWO

WHETHER PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT OF THE U.S. CONSTITUTION WHEN COUNSEL FAILED TO CALL CHRISTINA MAURI AS A WITNESS AT TRIAL?

Well in advance of trial Petitioner brought to his attorneys attention that Christina Mauri had lived with him and his wife until she was 18 years old. Petitioner's attorney assured him that he would investigate Christina Mauri. Although Christina was available

and willing to testify at trial, and counsel being provided with her address; defense counsel never made arrangements for Christina to be deposed or called as a witness. Had Christina Mauri been called to testify she would have testified as follows:

"That she had lived with Joanne and the Petitioner from the time she was 12 years old until she was 18 years old.

In all her years of living with them the Petitioner had never touched her in a sexual manner.

She lived with the Petitioner when T.P. and J.P. lived there and had never seen the Petitioner touch the girls in an inappropriate way.

She always babysat T.P. and J.P. and neither of the girls were ever left alone with Petitioner. Any time his wife went anywhere she always took T.P. and J.P. with her.

Christina Mauri's testimony supported Petitioner's theory of defense and further impeached both T.P. and J.P.'s testimonies yet Defense counsel still failed to call her as a witness. Counsel's failure to call this exculpatory witness prejudiced Petitioner and there is a reasonable probability had the jury heard Christina Mauri's testimony they would have found the Petitioner not guilty.

Counsel's failure to investigate and/or call potential witness that ***might*** be able to cast doubt on a defendant's guilt is a Sixth Amendment violation. see *Code v. Montgomery*, 799 F2d 1481, 1483-84 (11th Cir. 1986); *Khan v. United States*, 928 F3d 1264, 1278 (11th Cir. 2020); and *Jeffery v. Warden*, 817 Fed. Appx. 747 (11th Cir 2020) (Holding: Ineffective assistance may be shown where defense counsel utterly failed to investigate potential witnesses or secure their testimony).

The Defendant now contends that the state court's findings were an unreasonable

application of and/or contrary to the United States Supreme Court's holding in *Strickland v. Washington; Lafler v. Cooper;* and *Missouri v. Frye;* supra

GROUND THREE

WHETHER THE PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT OF THE U.S. CONSTITUTION WHEN COUNSEL ELICITED AN UNCHARGED SEXUAL ASSAULT ON J.P. - THE ALLEGED VICTIM'S YOUNGER SISTER?

Prior to trial the Trial Court granted the State's Motion in Limine, prohibiting testimony concerning the Petitioner touching the younger sister of J.P., in a sexual manner.

On cross-examination, by trial counsel, J.P. (who was T.P.'s six (6) year old sister) was asked:

[Q] "Mr. Santiago Giovanni, never touched you; isn't that correct.

[A] "Yes."

[Q] "Yet you told Janice that he touch ..."

At this point the Trial Court sustained the objection, by the State and gave a curative instruction.

The decision to elicit such damaging character evidence of other crimes not charged – cannot in any form or fashion – be deemed a reasonable strategic/tactical decision. This error so undermined the proper functioning of the adversary process that the result of Petitioner's trial could not have produced a just result. Counsel's constitutionally deficient act caused actual prejudice to the Petitioner and compelled the jury to find the Petitioner guilty of crimes based on evidence from a crime not charged – requiring reversal of the for a new trial

The state court's findings were unreasonable application of, or contrary to the

United States Supreme Court's holding in *Strickland v. Washington,* 104 S. Ct. 2052 (1984). The Petitioner has established both the deficiency and prejudice prongs of *Strickland;* warranting federal habeas relief.

A decisions on whether to cross examine a witness and how vigorously to challenge their testimony require a quintessential exercise in professional judgment. However that discretion is not unfettered. Tactical and/or strategic decisions are for Trial Counsel to make and will not be second guessed unless where, as here, they are patently unreasonable see *Ford v. Cockrell*, 313 F. Supp. 831, 859 (W D Tex. 2004).

Trial Counsel further impacted the situation by not utilizing the proffer that Trial Court said it would conduct when the issue arose. Because he failed to do so the jury heard there had been a second accusation of sexual abuse against an even younger relative without the benefit of hearing that the accusation had been recanted because it was fabricated in the first place. Even a curative instruction, to disregard the testimony, cannot unring that bell. That is to say if you throw a skunk into the jury box, you can't instruct the jury not to smell it see *Dunn v. United States*, 307 F2d 883, 887 (5th Cir. 1962), Trial counsel's deficient performance was devastating because credibility was everything in this entirely circumstantial case. Even though the State Courts failed to address the issue it is ripe for federal review.

CONCLUSION

Failing to investigate and call a witness, especially in a credibility case, was not only an unreasonable trial tactic/strategy it was highly prejudicial and entitles Petitioner to a new trial.

Petitioner asserts that Trial Counsel's eliciting the statement about the alleged sexual abuse on the victim's younger sister without utilizing the proffer, offered by the Trial Court, to ensure that he could also elicit testimony about the recantation of the allegation, and why it was fabricated in the first place was an unreasonable trial tactic/strategy. This testimony was so devastatingly prejudicial that no curative instruction could resuscitate fairness.

Petitioner asserts that the State Courts rulings: (1) violated his Sixth Amendment right to competent representation of counsel as made applicable to the State Courts through the Fourteenth Amendment; and (2) were contrary to or unreasonable application of the evidence presented and were contrary to or unreasonable application of United States Supreme Court precedent see *Gideon v. Wainwright*, 372 US 355, 83 SCt 792 (1963); and *Strickland v. Washington*, 466 US 668, 104 SCt 2052 (1984)

Wherefore based on the foregoing arguments and citations of authority Petitioner requests this Court to remand this case to the State Court for a new trial or any/all relief deemed to be appropriate.

Respectfully submitted,

_____ Petitioner *pro se*

Edvin Santiagomazariegos, DC# X93255

Date: 11-22-24