IN THE

SUPREME COURT OF THE UNITED STATES

MAY TERM 2025

No. _____

DANIEL DAVID STRADER

Petitioner

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS AND

ATTORNEY GENERAL, STATE OF FLORIDA,

Respondent.

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

Appellate Case No: 24-11094

Daniel David Strader
2313 Coventry Ave.
Lakeland, Florida 33803
Telephone# (863)-944-8755
Petitioner Pro Se

QUESTION(S) PRESENTED

Question (1)

In light of *Mitchell v. United States*, 526 U.S. 314, 119 S.Ct. 1307, 143 L. Ed. 2d 424 (1999) and *Erlinger v. United States,* 144 S.Ct. 1840 (2024), does a court violate the Fifth and Fourteenth Amendments to the United States Constitution when it holds a petitioner's silence at sentencing against him in determining underlying facts of an offense at a later date and uses that silence as the sole definitive factor to deny a petitioner relief?

Questions (2)

Does a federal circuit court violate a petitioner's right to due process of law under the Fourteenth Amendment to the United States Constitution by failing to consider newly discovered evidence obtained for the first time on appeal?

LIST OF PARTIES

All parties appear in the Caption of the case on the cover page.

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT (CIP)

U.S. Supreme Court Rule 29:6 requires the petitioner to file a Certificate of Interested Persons and Corporate Disclosure Statement (CIP) with this court within 14 days after the date the case or appeal is docketed in this court, and to include a CIP within every motion, petition, brief, answer, response, and reply filed. Also, all appellees, intervenors, respondents, and all other parties to the case or appeal must file a CIP within 28 days after the date the case or appeal is docketed in this court. In alphabetical order, with one name per line, please list all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an

interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party. (Please type or print legibly):

BRASHER, Andrew L.
United States Circuit Judge

DIXON, Ricky
Secretary, Florida Department of Corrections

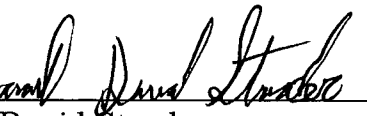
MOODY, Ashley
Attorney General, State of Florida

SCRIVEN, Mary S.
U.S. District Judge

STRADER, Daniel David
Petitioner-Appellant

WELLS, Sheron
Assistant General Counsel, Florida Department of Corrections

Submitted by:

Signature: 
Name: Daniel David Strader
Address: 2313 Coventry Ave., Lakeland, Florida 33803
Telephone #: (863)-944-8755

LIST OF ALL PROCEEDINGS DIRECTLY RELATED

The United States Court of Appeal for the Eleventh Circuit entered a written opinion of the decision entered by the United States District Court for the Middle District of Florida which denied the Petitioner's 28 U.S.C. §2254 petition for writ of habeas corpus. The decision of the Eleventh Circuit Court of Appeal captioned *Strader v. Secr'y, Fla. Dep't of Corr.*, 2024 U.S. App. LEXIS 26457 (11th Cir. 2024)

and was decided on September 10, 2024, reconsideration denied on December 2, 2024, and appears at (Appendix A and B) to the petition and has been designated for publication but is not yet reported. The United States District Court for the Middle District of Florida entered an Order Granting Petitioner's Motion to Alter or Amend the Judgment and denying his due process claim filed pursuant to Rule 59(e) Federal Rules of Civil Procedure which sought to amend the Court's June 13, 2023, Order Dismissing Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. §2254 on June 14, 2012. (Appendix C) See *Strader v. Secr'y, Fla. Dep't of Corr.*, case no: 8:12-cv-01327-MSS-SPF. Florida Supreme Court review was not sought as the First District Court of Appeal did not issue a written opinion. Petitioner's Petition for Writ of Mandamus was per curiam affirmed on appeal without opinion. See *Strader v. Tucker,* 81 So. 3d 422 (Fla. 1st DCA 2012) rehearing denied by *Strader v. Tucker,* 2012 Fla. App. LEXIS 4499 (Fla. Dist. Ct. App. 1st Dist., Mar. 6, 2012). The original Petition for Writ of Mandamus was filed in the Second Judicial Circuit in and for Leon County, *Strader, Daniel D. v. Dept. of Corrections*, 2010 CA 002753 and was denied per final order on May 18, 2011.

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Cases

Constitutional Provisions;

State Statutes;

United States Code;

Rules of Court;

DECISIONS BELOW

This Petition seeks review of the judgment entered by the United States Court of Appeals for the Eleventh Circuit denying a Certificate of Appealability and Motion for Reconsideration upholding the denial of the Petitioner's 28 U.S.C. §2254 Petition for Writ of Habeas Corpus. The Eleventh Circuit captioned this case *Strader v. Secr'y, Fla. Dep't of Corr.*, 2024 U.S. App. LEXIS 26457 (11th Cir. 2024) upholding the United States District Court's ruling in *Strader v. Secr'y, Fla. Dep't of Corr.*, 8:12-cv-01327-MSS-SPF (M.D. Dist. Fla. 2024) (Doc. 89) and the order denying (COA) was decided on September 10, 2024, reconsideration denied on December 2, 2024 both opinions are attached as Appendix A and B.

JURISDICTION

The judgment of the court of appeals was entered on September 10, 2024. (App. A) A petition for reconsideration was denied on December 2, 2024. (App. B). On March 25, 2025, Scott S. Harris, Clerk for the United States Supreme Court extended the time within which to file a petition for a writ of certiorari to and including May 24, 2025, i.e., within sixty (60) days of the Clerks letter.The jurisdiction of this Court to review the judgment is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment IV to the United States Constitution which provides that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

This case involves Amendment V to the United States Constitution which provides that:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

This case involves Amendment XIV to the United States Constitution which provides that:

> Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

The above Amendments are enforced by Title 28, Section §2254, United States Code:

> The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

STATEMENT OF THE CASE

The following procedural history and statement of the case is gleaned from reading the Eleventh Circuit Court of Appeals ruling in *Strader v. Sec'y, Fla. Dep't of Corr.*, 634 Fed. Appx. 270 (11th Cir. 2015):

A. State Criminal Convictions

> In August 1995, a Florida jury convicted Petitioner of 238 offenses involving racketeering, conspiracy to commit racketeering, and grand theft. The offenses, which all related to Petitioner's involvement in a Ponzi scheme, were committed between June 3, 1989, and April 13, 1994. Following the jury's verdict, the Florida court sentenced Petitioner to a total of 45 years' imprisonment and 25 years' probation. Petitioner was taken into custody by the FDOC on August 22, 1995.
>
> During the course of Petitioner's criminal enterprise, the Florida legislature enacted a statute that provided that basic gain-time could only be applied to sentences for offenses committed on or after July 1, 1978, and before January 1, 1994. See Fla. Stat. § 944.275(6)(a). The FDOC initially applied basic gain-time to Petitioner's sentences for racketeering and conspiracy to commit racketeering based on its determination that the date of his offenses for basic gain-time purposes was the date he commenced the offenses—June 3, 1989.
>
> However, in 2002, the Florida Supreme Court issued the opinion in Young v. Moore, 820 So. 2d 901 (Fla. 2002), which stated that, for purposes of gain-time, the date of commission for a continuing felony should be the date of the last overt act in furtherance of the felony. See id. at 903 n.4. On September 16, 2005, the FDOC audited Petitioner's sentences in light of Young, and determined that his racketeering offenses were committed on the date the offenses ended — April 3, 1994. Because Petitioner's

racketeering offenses continued after January 1, 1994, the FDOC determined that he was not entitled to basic gain-time. As a result, the FDOC canceled his basic gain-time credits.

B. State Mandamus Petition

In 2010, Petitioner filed a petition for writ of mandamus in the Florida court, challenging the FDOC's cancellation of his 15 years of basic gain-time credits. Specifically, he contended that the FDOC's calculation of his basic gain-time in 1995 was correct, and that the retroactive application of the Florida Supreme Court's decision in Young violated his due process rights and the Ex Post Facto Clause.

The Florida court denied his petition, concluding that the cancellation of Petitioner's basic gain-time did not violate the Ex Post Facto Clause. The Florida court explained that, because the date of Petitioner's offenses was after January 1, 1994, he was not eligible for basic gain-time at the time when the FDOC mistakenly awarded it to him. Given that Petitioner was never entitled to the basic gain-time credits, the FDOC's cancellation of those credits did not violate the Ex Post Facto Clause. The Florida appellate court subsequently denied Petitioner's petition for writ of certiorari.

C. Habeas Corpus Proceedings

In June 2012, Petitioner filed the present § 2254 petition, raising one claim for relief. He alleged that the FDOC singled him out for a "re-audit" and retroactively cancelled his basic gain-time credits in violation of the "Ex Post Facto and Equal Protection Clauses of the U.S. Constitution." He further asserted in a single sentence that "it should go without saying" that he had a "liberty interest" under the Fourteenth Amendment and Wolff v. McDonnell, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed. 2d 935 (1974), in the basic gain-time credits that he was correctly awarded in 1995.

The district court denied the § 2254 petition, concluding that the cancellation of Petitioner's basic gain-time credits did not violate the Ex Post Facto Clause. The district court explained that

> the revision to the basic gain-time statute—which eliminated basic gain-time for offenses committed after January 1, 1994—was not retroactively applied to Petitioner because the statute was revised before Petitioner's offenses ended. Because Petitioner was not legally entitled to accrue basic gain-time, he did not have any legally enforceable right based on the FDOC's initial error in awarding him those credits.
>
> Petitioner appealed and we subsequently granted a certificate of appealability on the following issue:
>
> Whether the district court committed error in violation of Clisby v. Jones, 960 F.2d 925, 936 (11th Cir. 1992) (en banc), by failing to address [Petitioner's] claim that the [FDOC] violated the Due Process Clause of the U.S. Constitution when it retroactively cancelled his basic gain-time based on the Florida Supreme Court opinion Young v. Moore, 820 So.2d 901, 903 n.4 (Fla. 2002).

See *Strader v. Sec'y, Fla. Dep't of Corr.,* 634 Fed. Appx. 270 (11th Cir. 2015).

The Eleventh Circuit Court of Appeal ultimately ruled that that the district court violated Clisby by failing to address Petitioner's claim that the FDOC's cancellation of his basic gain-time violated his due process rights. The Eleventh Circuit Court held that because the district court did not resolve this claim, it erred under Clisby. See *Clisby v. Jones,* 960 F.2d 925, 936 (11th Cir. 1992) (en banc). Accordingly, the Eleventh Circuit Court vacated the judgment of the district court without prejudice and remanded the case to the district court to consider Petitioner's due process claim. See *Strader v. Sec'y, Fla. Dep't of Corr.,* 634 Fed. Appx. 270 (11th Cir. 2015).

As a direct result of the Eleventh Circuit's ruling above, the United States Middle District entered an order on April 21, 2015, which granted Petitioner leave to file a

Supplemental Brief on the following issue: "Strader must supplement his arguments to prove entitlement to relief under either Section 2254(d)(1) or Section 2254(d)(2) specifically, that the recalculation of his gain time credits violated his rights under the Due Process Clause." See Order at 3, *Daniel D. Strader v. Sec'y, Dep't of Corrs.*, et al., 8:12-cv-01327-MSS-MAP (U.S. Middle District Apr. 21, 2016)(unpublished)("Order)(Doc.22).

The Petitioner complied with the above order on May 25, 2016, by filing a Supplemental Brief with the District Court, however, the question Petitioner was requested to address by the Middle District was not the question posed by the Eleventh Circuit in *Strader v. Sec'y, Fla. Dep't of Corr.*, 634 Fed. Appx. 270 (11th Cir. 2015). This error will be more fully addressed below.

The Respondent filed an Answer to Complaint on August 29, 2016. (Doc. 29) While the Federal District Court was reviewing all pleadings filed to make its ruling the Petitioner requested the Court to hold the case in abeyance pending the exhaustion of an issue at dispute in the case regarding Petitioner's eligibility to basic gain time for predicate offenses to Count (1) RICO and Count (2) RICO Conspiracy, i.e., Counts (123-126). The Federal District Court stayed and administratively closed this case because Strader returned to state court to seek relief. (Doc. 46) The Court lifted the stay after the state post- conviction proceedings concluded (Doc. 59), and Strader notified the Court that he was released from prison. (Docs. 61 and 63) The Court directed the parties to submit supplemental briefing addressing whether the action was moot. After the parties submitted supplemental briefing, the Court dismissed

the action as moot because reinstatement of cancelled gain time would not reduce the length of Strader's confinement. (Doc. 80 at 3–4) Strader, who began serving a probationary sentence, contended that the District Court's ruling on the federal due process claim could impact a sentence in the future if he violates the conditions of his probation. (Doc. 78 at 4–5) The Court determined that Strader's speculative allegation of future injury failed to establish a "live" case or controversary that supported subject matter jurisdiction and entered an order dismissing the petition. (Doc. 80 at 5–6)

The Petitioner filed a Motion to Alter or Amend seeking review of the dismissal order and within said Motion the Petitioner asserted that the action did not become moot because he suffers collateral consequences from the denial of gain time. (Doc. 81 at 6) Petitioner contended that the state court violated his federal right to due process by denying him fifteen years of gain time, that the denial of gain time caused him to serve an additional ten years in prison, and that he could have moved to terminate his probation in 2021 if the prison had properly awarded him gain time and further argued that he would have already completed (10) years of probation had he been released at the appropriate time. (Doc. 81 at 7–8).

The Federal District Court granted the Petitioner's Motion to Alter or Amend, in effect nullifying the prior dismissal on the grounds that the Petition had become moot and ruled that even if this action is not moot, his federal due process claim fails. (Doc. 89 at 2). The District Court ultimately found: "Strader's motion (Doc. 81) to alter or amend is GRANTED, and the federal due process claim (Doc. 1 at 9) is DENIED. A

certificate of appealability and leave to appeal in forma pauperis are DENIED. 28 U.S.C. § 2253(c)(2). Slack v. McDaniel, 529 U.S. 473, 478 (2000)." (Doc. 89 at 24)

The Petitioner filed a timely notice of appeal. (Doc. 90) A Certificate of Appealability was then timely filed directly with the Eleventh Circuit Court of Appeal. Petitioner raised a total of three issues on COA:

ISSUE I

> Whether the United States Middle District committed error in violation of Clisby v. Jones, 960 F.2d 925, 936 (11th Cir. 1992) (en banc), by failing to address [Petitioner's] claim that the [FDOC] violated the Due Process Clause of the U.S. *Constitution* when it retroactively cancelled his basic gain-time based on the Florida Supreme Court opinion *Young v. Moore*, 820 So.2d 901, 903 n.4 (Fla. 2002).

ISSUE II

> Whether the United States Middle District committed error in violation of *Mitchell v. United States*, 526 U.S. 314, 119 S.Ct. 1307, 143 L. Ed. 2d 424 (1999) where the Court held that by holding petitioner's silence against him in determining the facts of the offense at the sentencing hearing, the District Court imposed an impermissible burden on the exercise of the constitutional right against compelled self-incrimination in violation of the Fifth Amendment to the U.S. Constitution.

ISSUE III

> Whether the United States Middle District committed error in violation of *United States v. Crape*, 603 F.3d 1237 (11th Cir. 2010) by failing to comply with the mandate of the Eleventh Circuit Court of Appeal in *Strader v. Sec'y, Fla. Dep't of Corr.*, 634 Fed. Appx. 270 (11th Cir. 2015).

The Eleventh Circuit Court of Appeal entered the following order on COA:

> Daniel Strader moves for a certificate of appealability ("COA") in order to appeal the denial of his 28 U.S.C. § 2254 habeas corpus petition and leave to exceed the page limit in his motion for a COA. Strader's motion for leave to exceed the page limit is GRANTED. This Court has considered the entirety of his motion. His motion for a COA is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2).

Petitioner then timely filed a Motion for Reconsideration with the Eleventh Circuit Court of Appeal in which he presented newly discovered evidence that supported his claim to relief. The Reconsideration Motion outlined:

NEW EVIDENCE FROM THE STATE COURT

> After the Federal Middle District denied the Petitioner's 2254 Habeas Corpus Petition on March 11, 2024, without determining the last overt act in furtherance of RICO and RICO Conspiracy the Petitioner retained Counsel and requested the State Trial Court to answer this question. See (Appendix A – Motion for Clarification) (Appellate Doc. 7). The State Trial Court reviewed the Petitioner's entire case file and made a definitive determination that the last overt act in furtherance of Count (1) RICO and Count (2) RICO Conspiracy were Counts 123-126 the offense dates of which are all December 16, 1993. See (Appendix B – Order on Defendant's Motion for Clarification dated April 22, 2024) (Appellate Doc. 7). In other words, the Petitioner's criminal enterprise ceased on December 16, 1993, before the January 1, 1994 cut-off date for basic gain time. Under a correct application of Young v. Moore, 820 So.2d 901, 903 n.4 (Fla. 2002) the last overt acts in Petitioner's case occurred on December 16, 1993.

The finding of the Trial Court above is consistent with the finding of the State Circuit Court in Leon County, Florida in regard to Counts (123-126) where the Petitioner went before that court via a Petition for Writ of Mandamus in order to definitively determine when these (4) counts occurred. See *Strader v. Florida Department of Corrections,* Case No. 2016-CA-704 (Leon Cty. Fla. 2018). The Federal District Court of Appeal held the federal proceedings in abeyance pending the

exhaustion of this issue. (Doc. 46) The Leon County Circuit Judge Honorable Judge James O. Shelfer found that Counts 123-126 did not occur after January 1, 1994, which was the cut-off date for basic gain time eligibility and also found they occurred on December 16, 1993. See *Strader v. Florida Department of Corrections*, Case No. 2016-CA-704 (Leon Cty. Fla. 2018). The Court granted the Petitioner's Mandamus Petition and awarded Petitioner basic gain time as to Counts 123-126. It goes without saying that if the last overt acts in furtherance of Count (1) RICO and Count (2) RICO conspiracy are basic gain time eligible as they occurred before January 1, 1994, then clearly the first acts are basic gain time eligible as well. Strader's basic gain time should not have been revoked under a proper application of *Young v. Moore,* 820 So.2d 901, 903 n.4 (Fla. 2002). The United States Middle District ruled as follows regarding the date of the last overt act in furtherance of Petitioner's offenses: "The post-conviction court determined that "the record reflect[ed], and [Strader] did not dispute, that [Strader] ceased his criminal activity on April 13, 1994," See Order at page 18 (Doc. 89). The cutoff date for the award of basic gain-time is January 1, 1994. Fla. Stat. § 944.275 (6)(a).

The United States Middle District did not cite to a single portion of the Petitioner's trial transcript, jury findings or any testimony by the Petitioner that established when the date of the last overt act in furtherance of Petitioner's crimes occurred or which of the (238) counts Petitioner was found guilty of was the last overt act in furtherance of Count (1) RICO and Count (2) RICO Conspiracy. Instead, the Federal District reasoned that since the State Court asserted at the Petitioner's

sentencing that the criminal activity ceased on April 13, 1994, and Petitioner Strader did not dispute this assertion, the Petitioner's silence proves that the criminal activity ceased on April 13, 1994. Within the Motion for Reconsideration Petitioner outlined that the Eleventh Circuit Court of Appeal may have overlooked that recently this United States Supreme Court in *Erlinger v. United States,* 144 S.Ct. 1840 (2024), condemned such a practice. This Court reasoned as follows:

> As we have recognized, "[a]t trial, and still more at plea hearings, a defendant may have no incentive to contest what does not matter" to his conviction at the time. He may even "'have good reason not to'" haggle over seemingly immaterial errors in his judicial records. Ibid. (quoting Descamps, 570 U. S., at 270). Those realities counsel caution in the use of Shepard documents. At the time of his prior conviction, a defendant might not have cared if a judicial record contained a mistake about, say, the time or location of his offense. Back then, fine details like those might not have mattered a bit to his guilt or innocence. Contesting them needlessly, too, might have risked squandering the patience and good will of a jury or the judge responsible for pronouncing a sentence. Yet, years later and faced with an ACCA charge, those kinds of details can carry with them lifealtering consequences. For Mr. Erlinger, they may mean perhaps 10 more years in prison. As a matter of fair notice alone, old recorded details, prone to error, sometimes untested, often inessential, and the consequences of which a defendant may not have appreciated at the time, "should not come back to haunt [him] many years down the road by triggering a lengthy mandatory sentence."

The very fears outlined above by this United States Supreme Court has occurred in the Petitioner's case. At the time of sentencing the date of the last overt act in furtherance of the crime had no bearing on the Petitioner's guilt, innocence or length of sentence. Furthermore, the State Trial Court sentenced the Petitioner under the pre-1994 guidelines for Count (1) RICO and Count (2) RICO Conspiracy and therefore the Petitioner and all parties were aware that the pre-1994 laws are what applied to the Petitioner's case. In the Petitioner case District Judge Scriven found

in denying the Habeas Petition that: "The post-conviction court determined that "the record reflect[ed], and [Strader] did not dispute, that [Strader] ceased his criminal activity on April 13, 1994," See Order at page 18 (Doc. 89). At the time of the Petitioner's trial the exact date the Petitioner's criminal activity ceased was irrelevant and therefore the Petitioner did not contest it. However, when the date criminal activity ceased did become relevant the Petitioner contested the April 13, 1994, date by seeking clarification with the State Trial Court. See (Appendix D – Motion for Clarification) (Appellate Doc. 7). The State Trial Court reviewed the Petitioner's entire case file and made a definitive determination that the last overt act in furtherance of Count (1) RICO and Count (2) RICO Conspiracy were Counts 123-126 the offense dates of which are all December 16, 1993. See (Appendix E – Order on Defendant's Motion for Clarification dated April 22, 2024) (Appellate Doc. 7). In other words, the Petitioner's criminal enterprise ceased on December 16, 1993, before the January 1, 1994, cut-off date for basic gain time. Under a correct application of *Young v. Moore*, 820 So.2d 901, 903 n.4 (Fla. 2002) the last overt acts in Petitioner's case occurred on December 16, 1993. Petitioner therefore asserted on Reconsideration that Jurists of reason could easily debate and in fact would find that the Department of Corrections and District Court's finding that "[Strader] ceased his criminal activity on April 13, 1994," was incorrect in light of the State Court's April 22, 2024, ruling finding that the last overt act in furtherance of Count (1) RICO and Count (2) RICO Conspiracy were Counts 123-126 the offense dates of which are

all December 16, 1993. See (Appendix E – Order on Defendant's Motion for Clarification dated April 22, 2024) (Appellate Doc. 7).

The Eleventh Circuit Court of Appeal entered the following ruling on Petitioner's Motion for Reconsideration on December 2, 2024:

> Daniel Strader has filed a motion for reconsideration, pursuant to 11th Cir. R. 22-l(c) and 27-2, of this Court's September 10, 2024, order denying a certificate of appealability in his underlying habeas corpus petition. Upon review, Strader's motion for reconsideration is DENIED

This Petition for Writ of Certiorari follows and must be submitted within a (90) day window beginning the day after the Motion for Reconsideration of COA was denied which is December 3, 2024, and ending March 2, 2025, i.e., (90) days later.

BASIS FOR FEDERAL JURISDICTION

This case raises questions of interpretation of the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. The district court had jurisdiction under the general federal question jurisdiction conferred by Title 28 U.S.C. §1331.

REASONS FOR GRANTING THE WRIT

STRADER WAS DENIED DUE PROCESS OF LAW AND UNLAWFULLY INCARCERATED AN ADDITIONAL 10 YEARS IN PRISON AS A DIRECT RESULT OF REMAINING SILENT DURING A SENTENCING PROCEEDING THAT OCCURRED ALMOST THREE DECADES EARLIER IN VIOLATION OF THE FOURTH, FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND IN DIRECT CONTRAVENTION OF ERLINGER V. UNITED STATES, 144 S.CT. 1840 (2024).

A. Entering an opinion in this case could have precedential value.

In *Erlinger v. United States*, 144 S.Ct. 1840 (2024) this Court held that a court may not permit a defendant's silence at a sentencing proceeding to come back to haunt him many years down the road. This Court reasoned as follows:

> As we have recognized, "[a]t trial, and still more at plea hearings, a defendant may have no incentive to contest what does not matter" to his conviction at the time. He may even "'have good reason not to'" haggle over seemingly immaterial errors in his judicial records. Ibid. (quoting Descamps, 570 U. S., at 270). Those realities counsel caution in the use of Shepard documents. At the time of his prior conviction, a defendant might not have cared if a judicial record contained a mistake about, say, the time or location of his offense. Back then, fine details like those might not have mattered a bit to his guilt or innocence. Contesting them needlessly, too, might have risked squandering the patience and good will of a jury or the judge responsible for pronouncing a sentence. Yet, years later and faced with an ACCA charge, those kinds of details can carry with them lifealtering consequences. For Mr. Erlinger, they may mean perhaps 10 more years in prison. As a matter of fair notice alone, old recorded details, prone to error, sometimes untested, often inessential, and the consequences of which a defendant may not have appreciated at the time, "should not come back to haunt [him] many years down the road by triggering a lengthy mandatory sentence."

The very fears outlined above by this United States Supreme Court has occurred in the Petitioner's case. At the time of sentencing the date of the last overt act in furtherance of the crime had no bearing on the Petitioner's guilt, innocence or length of sentence. Furthermore, the State Trial Court sentenced the Petitioner under the pre-1994 guidelines for Count (1) RICO and Count (2) RICO Conspiracy and therefore the Petitioner and all parties were aware that the pre-1994 laws are what applied to the Petitioner's case. In the Petitioner case District Judge Scriven found in denying the Habeas Petition that: "The post-conviction court determined that "the record reflect[ed], and ***[Strader] did not dispute***, that [Strader] ceased his criminal activity on April 13, 1994," See Order at page 18 (Doc. 89). At the time of

the Petitioner's trial the exact date the Petitioner's criminal activity ceased was irrelevant and therefore the Petitioner did not contest it. However, when the date criminal activity ceased did become relevant the Petitioner contested the April 13, 1994, date by seeking clarification with the State Trial Court. See (Appendix D – Motion for Clarification) (Appellate Doc. 7). The State Trial Court reviewed the Petitioner's entire case file and made a definitive determination that the last overt act in furtherance of Count (1) RICO and Count (2) RICO Conspiracy were Counts 123-126 the offense dates of which are all December 16, 1993. See (Appendix E – Order on Defendant's Motion for Clarification dated April 22, 2024) (Appellate Doc. 7). In other words, the Petitioner's criminal enterprise ceased on December 16, 1993, before the January 1, 1994, cut-off date for basic gain time. Under a correct application of *Young v. Moore*, 820 So.2d 901, 903 n.4 (Fla. 2002) the last overt acts in Petitioner's case occurred on December 16, 1993. Petitioner therefore asserted on Reconsideration before the Eleventh Circuit Court of Appeal that Jurists of reason could easily debate and in fact would find that the Department of Corrections and District Court's finding that "[Strader] ceased his criminal activity on April 13, 1994," was incorrect in light of the State Court's April 22, 2024, ruling finding that the last overt act in furtherance of Count (1) RICO and Count (2) RICO Conspiracy were Counts 123-126 the offense dates of which are all December 16, 1993. See (Appendix E – Order on Defendant's Motion for Clarification dated April 22, 2024) (Appellate Doc. 7).

The Eleventh Circuit Court of Appeals ruling in *Strader v. Secr'y, Fla. Dep't of Corr.,* 2024 U.S. App. LEXIS 26457 (11th Cir. 2024) upholding the United States District Court's ruling in *Strader v. Secr'y, Fla. Dep't of Corr.,* 8:12-cv-01327-MSS-SPF (M.D. Dist. Fla. 2024)(Doc. 89) which denied Petitioner federal habeas relief solely as a result of his silence at sentencing that occurred nearly three decades earlier resulted in a violation of Petitioner's Fourth, Fifth and Fourteenth Amendments to the United States Constitution. The Fourth Amendment is implicated where Petitioner was detained and incarcerated ten years longer than that which was required by law by the Departments improper revocation of fifteen years' worth of basic gain time thus extending his probationary period by ten years. The Fifth Amendment is implicated where Petitioner's silence at a sentencing proceeding nearly three decades earlier was used to haunt him years later during the proceedings currently on review before this Court. Lastly, the Fourteenth Amendment is implicated where the Department of Corrections revoked fifteen years of basic gain time due to an improper application of *Young v. Moore,* 820 So. 2d 901 (Fla. 2002), without providing Petitioner notice or the ability to contest the revocation.

DENIAL OF A CONSTITUTIONAL RIGHT

Petitioner has asserted that he was denied due process of law under the Fourteenth Amendment to the United States Constitution.

> "[A court] examine[s] procedural due process questions in two steps: the first asks whether there exists a liberty or property interest which has been interfered with by the State; the second examines whether the

> procedures attendant upon that deprivation were constitutionally sufficient."
>
> *Kentucky Dep't Corrs. v. Thompson,* 490 U.S. 454, 460 (1989) (citations omitted).
>
> "[A]n individual claiming a protected interest must have a legitimate claim of entitlement to it." Thompson, 490 U.S. at 460. "Protected liberty interests 'may arise from two sources — the Due Process Clause itself and the laws of the States.'"
>
> *Thompson,* 490 U.S. at 460.

The United States Middle District of Florida denied Petitioner habeas corpus relief in finding:

> Consequently, the prison did not violate Strader's federal right to procedural due process by cancelling the improvidently awarded gain time without notice, a hearing, and other process. Stephens v. Thomas, 19 F.3d 498, 501 (10th Cir. 1994) ("A state inmate's due process rights are implicated only when a state's actions impinge on a protected liberty interest. At the time of Mr. Stephens' conviction, a prisoner serving a life term possessed no such interest in good time credits during the first ten years of his sentence. The state's previous practice of misapplying the law does not change this.") (citing Vitek v. Jones, 445 U.S. 480, 488–90 (1980) and Conn. Bd. of Pardons v. Dumschat, 452 U.S. 458, 465 (1981)).

See Order at pages 19-20. (Doc. 89)

The question that must be answered is whether the Petitioner was entitled to basic gain time to begin with. As previously outlined, in 2002, the Florida Supreme Court issued the opinion in *Young v. Moore*, 820 So. 2d 901 (Fla. 2002), which stated that, for purposes of gain-time, the date of commission for a continuing felony should be the date of the last overt act in furtherance of the felony. See id. at 903 n.4. On September 16, 2005, the FDOC audited Petitioner's sentences in light of Young, and determined that his racketeering offenses were committed on the date the offenses

ended — April 3, 1994. Because Petitioner's racketeering offenses continued after January 1, 1994, the FDOC determined that he was not entitled to basic gain-time. As a result, the FDOC canceled or revoked his basic gain-time credits.

Petitioner has always maintained that none of his offenses continued past December of 1993. The Florida Department of Corrections never contacted the trial court that tried the Petitioner and never requested the trial Court to determine the last overt act in furtherance of RICO and RICO Conspiracy. To date, the Department has failed to remotely allege [any] last overt act as required by *Young v. Moore*, 820 So. 2d 901 (Fla. 2002) let alone have they established when Petitioner's criminal activity ceased.

As outlined earlier herein, after the Federal Middle District denied the Petitioner's 2254 Habeas Corpus Petition on March 11, 2024, without determining the last overt act in furtherance of RICO and RICO Conspiracy the Petitioner retained Counsel and requested the State Trial Court to answer this question. See (Appendix D – Motion for Clarification) (Appellate Doc. 7). The State Trial Court reviewed the Petitioner's entire case file and made a definitive determination that the last overt act in furtherance of Count (1) RICO and Count (2) RICO Conspiracy were Counts 123-126 the offense dates of which are all December 16, 1993. See (Appendix E – Order on Defendant's Motion for Clarification dated April 22, 2024) (Appellate Doc. 7). In other words, the Petitioner's criminal enterprise ceased on December 16, 1993, before the January 1, 1994 cut-off date for basic gain time. Under

a correct application of Young v. Moore, 820 So.2d 901, 903 n.4 (Fla. 2002) the last overt acts in Petitioner's case occurred on December 16, 1993.

In light of the irrefutable proof that Petitioner's offenses ceased on December 16, 1993, the Department of Corrections did not improperly award Petitioner basic credit and therefore due process of law required revocation of said gain time. Strader had a liberty interest in basic gain time as he was held an additional ten years in prison as a result of the Department revoking the basic gain time. As to whether Petitioner was denied due process of law the federal court conceded that the Department revoked the gain time "without notice, a hearing, and other process." See Order at pages 19-20. (Doc. 89)

Not only was Petitioner denied due process of law by the Department of Corrections but the Federal Middle District Court denied habeas relief by using Petitioner's silence at sentencing against him to support its finding that Petitioner's offenses ceased April 3, 1994. See Order at page 18 (Doc. 89)("The post-conviction court determined that "the record reflect[ed], and ***[Strader] did not dispute***, that [Strader] ceased his criminal activity on April 13, 1994," The postconviction court's statement that the criminal activity ceased on April 13, 1994 was dicta and the postconviction court's recent ruling on April 22, 2024, finding that the criminal activity ceased on December 16, 1993, supports this fact. See (Appendix E – Order on Defendant's Motion for Clarification dated April 22, 2024) (Appellate Doc. 7) The Federal District Court did not have the benefit of the postconviction court's April 22, 2024, Order finding that the criminal activity ceased on December 16, 1993, as such

was obtained as a result of the federal court's denial of habeas relief and was obtained during the pendency of the appellate proceedings in this case.

The Eleventh Circuit Court of Appeal could failed consider the newly discovered evidence raised for the first time on appeal and denied both COA and reconsideration. However, the Eleventh Circuit Court of Appeal departed from the essential requirements of law by refusing to consider the newly discovered evidence or its impact it would have had on the federal district court's decision.

> As a general matter, issues not raised in the district court and raised for the first time in an appeal will not be considered by the appellate court. While the appellate court liberally construes pro se pleadings, issues not raised below by a party proceeding pro se are normally deemed waived. The appellate court permits issues to be raised for the first time on appeal under five circumstances: First, an appellate court will consider an issue not raised in the district court if it involves a pure question of law, and if refusal to consider it would result in a miscarriage of justice. *Second, the rule may be relaxed where the appellant raises an objection to an order which he had no opportunity to raise at the district court level. Third, the rule does not bar consideration by the appellate court in the first instance where the interest of substantial justice is at stake. Fourth, a federal appellate court is justified in resolving an issue not passed on below where the proper resolution is beyond any doubt.* Finally, it may be appropriate to consider an issue first raised on appeal if that issue presents significant questions of general impact or of great public concern.

See *SEC v. Rand,* 805 Fed. Appx. 871, 873 (11th Cir. 2020).

In light of the above factors the following two questions are posed to this United State's Supreme Court:

Question (1)

> In light of *Mitchell v. United States,* 526 U.S. 314, 119 S.Ct. 1307, 143 L. Ed. 2d 424 (1999) and *Erlinger v. United States,* 144 S.Ct. 1840 (2024), does a court violate the fifth and fourteenth amendments when it holds a petitioner's silence at sentencing

against him in determining underlying facts of an offense at a later date and uses that silence as the sole definitive factor to deny a petitioner relief?

Questions (2)

Does a federal circuit court violate a petitioner's right to due process of law under the fourteenth amendment to the united states constitution by failing to consider newly discovered evidence obtained for the first time on appeal?

A written opinion by this Court could have precedential value and would permit the Court to further elaborate regarding the need to protect a defendant's right to remain silent during pre-trial, trial and sentencing proceedings without a defendant having a fear that such silence will be used against them at a later date. Furthermore, where this Court has never issued an opinion that requires a federal circuit court to not only consider newly discovered evidence presented for the first time on appeal but to also conduct a de novo review of the new evidence and enter a written order that weighs the impact that the new evidence would have had on a federal district court's order denying habeas relief.

LEGAL ANALYSIS

In deciding whether to grant certiorari in a particular case, we rely heavily on the submissions of the parties at the petition stage. See this Court's Rule 15.1. If, as in this case, a legal issue appears to warrant review, we grant certiorari in the expectation of being able to decide that issue.

See *Schiro v. Farley,* 510 U.S. 222, 229; 114 S.Ct. 783, 127 L. Ed. 2d 47 (1994).

B. Importance of the Questions Presented:

The importance of the ***first question*** presented impacts a wide class of individuals that are, and will be, similarly situated as the Petitioner. For example, there are many reasons why an accused may remain silent when a court is sentencing a Petitioner such as defense counsel may have ordered his clients silence. In *Erlinger v. United States,* 144 S.Ct. 1840 (2024), this Court listed a myriad of reasons why a defendant may stay silent at sentencing:

> As we have recognized, "[a]t trial, and still more at plea hearings, a defendant may have no incentive to contest what does not matter" to his conviction at the time. He may even "'have good reason not to'" haggle over seemingly immaterial errors in his judicial records. Ibid. (quoting Descamps, 570 U. S., at 270). Those realities counsel caution in the use of Shepard documents. At the time of his prior conviction, a defendant might not have cared if a judicial record contained a mistake about, say, the time or location of his offense. Back then, fine details like those might not have mattered a bit to his guilt or innocence. Contesting them needlessly, too, might have risked squandering the patience and good will of a jury or the judge responsible for pronouncing a sentence. Yet, years later and faced with an ACCA charge, those kinds of details can carry with them lifealtering consequences. For Mr. Erlinger, they may mean perhaps 10 more years in prison. As a matter of fair notice alone, old recorded details, prone to error, sometimes untested, often inessential, and the consequences of which a defendant may not have appreciated at the time, "should not come back to haunt [him] many years down the road by triggering a lengthy mandatory sentence." Id.

See also Mitchell v. United States, 526 U.S. 314, 119 S.Ct. 1307, 143 L. Ed. 2d 424 (1999).

The Eleventh Circuit Court of Appeals ruling in *Strader v. Secr'y, Fla. Dep't of Corr.,* 2024 U.S. App. LEXIS 26457 (11th Cir. 2024) upholding the United States District Court's ruling in *Strader v. Secr'y, Fla. Dep't of Corr.,* 8:12-cv-01327-MSS-SPF (M.D. Dist. Fla. 2024)(Doc. 89) which denied Petitioner federal habeas relief solely as a result of his silence at sentencing that occurred nearly three decades

earlier resulted in a violation of Petitioner's Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

The law cannot permit a Court to use a defendant's silence at any point during a pre-trial, trial or a sentencing proceeding against him or her at a later date as proof a matter asserted. This type of practice would place a significant undue burden on defense counsel around the United States, both State and Federal, to correct every misspoken word of any judge during any proceeding in order to protect a defendant's fifth amendment rights often to the detriment of the defendant. See *Erlinger v. United States,* 144 S.Ct. 1840 (2024)("Back then, fine details like those might not have mattered a bit to his guilt or innocence. Contesting them needlessly, too, might have risked squandering the patience and good will of a jury or the judge responsible for pronouncing a sentence.")

The importance of the ***second question*** presented impacts a wide class of individuals that are, and will be, similarly situated as the Petitioner as it pertains to the impact of newly discovered evidence obtained for the first time while on a certificate of appealability (COA). According to case law precedent issues raised for the first time on appeal will not be considered by an appellate court. See *Taylor v. Mentor Worldwide LLC,* 940 F.3d 582, 588 (11th Cir. 2019) ("As a general matter, issues not raised in the district court and raised for the first time in an appeal will not be considered by this Court.")

Case law precedent also establishes that there are exceptions to the above rule. See *SEC v. Rand,* 805 Fed. Appx 871 (11th Cir. 2020):

> We permit issues to be raised for the first time on appeal under five circumstances:
>
> First, an appellate court will consider an issue not raised in the district court if it involves a pure question of law, and if refusal to consider it would result in a miscarriage of justice. Second, the rule may be relaxed where the appellant raises an objection to an order which he had no opportunity to raise at the district court level. Third, the rule does not bar consideration by the appellate court in the first instance where the interest of substantial justice is at stake. Fourth, a federal appellate court is justified in resolving an issue not passed on below where the proper resolution is beyond any doubt. Finally, it may be appropriate to consider an issue first raised on appeal if that issue presents significant questions of general impact or of great public concern.

As Petitioner outlined herein, while his case was before the Eleventh Circuit Court of Appeal Petitioner obtained a ruling from the state postconviction court that definitively establishes that the rationale used by the United States Middle District to deny habeas relief was incorrect. The Federal District Court made a finding that Petitioner "ceased his criminal activity on April 13, 1994". See Order at page 18 (Doc. 89) Taking this date as true, Petitioner would not be entitled to basic gain time as such cannot be applied to offenses where a defendant's criminal activity ceased after January 1, 1994. However, on April 22, 2024, while the United States Middle District's denial of habeas corpus relief was on appeal the State Trial Court reviewed the Petitioner's entire case file and made a definitive determination that the last overt act in furtherance of Count (1) RICO and Count (2) RICO Conspiracy were Counts 123-126 the offense dates of which are all December 16, 1993. See (Appendix E – Order on Defendant's Motion for Clarification dated April 22, 2024) (Appellate Doc. 7). In other words, the Petitioner's criminal enterprise ceased on December 16, 1993, before the January 1, 1994 cut-off date for basic gain time. Under a correct

application of Young v. Moore, 820 So.2d 901, 903 n.4 (Fla. 2002) the last overt acts in Petitioner's case occurred on December 16, 1993.

Within Petitioner's COA he requested the Eleventh Circuit Court of Appeal to take into consideration the newly discovered evidence and enter an order that reversed the United States Middle District's denial of Petitioner habeas petition with directions that the federal district consider the new evidence. However, the Eleventh Circuit Court of Appeal entered an Order denying Petitioner's COA and subsequent Reconsideration Motion without granting the Middle District the opportunity to take into consideration definitive evidence establishing that the sole basis relied upon in denying habeas relief was incorrect.

This United States Supreme Court has never issued an opinion that requires a federal circuit court to not only consider newly discovered evidence presented for the first time on appeal but to also conduct a de novo review of the new evidence and enter a written order that weighs the impact that the new evidence would have had on a federal district court's order denying habeas relief. Under a de novo review, no federal circuit in the United States would find that the Middle District's basis for denial in this case was correct in light of the newly discovered evidence. Refusal to permit the United States Middle District the opportunity to review the newly discovered evidence in this case is a miscarriage of justice where the result of said review would unquestionably have produced a different result in the federal habeas proceedings.

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

Respectfully Submitted,

Daniel David Strader
2313 Coventry Ave.
Lakeland, Florida 33803
Telephone# (863)-944-8755
Petitioner Pro Se

DECLARATION IN COMPLIANCE WITH 28 U. S. C. §1746

I DECLARE UNDER PENALTY OF PERJURY that the foregoing Petition for Writ of Certiorari was deposited into the hands of United States Postal Workers, postage pre-paid on this 23rd day of May, 2025 for mailing to all parties listed in the certificate of service.

Daniel David Strader
2313 Coventry Ave.
Lakeland, Florida 33803
Telephone# (863)-944-8755
Petitioner Pro Se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY under the penalties of perjury that a true and correct copy of the foregoing has been placed in the hands of United States Postal Workers for mailing to: Supreme Court of the United States, One First St. N.E., Washington, DC 20543 and the Office of the Attorney General, 444 Seabreeze Blvd., Ste. 500, Daytona Beach, Florida 32118. On this 23rd day of May, 2025.

Daniel David Strader
2313 Coventry Ave.
Lakeland, Florida 33803
Telephone# (863)-944-8755
Petitioner Pro Se