

24-6950 **ORIGINAL**
No. _____

Supreme Court U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES
WASHINGTON D.C.

DAONTAE T. SCOTT - PETITIONER

VS.

SEC'Y, FLORIDA DEPT. OF CORRECTIONS - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS - 11TH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DAONTAE T. SCOTT

HAMILTON C.I. - ANNEX

JASPER, FL 32052

QUESTIONS PRESENTED

- (1) DOES TRIAL COUNSEL'S FAILURE TO INVESTIGATE, PROCURE EXONERATORY EVIDENCE (SECURITY CAMERA FOOTAGE), OTHER INFORMATION FROM THE LOCATION CRIME SCENE ABROGATE APPELLANT'S 6TH AND 14TH AMENDMENT RIGHTS TO CONFRONT A WITNESS AND TO DUE PROCESS RESPECTIVELY?
- (2) THE HONORABLE COURT ISSUED A CERTIFICATE OF APPEALABILITY TO REVIEW ONE ISSUE; WHETHER THE DISTRICT COURT ERRED BY FINDING THAT GROUND (3) OF SCOTT PETITIONER'S FIRST AMENDED PETITION IN PART, SUCH THAT ONLY HIS CLAIM THAT COUNSEL WAS INEFFECTIVE FOR FAILING TO REVIEW SECURITY CAMERA FOOTAGE COULD BE REVIEWED AS TIMELY?
- (3) THE QUESTION PRESENTED CONCERNS THE TIMELINESS OF APPELLANT'S 6TH AMENDMENT CLAIM THAT COUNSEL FAILED TO INVESTIGATE AND OBTAIN SURVEILLANCE VIDEO FROM THE SHOP WHERE THE INCIDENT GIVING RISE TO THE INSTANT CHARGES TOOK PLACE?

LIST OF PARTIES

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

RELATED CASES

1st Judicial Circuit Court Escambia County Trial Court: Date: April 7, 2016.
Case# 2014-CF-4648/2015-CF-1105. Guilty, Court rendered judgment, Sentence - May 23, 2016
Florida First District Court of Appeal - Direct Appeal

Date Filed: June 15, 2016 Case# 1D16-2717. Date: 8-14-2017

Rehearing Date, Denied: 8-14-2017

Florida Supreme Court Review Denial of Jurisdiction
Date: 9-22-2017 / 12-27, 2017
Scott v. State, 2017 F.L.A. LEXIS 2541 (Fla. 2017)

(SEE) - Declined to Accept Jurisdiction

Habeas Petition Fla. R. App. P. Rule(d) petition

1-29-2018, Result: Denied per Curiam, Result: 8-15-2018

1st Judicial Circuit Court Escambia County, 3.850 Motion post-
Conviction, Fla. R. Crim. P. Rule 3.850 Motion post-

Conviction relief Case# 14-CF-4698; 15-CF-1105 - Date: 8-8-2011
Result: Denied - Without attaching portion of the Record

Date of Result: February 7, 2019.
Original Petition 2254 - Federal Habeas Corpus, Date: 10-21-2021

First Federal Amendment Habeas Corpus, Date: 10-21-2021

Second Amended Petition File in January 2022.

Case# 2022-13422 - J/L.T. Court of Appeals 11th Circuit

Application for Certificate of Appealability

Date Filed: 11-18-22 Granted: one-issue.

United States Court of Appeals 11th Circuit - Case# 2022-13422

Initial Brief: on Appeal from the District Court of the Northern

District of Florida Pensacola Division, Date Filed:

Penal: 1-16-2025 Nov. 3, 2023.

Issued as Mandate: 1-27-2025 3 Date: 12-12-2024.

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Wiggin v. Smith, 539 U.S. 510 (2003) (12.)

U.S. v. Gray, 878 F.2d 702, 711 (3rd Cir. 1988). (12.)

Fate v. Robinson, 383 U.S. 375 (1966) 13. 16.

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Conley v. Gibson, 355 U.S. 41, 47 (1957). (21.)

Espinosa-Saenz, 235 F.3d, at 503-05) (22.)

Pavensport, 217 F.3d at 1344-46) (23.)

Pittman, 209 F.3d at 317-18; (23.)

Cray Craft, 167 F.3d at 457). (23.)

Burgess v. State, 831 So. 2d 137 (Fla. 2002). (25.)

§ 2254(d) (2). (10.)

U.S. C. A. Const. Amend. 6th (12.)

The law is well settled that, when an amended habeas petition is filed outside of the statute of limitation established by § 2254 and § 2241 the issues raised are timely if they relate back to the original petition.

Trial Court error, petitioner's right under the 5th, 6th, and 14th Amendments were violated when the trial Court allowed petitioner to unintelligently waive right to Counsel. (13.)

Trial Court violated petitioner's right under the 5th, 6th, and 14th Amendments by failing to conduct a Faretta hearing at each stage of the proceedings. (14.)

28 U.S.C. § 2244(d)(1) (15.)

Fed. R. Civ. P. 15(c)(2). (16.) Rule 4, - (22.) (14.)

Rule 8, Fed. R. Civ. P. (18.) - (21.) Rule 5,6 - (22.)

Fed. R. Civ. P. 8(a)(2) - Rule 2(c) (18.) 2254(d)(1) - (22.)

Rule 15, Fed. R. Civ. P - (18.)

Fed. R. Civ. 15(c)(2). - (18.) (19.) (22.) - (21.)

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Fed. R. Civ. P. 81(a)(2) - (20.) - (20.)

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Habeas Corpus Rule, Forms App., 28 U.S.C.A., Pg 353 (2005). - (21.)

Habeas Corpus Rule 2(c) - (21.)

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 U.S. Court of Appeals appears at Appendix N/A +
the petition and is
 reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.
The opinion of the U.S. District Court appears at Appendix N/A +
the petition and is
 reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from State Courts:

The opinion of the highest state court to review the merits
appears at Appendix B to the petition and is
 reported at Scott v. State, 2017 FLA. LEXIS 11632 Fla. 2017; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Florida First District Court
appears at Appendix B to the petition and is
 reported at Scott v. State, 2017 LEXIS 2541 Fla. 2017; or,
 has been designated for publication but not yet reported; or,
 is unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 10-1-2024.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 1-11-2025, and a copy of the order denying rehearing appears at Appendix I.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from state courts:

The date on which the highest state court decided my case was 8-14-2017.
A copy of that decision appears at Appendix B.

A timely petition for rehearing was thereafter denied on the following date: 9-22-2017, and a copy of the order denying rehearing appears at Appendix I.

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

6TH Amendment Right to Confront Witness

14th Amendment Right to Due Process

STATEMENT OF THE CASE

Appeals Court must reverse a criminal petitioner's conviction without any specific showing of prejudice to Petitioner when Counsel was either totally absent, or prevented from assisting the accused during critical stage of the proceeding. In other words, when Counsel is totally absent during a critical stage of the proceeding, prejudice must be presumed.

The U.S. Supreme Court has confirmed the vitality of this *per se* approach noting that while the **Strickland** test for Ineffective Assistance of Counsel, requiring proof of deficient performance, and prejudiced provides guidance for resolving virtually ineffective assistance of counsel claims. There are a few situations in which prejudice may be presumed.

The U.S. Court of Appeals for the 6th Circuit has recently applied the presumption of prejudice test to a claim of ineffective assistance of counsel. See **Mitchell v. Mason**, 325 F.3d 732 (6th Cir. 2003).

The pretrial period is indeed a critical stage; the denial of counsel during which support a **Chronic Analysis**. Several of the U.S. Supreme Court's cases demonstrate that the period between appointment of counsel and the start of trial is indeed a critical stage for 6th Amendment purposes.

The Court has described the pretrial period as perhaps the most critical period of the proceeding that is to say, from the time of their arraignment until the beginning of their trial, when consultation, thorough going investigation, and preparation were vitally important.

The Court has ruled that a Petitioner must be provided counsel at every step in the proceeding against him which the power ruling suggest includes the pre-trial period.

If a claim is governed by **Strickland**, a defendant must typically demonstrate that specific errors made by trial counsel affected the ability of the petitioner to receive a fair trial. If a claim is governed by **Chronic**, however, the petitioner need not demonstrate any prejudice resulting from the lack of effective counsel. In some cases, the 6th Amendment violation are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified.

Three types of cases warrant **Chronic's** presumption of prejudice analysis. The first is the complete denial of counsel in which the accused is denied the presence of counsel at a critical stage.

The second is when counsel entirely fails to subject the prosecution case to meaningful adversary testing. The third is when counsel is placed in a circumstance in which competent counsel very likely could not render assistance.

A critical stage includes pretrial preparation. The pretrial period constitutes a critical period because it encompasses counsel's constitutionally imposed duty to investigate the case.

In **Strickland**, the U.S. Supreme Court has explicitly found that trial counsel has a duty to investigate and that to discharge that duty, counsel has duty to make reasonable investigations; or to make a reasonable decision. The Court has also recognized that without pretrial consultation with the petitioner, trial counsel cannot

fulfill his/her duty to investigate. See **Mitchell v. Mason**, 325 F.3d 732 (6th Cir.). The Court has stated that the reasonableness of counsel's actions may be determined or substantially influenced by the petitioner's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the petitioner... because the U.S. Supreme Court has repeatedly made clear that there is a duty incumbent on trial counsel to conduct pretrial investigation. It necessarily follows that trial counsel cannot discharge this duty if he/she fails to consult with his/her client. The U.S. Supreme Court has long recognized that there is a duty to investigate before trial and that by failing to consult with the petitioner, counsel cannot perform its duty in a critical stage.

REASON FOR GRANTING THE PETITION

A petitioner for Writ of Certiorari seeking review of a judgment of a Lower State Court that is subject to discretionary review. Petitioner argues that the State Court's finding was unreasonable under §2254(d)(2). The State Court's resolution of Petitioner, Mr. Scott's pretrial ineffective assistance of counsel claim was contrary to; or involved an unreasonable application of, clearly established federal law under §2254(d)(1) and **Strickland**.

A critical stage include pretrial preparation period constitutes a critical period because it encompasses counsel's constitutionally imposed duty to investigate the case.

In **Strickland**, the U.S. Supreme Court has explicitly found that trial counsel has a duty to investigate and that to discharge that duty, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.

The Court has also recognized that, without pretrial consultation with the defendant, trial counsel cannot fulfill his/her duty to investigate. The Court has stated the reasonableness of counsel's actions may be determined; or substantially influenced by the defendant's own statements; or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and information supplied by the defendant..

The pretrial counsel provided ineffective assistance in failing to do any reasonable pretrial investigation that would have been helpful to petitioner's case

such as procure exculpatory evidence (security camera footage) and other information to show that Mr. Scott never had in his possession the Sheers as alleged or any other object, to support the Aggravated Assault charge. Both pretrial counsels provided that they would conduct such but, failed to do so. The failure to conduct any reasonable pretrial investigation as requested; interview any potential witness or State witnesses; depose any State witnesses; or even find out if the barbershop had a security camera, prejudiced the petitioner's case, as it deprived the petitioner of the ability to properly prepare for trial, wherein Petitioner ultimately had to represent himself due to Counsel's unpreparedness and the fact that Counsel admitted that he had no idea as to what the State's witness would testify to. Counsel's failure to conduct any pretrial investigation also prevented the defense from knowing that the State did not have possession of the alleged weapon necessary to support the aggravation of the crime. The law is well settled that a Defendant's Counsel has a general duty to reasonably investigate avenues of defense or make a reasonable decision to not do so. Inherent in this duty to conduct a substantial investigation into any plausible lines of defense. The notion that strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgment support the limitation on investigation. See **Strickland v. Washington**, 466 U.S. 668 (1984). The duty to investigate particular facts or defense is thus, not absolute, but Counsel's decision not to investigate must be reasonable under the circumstances.

The Trial Court analyzed Petitioner's ineffectiveness claim by focusing on the alleged strategic choice Counsel made prior to trial, rather than on Counsel's antecedent decision not to conduct any pretrial investigation. However, in the absence of an evidentiary hearing, the Trial Court even sifting through the Court records, could not properly make a factual determination that Counsel's actions were strategic.

The Courts have long held that the failure of Counsel to conduct any pretrial investigation, or interview identified State witnesses, is objectively unreasonable. **Wiggin v. Smith**, 539 U.S. 510 (2003) and **U.S. v. Gray**, 878 F.2d 702, 711 (3rd Cir. 1988). In the instant case, Petitioner is unskilled and untrained in the intricacies of the law and relied upon Counsel's professional assistance in conducting depositions and all pretrial investigations. The language and spirit of the 6th Amendment to the U.S. Constitution gives to every criminal defendant the right to counsel and contemplates that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to the defendant and his right to defend himself. See **U.S.C.A. Const. Amend. 6th**, both pretrial Counsel's failed to act as counsel guaranteed by the Constitution. Both Counsel abdicated their duty to Petitioner in failing to depose the State witnesses and to conduct reasonable pretrial investigations. Had they done so, Petitioner would not have been found guilty or proceeded to trial.

Therefore, Counsel was ineffective and not performing as counsel guaranteed by the Sixth Amendment, and the State Court's adjudication of this claim is contrary

to clearly established federal law as outlined by **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052 (1984). On appeal from the District Court of the Northern District of Florida, Pensacola Division, and U.S. Court of Appeals, 11th Circuit, it was error for the District Court to deny issue three of the First Amended Habeas Petition as untimely. The 11th Circuit Honorable Court had issued a Certificate of Appealability to review one issue, whether the District court erred by finding that Ground 3 of Scott's First Amended Petition only related back to his original petition in part, such that only his claim that Counsel was ineffective for failing to review security camera footage could be reviewed.

In this appeal, the District Court below had failed to honor established precedence to the facts of this case by overlooking the First Amended Habeas Petition to find that all the issues before it were untimely.

The law is well settled that, when an amended habeas petition is filed outside of the statute of limitation established by §2254 and §2241, the issues raised are timely if they relate back to the original petition. Appellant filed his original timely habeas petition October 21, 2020. The petition raised five issues, namely:

- (1) Trial Court error; The Petitioner was denied due process when the Trial Court failed to conduct a full competency hearing in violation of **Pate v. Robinson**, 383 U.S. 375 (1966). (Doc. #1 at 4);
- (2) Trial Counsel was ineffective for failing to protect the due process not to be tried or convicted while incompetent afforded to Petitioner through the opinion of **Pate v. Robinson**. (Doc. #1 at 10)'

- (3) Trial Court error, Petitioner's right under the 5th, 6th, and 14th Amendments were violated when the Trial Court allowed Petitioner to unintelligently waive his right to Counsel. (Doc. #1 at 15).
- (4) Trial Court error, the Trial Court violated Petitioner's rights under the 5th, 6th, and 14th Amendments by failing to conduct a Faretta hearing at each stage of the proceedings. (Doc. #1 at 19).
- (5) Counsel was ineffective for failing to investigate and obtain exculpatory security camera footage to show that he was never and had in his possession the shears as alleged or any other object, to support the aggravated assault charge. (Doc. #1 at 22).

In his First Amended Petition, filed outside of the one-year statute of limitations, Petitioner raised three grounds for relief;

- (1) The Trial Court erred by failing to renew the offer of Counsel before the start of the second trial, in violation of his 6th Amendment right to counsel at every critical stage of the proceeding. (Doc. #18-1 at 9).
- (2) The Appellate Counsel was ineffective for failing to argue on appeal that the Trial Court abused its discretion when it found Petitioner competent to stand trial without first allowing the expert to testify consistent with their reports, or obtain a third report. (Doc. #18-1 at 11).
- (3) Trial Counsel provided ineffective assistance in failing to do any reasonable pretrial investigation that would have been helpful to Petitioner's case such as

pretrial depositions and other relevant factual background investigations. (Doc. #18-1 at 13).

Petitioner then requested, and was granted, leave to file an amendment to the pending Habeas petition to which the District Court granted. (Doc. #18-1). Appellant never filed an amendment as authorized by the District Court. However, a supplement to the Habeas petition was filed, and it raised one ground asserting the Petitioner's Sixth Amendment right to counsel was violated when the Court made a finding that it was necessary to protect the public by imposing a sentence above the statutory maximum. (Doc. #34).

The District Court denied all relief, holding the supplemental/second amendment petition was untimely and no issue raised in the document related back to the original timely §2254 Petition. The District Court held:

"Here, whether any alleged security video recording would have shown Scott did not possess shears appears speculative. Indeed, Scott has not alleged in his amended petition of amended Rule 3.820(sic), and nothing indicates the barber shop actually had a security system, or made, or kept for any period, such video recording. Notably, the police report of the incident states; "There is no known video surveillance." Even assuming such system and video existed, however, Scott has not shown prejudice. At the start of the bench trial, Scott affirmatively stated to the Judge, "I'm ready to go to trial, Your Honor." Scott also pointed out, in his defense, there was no video to show aggravated assault with a deadly weapon had occurred. (Doc. 18-1 at 13).

This Court issued a Certificate of Appealability to review the application of two federal principles: the one-year limitation period imposed on federal habeas petitioners by the Anti-terrorism and Effective Death Penalty Act of 1996 (AEDPA) 28 U.S.C. §2244(d)(1); and the rule that pleading amendments relate back to the filing

date of the original pleading when both the original plea and the amendment arise out of the same "Conduct, transaction, or occurrence," Fed. R. Civ. P. 15(c)(2).

Appellant, a Florida prisoner, and Federal habeas petitioner, was convicted in Florida State Court of Aggravated Assault by Threat, Felony Battery, Violation of Protective Order Against Domestic Violence, and Criminal Contempt, and received an eleven-year sentence. With the one-year limitation period AEDPA allows for habeas petitions, Appellant filed a pro se petition in Federal District Court, that alleged:

- (1) Trial Court error; The Petitioner was denied due process when the Trial Court failed to conduct a full competency hearing in violation of **Pate v. Robinson**, 383 U.S. 375 (1966). (Doc. #1 at 4);
- (2) Trial Counsel was ineffective for failing to protect the due process not to be tried or convicted while incompetent afforded to Petitioner through the opinion of **Pate v. Robinson**. (Doc. #1 at 10)'
- (3) Trial Court error, Petitioner's right under the 5th, 6th, and 14th Amendments were violated when the Trial Court allowed Petitioner to unintelligently waive his right to Counsel. (Doc. #1 at 15).
- (4) Trial Court error, the Trial Court violated Petitioner's rights under the 5th, 6th, and 14th Amendments by failing to conduct a Faretta hearing at each stage of the proceedings. (Doc. #1 at 19).
- (5) Counsel was ineffective for failing to investigate and obtain exculpatory security camera footage to show that he was never and had in his possession

the shears as alleged or any other object, to support the aggravated assault charge. (Doc. #1 at 22).

This initial §2254 was filed October 21, 2020, which made the argument that the Trial Counsel was ineffective for failing to investigate and obtain security footage that would show he never possessed shears necessary to sustain an Aggravated Assault (Doc. #1 at 22).

On July 6, 2021, nine months after the initial filing , Petitioner filed the First Amended Petition in which he raised three claims for relief:

- (1) The Trial Court erred by failing to renew the offer of Counsel before the start of the second trial, in violation of his 6th Amendment right to counsel at every critical stage of the proceeding. (Doc. #18-1 at 9).
- (2) The Appellate Counsel was ineffective for failing to argue on appeal that the Trial Court abused its discretion when it found Petitioner competent to stand trial without first allowing the expert to testify consistent with their reports, or obtain a third report. (Doc. #18-1 at 11).
- (3) Trial Counsel provided ineffective assistance in failing to do any reasonable pretrial investigation that would have been helpful to Petitioner's case such as pretrial depositions and other relevant factual background investigations. (Doc. #18-1 at 13).

Relevant to this appeal is Ground Three of the First Amended Petition which argued the Trial Counsel was ineffective for failing to do any reasonable investigation

that would be helpful to Petitioner's case such as pretrial depositions and other relevant factual background investigation. (Doc. #18-1 at 13).

The question presented concerns the timeliness of Appellant's Sixth Amendment claim that Counsel failed to investigate and obtain the surveillance video from the shop where the incident giving rise to the instant charge took place.

In ordinary civil proceedings, the governing rule, Rule 8, Fed. R. Civ. P., requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Rule 2(c) of the rules governing habeas corpus cases requires a more detailed statement. The habeas rule instructs the Petitioner to specify all the grounds for relief available to him and to state the facts supporting each ground.

By statute, Congress provided that a habeas petition may be amended as provided in the rules of procedure applicable to civil actions. 28 U.S.C. §2242. The civil rule on amended pleadings Rule 15, Fed. R. Civ. P. instructs: "An amendment of a pleading relates back to the date of the original pleading when the claim asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. Fed. R. Civ. P. 15(c)(2).

Ground Three, in July, 2021, First Amended Petition, relates back to the original October, 2020, habeas petition because both pleadings argued the Trial Counsel failed to investigate and discover evidence helpful to the defense, which is the same as Counsel failed to investigate and obtain exculpatory evidence security camera footage

to show that he never had in his possession the shears as alleged or any other object, to support the aggravated assault.

This claim is never addressed by the District Court, and there is no theory as to why the issue is never addressed. The law is well settled that claims presented in an amended §2254 petition filed after the expiration of the AEDPA limitations period are barred unless it relates back to claims presented in the original timely petition. See **Mayle v. Felix**, 545 U.S. 644, 648-50 (2005) involving petitioner's amended habeas petition, filed after the one-year AEDPA limitations period, and adding new claim that police used coercive tactics to obtain damaging statements from him admitted at trial in violation of his 5th Amendment right against self-incrimination, did not relate back to date of original petition, which had alleged that admission into evidence of prosecution.

Witness's video-taped testimony violated his rights under the 6th Amendment's confrontation clause relating back because original petition and amended petition arose from same trial and conviction and holding;

"An amended habeas petition does not back and thereby escape AEDPA's one-year time limit when it asserts a new ground for relief supported by facts that differ in both time and type from those the original pleading set forth." See Fed. R. Civ. P. 15(c).

In this case, Ground Three on the first amended petition must be used as timely because this argument places blame on the pre-trial counsel for failing to investigate and discover evidence, video recordings, forensic evidence, and the list goes on. In enacting AEDPA, in 1996, Congress imposed, for the first time, a fixed time limitation for collateral attacks in Federal Court on a judgment of conviction.

Subsection 2254 (d)(1) provides; "A one-year period of limitation shall apply to an application for a habeas corpus by a person in custody pursuant to the judgment of a State Court." See also subsection 2255, providing one-year limitation period in which to file a motion to vacate a Federal conviction...

As discrete set of rules governs Federal habeas proceedings launched by State prisoners. See rules governing Section §2254 cases in the United States District Courts. The last of those rules, Habeas Corpus Rule 11, permits application of the Federal Rules of Civil Procedure in habeas corpus cases to the extent that the civil rules are not inconsistent with any statutory provision or the habeas rules." See also Fed. R. Civ. P. 81(a)(2). "The civil rules are applicable to proceedings for habeas corpus." Rule 11, the Advisory Committee's notes caution, permits applications of the civil rules only when it would be appropriate to do so, and would not be "inconsistent or inequitable in the overall framework of habeas corpus."

Advisor Committee's note on habeas corpus Rule 11, 28 U.S.C., Pg. 480. In addition to the general prescription on application of the civil rules in Federal habeas cases, §2242 specifically provides that habeas application may be amended as provided in the rules of procedure applicable to civils actions.

Fed. R. Civ. P. 15, made applicable to habeas proceedings by §2254, Fed. R. Civ. P. 81(a)(2), and Habeas Corpus Rule 11 allow pleading amendments with leave of Court any time during a proceeding. Before a responsive pleading is served, pleading may be amended once as a matter of course, i.e., without seeking Court leave. Amendments made after the statute of limitation has run relate back to the date of

the original pleading if the original and amended pleadings arise out of the conduct, transactions, or occurrence. Rule 15(c)(2). The original pleading to which Rule 15 refers is the complaint in an ordinary civil proceeding, and the petition in a habeas.

Under Rule 8(a), applicable to ordinary civil proceedings, a complaint need only provide fair notice of what the plaintiff's claim is and the ground upon which it rests.

Conley v. Gibson, 355 U.S. 41, 47 (1957).

Habeas Corpus Rule 2(c) is more demanding. It provides that the petition must specify all grounds for relief available to the petitioner and state the facts supporting each ground. See also Advisory Committee note on subdivision (c) of Rule 2, 28 U.S.C. Pg. 469.

Notice pleading is not sufficient, for the petition is expected to state facts that point to a real possibility of Constitutional error. Accordingly, the model form available to aid prisoners in filing their habeas petitions instructs in bold face:

“CAUTION: You must include in this petition all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting further grounds at a later date.”

Petition for relief from a conviction or sentence by a person in state custody, Habeas Corpus Rules, Forms App., 28 U.S.C.A., Pg. 353 (2005). A prime purpose of Rule 2(c) demanding that habeas petitioners plead with particularity, is to assist the District Court in determining whether a State should be ordered to show cause why the writ should not be granted.

2243. Under habeas corpus Rule 4, if it plainly appears from the petition that the petitioner is not entitled to relief in the District Court, the Court must summarily dismiss the petition without ordering a responsive pleading. If the Court orders the State to file an answer, that pleading must address the allegations in the petition. Rule 5(b).

This case turns on the meaning of Fed. R. Civ. P. 15(c)(2) relation back provision in the context of Federal habeas proceedings and AEDPA's one-year statute of limitations. Rule 15(c)(2), as earlier stated, provides that pleading amendments relate back to the date of the original pleading when the claim asserted in the amended plea arose out of the conduct, transaction, or occurrence, set forth or attempted to be set forth in the original pleading. The key words are conduct, transaction, or occurrence.

The District Court, whose judgment is on review, failed to honor decisions from other Appellate Courts which define those words to allow relation back of a claim first asserted in an amended petition, so long as the new claim stems from the habeas petitioner's trial, conviction, or sentence. Under that comprehensive definition, virtually any new claim introduced in an amended petition will relate back, for federal habeas claims, by their very nature, challenge the constitutionality of a conviction or sentence, and commonly attack proceeding anterior thereto. See *Espinoza-Saenz*, 235 F.3d, at 503-05, a majority of amendments to habeas petitions raise issues falling under the broad umbrella of as defendant's trial and sentencing.; 283 F.3d, at 388. The majority of circuits, mindful of Congress's decision to expedite

collateral attacks by placing stringent time on them, *ibid.*, define conduct, transaction, or occurrence in Federal habeas cases less broadly. See *id.*, at 388-89; **Espinoza-Saenz**, 235 F.3d, at 503-05; **Davenport**, 217 F.3d at 1344-46; **Pittman**, 209 F.3d at 317-18; **Duffus**, 174 F.3d at 337; **Cray Craft**, 167 F.3d at 457.

They allow relation back only when the claim added by amendment arises from the same core facts as the timely filed claims, and not when the new claims depend upon events separate in both time and type, from the originally raised episodes. *Ibid.*

In this case, the conduct of pre-trial counsel was that he was ineffective for failure to investigate and obtain evidence necessary to the defendant's defense. In the October 2020 original petition, the failure to obtain evidence. The evidence was the video recording from the crime scene that would show the Appellant never possessed shears during the altercation resulting in the charge and conviction for aggravated assault. The conduct challenged in the amended petition filed outside the statute of limitations was the failure of pre-trial counsel failing to do any reasonable pre-trial investigation that would have been helpful to petitioner's case; such as pre-trial depositions and other relevant factual background investigations. Ground (5) of the original petition and Ground (3) of the amended petition derived from the same fact, transition, occurrence, conduct. The failure to investigate and discover evidence.

Claim Three of the amended petition for habeas relief relates back to the original habeas petition because they challenge the same core claim of ineffective assistance of counsel for failure to investigate prior to trial.

Mayle. The District Court held that out of an abundance of caution, it would deny all relief, holding the supplement/second first amendment petition were untimely, and no issue raised in the document related back to the original timely §2254 petition.

The District Court's ruling on Ground Three of the amended document, and Ground Five of the original pleading, holding;

Here, whether any alleged security video recording would have shown Scott did not possess shears appears speculative. Indeed, Scott has not alleged in his amended petition or amended Rule 3.820(sic), and nothing indicates the barber shop actually had a security system or made, or kept for any period, such video recordings. Notably, the police report of the incident states, "There is no known video surveillance." Even assuming such system and video existed; however, Scott has not shown prejudice." At the start of the bench trial, Scott affirmatively stated to the Judge, "I'm ready to go to trial, Your Honor." Scott also pointed out, in his defense there was no video to show aggravated assault with a deadly weapon had occurred. (Doc 18-1 at 13).

The District Court avers the claim is based on speculation on the part of Appellant. This cannot be upheld because the shop is a family business to which Appellant is a part of, and with that, he knows what is there, what is not. It is not speculation as to whether there is a security video recording of the incident, a recording device existed, and Appellant moved counsel to go obtain the recording.

The District Court takes issue with the fact that Appellant indicated he was ready for trial, and that he told the Judge, during trial, that there was no video recording of the incident. While these comments seem to say there was no video of the incident. However, looking from the Appellant's perspective in a trial as his own counsel.

First, being ready for trial does not mean that all the evidence was collected and provided to the defense.

The District Court also cited to hearsay police report saying no video recording existed. This was error because police reports are hearsay. See **Burgess v. State**, 831 So. 2d 137 (Fla. 2002). While the Appellant indicated there was no video, he did so because pre-trial counsel failed to investigate and obtain the video. All Appellant did was told the Judge what the situation with the video.

In other words, Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigation unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to Counsel's judgments. **Strickland v. Washington**, 466 U.S. 668 (1984). The reasonableness of Counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant.

In particular, what investigation decisions are reasonable depends critically on such information. Appellant discussed on multiple occasions the need to go to the barber shop and retrieve the video recording of the incident because it would show no weapon was employed during the altercation. That was ineffective assistance in failing to investigate.

Because Counsel's actions fall below the reasonable standard as announced in **Strickland**, the order on review must be reversed. This is reason for granting this Petition on Mr. Scott's appeal, that the 11th Circuit Court of Appeals, District Court

below has failed to honor established precedence to the facts of this case by overlooking the first amended habeas petition to find that all the issues before it were untimely. The law is well settled that when an amended habeas petition is filed outside of the statute of limitation established by §2254 and §2241, the issues raised are timely if they relate back to the original petition. It was error for the District Court to deny Issue Three of the first amended habeas petition as untimely.

Appellant has shown that the District Court, and the 11th Circuit Court of Appeals were in error to determine that the issue raised in the untimely habeas petition did not relate back to the original habeas petition. **Mayle**. The District Court was also in error in its attempt to address the merits holding the issue lacked merit. The order on review must be reversed for further proceedings and other orders this Court deems necessary and just.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
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