CASE NO.:

IN THE
UNITED STATES SUPREME COURT

PLEADRO J. SCOTT
PETITIONER

V

SECRETARY, FLORIDA DEPARTMENT OF
CORRECTIONS, ET. AL.
RESPONDANTS

AN APPLICATION DIRECTED TO U.S. SUPREME COURT
JUSTICE STEVEN J PETITIONER REQUEST
FOR AN EXTENSION OF TIME TO FILE A
WRIT OF CERTIORARI
TO
THE U.S. COURT OF APPEALS ELEVENTH CIRCUIT
CASE # 23-11508 ENTITLED "SCOTT V SECRARY, FLORIDA
DEPARTMENT OF CORRECTIONS, ET. AL," AND U.S. DISTRICT
CASE # 1:21CV22439

PLEADRO J. SCOTT DC#198737
BLACKWATER RIVER CORRECTIONAL
AND REHABILITATION FACILITY
5914 JEFF ATES ROAD
MILTON, FL 32583

PETITIONER HEREBY MOVES U.S. SUPREME COURT JUSTICE STEVEN J PURSUANT TO U.S. SUPREME COURT RULE 13.5 AND 30.3 AND RESPECTFULLY REQUEST FOR AN EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS ELEVENTH CIRCUIT CASE OF SCOTT V SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET.AL, CASE # 23-11508. AND U.S. DISTRICT COURT DOCKET # 1:21CV22439

# REASONS FOR REQUESTING AN EXTENSION OF TIME

PETITIONER IS HELD IN THE FLORIDA DEPARTMENT OF CORRECTIONS SUB-CONTRACTING INSTITUTION; "... BLACKWATER RIVER CORRECTIONAL AND REHABILITATION FACILITY..." WHICH IS GOVERNED UNDER THE FLORIDA ADMINISTRATIVE CODE [F.A.C.] AND SAID FACILITY HAS IMPLEMENTED OBSTRUCTIVE TACTICS INFRINGING ON PETITIONERS GOOD FAITH ATTEMPTS IN COMPLYING WITH U.S. SUPREME COURT RULE 14 WHICH IS NECESSARY TO EFFECT A TIMELY AND PROPER FILING OF A WRIT OF CERTIORARI. THESE OBSTRUCTIVE TACTICS INCLUDE BUT NOT LIMITED TO: "ABANDONING THEIR DUTIES AND OBLIGATIONS UNDER F.A.C. 33-602.201(7)(g) AND (F) AND ILLEGALLY WITHOLDING PETITIONERS LEGAL DOCUMENTS AND/OR DENYING PETITIONER MEANINGFULL ACCESS TO A LAW LIBRARY WHICH IS REQUIRED TO ATTACH THE NECESSARY DOCUMENTS AND INFORMATION IDENTIFIED BY U.S. SUPREME COURT RULE 14. HOWEVER THERE IS A CHANCE THAT THESE NECESSARY INFORMATION AND DOCUMENTS MAY BECOME AVAILABLE AT A LATER DATE IF AN EXTENSION OF TIME IS GRANTED TO ALLOW THE PROPER FILING OF THE WRIT OF CERTIORARI

THE JUDGMENT UNDER ATTACK WAS ENTERED ON MARCH 2025 IN THE U.S. COURT OF APPEALS 11TH CIRCUIT

THIS COURT HAS JURISDICTION TO ISSUE A WRIT OF CERTIORARI PURSUANT TO U.S. SUPREME COURT RULE 10(a) AND(c) AND UNDER THE AUTHORITY OF 28 U.S.C. § 1254

## IS A TRIAL ATTORNEYS IDENTICATION OF EXCULPATORY EVIDENCE THAT WAS NOT USED AT TRIAL SUFFICIENT TO PASS THE GATEWAY TO ALLOW THE PRESENTATION OF AN ACTUAL INNOCENCE CLAIM

PETITIONER HAS RAISED HIS CLAIMS THAT HIS TRIAL ATTORNEY WAS INEFFECTIVE ASSISTANCE FOR HIS FAILURE TO PRESENT EXCULPATORY EVIDENCE, (SEE, DISTRICT COURT DOCKET ENTRY 29-1 AT GROUND # 7 AND THE SECTION OF PETITIONERS 2254 FORM) AND THE STATES FAILURE TO TURN OVER EXCULPATORY EVIDENCE, (SEE, DISTRICT COURT DOCKET ENTRY 29-1 AT GROUND # 6 ) AT EVERY STATE OF THIS PROCEEDING, AND LATER SUPPLEMENTED THE CLAIMS WITH AN ASSERTION OF ACTUAL INNOCENCE. (SEE, DISTRICT COURT DOCKET ENTRY 73 ) UNFORTUNATELY THE CLAIMS HAVE NEVER BEEN FULLY LITIGATED AND ADDRESSED ON THERE MERIT'S BY THE U.S. COURT OF APPEALS WHOM HAS DISMISSED THE CLAIMS AS PROCEDURALLY DEFAULTED WITHOUT ANY CONSIDERATION INTO THE FACTS THAT THE CLAIMS WAS SUPPLEMENTED WITH AN ALLEGATION OF ACTUAL INNOCENCE THE COURT VAGUELY ASSERTING THAT CLAIMS 2, 5, 6, 7, 8, 9, 10, 13, 15, 17, 18, 19, 20, 21, 24, 25 26, 27, 28, 29, 30, 31, AND 32 WERE PROCEDURALLY DEFAULTED OR NOT COGIZABLE IN A FEDERAL HABEAS CORPUS SEE, APPENDIX U.S. COURT OF APPEALS JANUARY 29, 2024 ORDER GRANTING A COA IN PART AND DENING IN PART AND GRANTING APPOINTMENT OF COUNSEL

THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH THIS COURT CASES ALLOWING "IN APPROPRIATE CASES" THE PRINCIPLES OF COMITY AND FINALITY THAT INFORM THE CONCEPTS OF CAUSE AND PREJUDICE "MUST YIELD TO THE IMPERATIVE OF CORRECTING A FUNDAMENTALLY UNJUST INCARCERATION..." SUCH CASES INCLUDE BUT NOT LIMITED TO: HOUSE V BELL, 547 US 518, 126 S. Ct 2064, 165 L Ed 2d 1, 2006 US LEXIS 4675 AND MURRY V CARRIER, 477 U.S 478, 91 L Ed 2d 397, 106 SCT 2639 ADDRESSING SITUATIONS WHERE A CONSTITUTIONAL VIOLATION HAS PROBABLY RESULTED IN THE CONVICTION OF ONE WHO IS ACTUALLY INNOCENT, A FEDERAL HABEAS COURT MAY GRANT THE WRIT EVEN IN THE ABSENCE OF A SHOWING CAUSE FOR THE PROCEDURAL DEFAULT. FIRST HERE AS IN MURRY V CARRIER. THERE IS A CONFLICT BECAUSE PETITIONERS TRIAL ATTORNEY IDENTIFICATION AND POSSESSION OF EXCULPATORY EVIDENCE OF THERD PARTY GUILT AS DISCUSSED AND/OR DEFINED BY HOLMES V SOUTH CARALINA, 547 US 319, 126 S CT 1727, 164 L Ed 2d 503, 2006 US LEXIS 34 IS MATERIAL THAT WOULD ESTABLISHED PETITIONERS ACTUAL INNOCENCE AS REFERANCED IN MURRY V CARRIER CONCLUDING: "... UNLESS IT IS DETERMINED ON REMAND THAT THE VICTIM'S STATEMENTS CONTAIN MATERIAL THAT WOULD ESTABLISH RESPONDENTS ACTUAL INNOCENCE...." WHILE THE COURT OF APPEALS DETERMINATION IN APPENDIX IS TO THE CONTRARY. SECOND THERE IS CONFLICT BECAUSE UNDER AN ANALYSES OF STRICKLAND V WASHINGTON, 466 US 668, 80 L.Ed 2d 674, 104 S Ct 2052 OTHER U.S. COURT OF APPEALS HAS FOUND PETITIONERS TRIAL COUNSELS ACTS AND OMESSIONS IN SUBSTANTIALLY SIMILAR SITUATIONS TO BE PER'SE INEFECTIVE ASSISTANCE OF COUNSEL AND GRANTED THE WRIT. THE CASES INCLUDE BUT NOT LIMITED TO: (SEE DISTRICT COURT DOCKET ENTRY 37 AT PETITIONERS REPLY TO GROUND 7) THERD THERE IS A CONFLICT WITH THIS COURT HOLDING IN WILLIAMS V TAYLOR, 529 U.S 362 (2000) (STATING: THERE IS A CONSTITUTIONAL RIGHT TO PRESENT MITIGATING EVIDENCE THAT TRIAL COUNSEL FAILED TO PRESENT OR FAILED TO DISCOVER) THERE IS A CONFLICT BECAUSE THE COURT OF APPEALS HAS RULED ~~DISMISSED~~ CLAIMS 6 AND 7... OTHERS PROCEDURALLY DEFAULTED OR NOT COGNIZABLE IN A FEDERAL HABEAS PETITION

PETITIONER URGES THIS COURT TO GRANT REVIEW DUE TO THE CONFLICTING CASES BETWEEN THIS COURT AND THE U.S. COURT OF APPEALS 11TH CIRCUIT AND THE DEVERGENT DECISIONS AMONGEST AND BETWEEN THE U.S. COURT OF APPEALS..:.. ON THE ISSUE WHEATHER AN ATTORNEY FAILURE TO PRESENT EXCULPATORY EVIDENCE IS IN FACT PER'SE INEFECTIVE ASSISTANCE OF COUNSEL..." AND THESE DETERMINATIONS ARE OF SUCH IMPERATIVE PUBLIC IMPORTANCE AS TO JUSTIFY IMMEDIATE DETERMINATION IN THIS COURT AS AUTHORIZED BY U.S SUPREME COURT RULE 11 BECAUSE THE DECISION OF THE U.S. COURT OF APPEALS ISSUED ON MARCH 2025 APPENDIX ) SERVES TO GIVE THE STATE SUCCESSIVE ATTEMPTS IN PERFECTING IT'S EVIDENCE THAT WILL WORK TO PETITIONERS ACTUAL AND SUBSTANTIAL DISADVANTAGE FROM A ONE SIDE PRESENTATION OF THE FACTS

## DOES "MARTINEZ V RYAN" GIVE STATE PRISONERS A CONSTITUTIONAL RIGHT TO HAVE COUNEL APPOINTED IN STATE COURT POST-CONVICTION PROCEDINGS

THE DECISION OF THE COURT OF APPEALS (APPENDIX ) CONFLICTS WITH THIS COURT CASES ALLOWING A FEDERAL HABEAS CORPUS PETITIONER TO OVERCOME A PROCEDURAL DEFAULT SUCH CASE INCLUDE BUT NOT LIMITED TO: MARTINEZ V RYAN, 566 U.S 1, 132 S CT 1309, 182 L ED 2d 272, 2012 US LEXIS 2317 ADDRESSING SITUATIONS WHERE CAUSE AND PREJUDICE MAY BE SHOWN TO OVERCOME A PROCEDURAL DEFAULT BY SHOWING THAT THE STATE DID NOT APPOINT HIM COUNSEL IN HIS STATE COURT PROCEDINGS. THERE IS A CONFLICT BECAUSE FLORIDA COURTS AND THE U.S. COURT OF APPEALS MAINTAIN THAT THERE IS NO CONSTITUTIONAL RIGHT TO APPOINTMENT OF COUNSEL IN STATE POST-CONVICTION PROCEDINGS WHILE THE FEDERAL SCHEM SEEMS TO MANDATE APPOINTMENT OF COUNSEL

MAY AN HABEAS CORPUS PETITIONER BE FORCED TO BE REPRESENTED BY COUNSEL ON APPEAL BY WHOMS CONDUCT HE OBJECTIVELY OPPOSSED

PETITIONER ALERTED HIS ATTORNEY AT EVERY STAGE OF THE APPEAL OF HIS DESIRE TO ARGUE CAUSE AND PREJUDICE RELYING ON MARTINEZ V RYAN, 566 US 1, 132 S CT 1309, 182 L Ed 2d 272, 2012 US LEXIS 2317 WHICH IS ALSO CLEAR ON THE FACE OF THE DISTRICT COURT RECORD BUT TO NO AVAIL. ALTHOUGH COUNSEL ASSURED PETITIONER THAT HE WOULD ADVANCE THIS ARGUMENT IT WAS NOT BRIEFED ON APPEAL WHEN PETITIONER ATTEMPTED TO NOTIFY THE COURT BY LETTER THAT HE DISAPPROVED OF THIS REPRESENTATION. PETITIONER LETTER AND THE LATTER FILED PRO SE MOTION FOR REHEARING WAS REJECTED AND NOT FORWARD TO THE COURT. THEREBY FORCING PETITIONER TO BE REPRESENTED BY COUNSEL WHOM HE OBJECTIVELY OPPOSSED INFRINGING ON HIS 6 AND 14 AMENDMENT RIGHT TO REPRESENT HIMSELF. WHILE THE COURT OF APPEALS THAN RULED ON CLAIMS 4 AND 22 ASSERTING THAT PETITIONER HAD NOT PRESENTED ARGUMENTS ON CAUSE AND PREJUDICE TO OVERCOME THE PROCEDURAL DEFAULT AND DENIED THE GROUNDS AS PROCEDURALLY DEFAULTED.

# CONCLUSION

WITHOUT ACCESS TO PETITIONERS LEGAL DOCUMENTS, AND/OR MEANINGFULL ACCESS TO A LAW LIBRARY PETITIONER CANNOT COMPLY WITH THE REQUIREMENTS OF SUPREME COURT RULE 14 AND ATTACHED THE NECESSARY ATTACHMENTS

# OATH

I PLEADRO J. SCOTT DECLARE AND SWEAR UNDER PENALTY OF PERJURY THAT ALL THE ABOVE INFORMATION AND FACTS ARE TRUE AND CORRECT PURSUANT TO 28 U.S.C. § 1746 INCLUDING THE BELOW CERTIFICATE OF SERVICE

# REQUESTED RELIEF

WHEREFORE PETITIONER PRAYS WITH GOOD CAUSE SHOWN THAT THIS COURT GRANT PETITIONER AN EXTENSION OF TIME OF DAYS TO SUBMIT AND/OR FILE HIS PETITION FOR A WRIT OF CERTIORARI AND ALL OTHER RELIEF THIS COURT FINDS JUST AND APPROPRIATE IN THE INTEREST OF JUSTICE

RESPECTFULLY SUBMITTED ON THIS DAY OF 2025

PLEADRO J. SCOTT DC# 198737
BLACKWATER RIVER CORRECTIONAL AND REHABILITATION FACILITY
5914 JEFF ATES ROAD
MILTON, FL 32583

Legal Mail Use ONLY

CASE NO:

IN THE
SUPREME COURT OF THE UNITED STATES

PLEADRO J. SCOTT
PETITIONER

v

SECRETARY, FLORIDA DEPARTMENT
OF CORRECTIONS, ET. AL
RESPONDANTS

# PROOF OF SERVICE

I PLEADRO J. SCOTT, DO SWEAR OR DECLARE THAT ON THIS DATE, MAY 22 2025, AS REQUIRED BY SUPREME COURT RULE 29 I HAVE SERVED THE ENCLOSED MOTION ENTITLED " AN APPLICATION DIRECTED TO US SUPREME COURT JUSTICE STEVEN J PETITIONER REQUEST FOR AN EXTENSION OF TIME TO FILE A WRIT OF CERTIORARI " TO THE US COURT OF APPEALS 11TH CIRCUIT." ON EACH PARTY TO THE ABOVE PROCEEDING OR THE PARTY'S COUNSEL, AND ON EVERY OTHER PERSON REQUIRED TO BE SERVED, BY DEPOSITING AN ENVELOPE CONTAINING THE ABOVE DOCUMENTS IN THE UNITED STATES MAIL PROPERLY ADDRESSED TO EACH OF THEM AND WITH FIRST CLASS POSTAGE PREPAID, OR BY DELIVERY TO A THIRD PARTY COMMERCIAL CARRIER FOR DELIVERY WITHIN 3 CALENDAR DAYS.

THE NAMES AND ADDRESS of THOSE SERVED ARE AS FOLLOWS: OFFICE OF ATTORNEY GENERAL, MS. SANDRA LIPMAN, AT 444 BRICKELL AVE, MIAMI FL 33131 AND U.S. SUPREME COURT CLERK of COURTS AT 1 - FIRST STREET N.E., WASHINGTON DC 20543

I DECLARE UNDER PENALTY of PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. TO THE BEST OF MY KNOWLEDGE

EXECUTED ON MAY 22, 2025

PLEADRO J. SCOTT DC# 198737
BLACKWATER RIVER CORRECTIONAL
AND REHABILITATION FACILITY
5914 JEFF ATES ROAD
MILTON, FL 32583

[DO NOT PUBLISH]

# In the United States Court of Appeals

## For the Eleventh Circuit

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No. 23-11508

Non-Argument Calendar

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PLEADRO J. SCOTT,

Petitioner-Appellant,

*versus*

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

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Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:21-cv-22439-BB

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Before WILLIAM PRYOR, Chief Judge, and ROSENBAUM and LUCK, Circuit Judges.

PER CURIAM:

Pleadro Scott, a Florida prisoner, appeals the denial of his *pro se* petition for a writ of habeas corpus. 28 U.S.C. § 2254. We granted a certificate of appealability to address whether the district court erred in dismissing five of his claims as procedurally barred based on adequate and independent state grounds. Because three of Scott's five claims were not procedurally barred, we vacate and remand in part and affirm in part.

## I. BACKGROUND

In 2014, Scott was convicted of armed burglary, armed kidnapping, armed robbery, attempted armed robbery, armed sexual battery, and unlawful sexual activity with two minors. The trial court sentenced Scott to consecutive sentences of life imprisonment on three counts and lesser sentences on the remaining counts. The Third District Court of Appeal affirmed.

In 2016, Scott filed a *pro se* motion to vacate. He alleged 15 claims for relief, including that the state failed to turn over allegedly exculpatory evidence of a video recording of another person admitting to having consensual sex with the victims. He requested a

deferred ruling because his trial counsel had refused to provide him a copy of his file.

The trial court treated the motion as one under Florida Rule of Criminal Procedure 3.850 and denied it. Paragraph I of the order discussed a motion *in limine* to exclude Scott's post-arrest statement. And Paragraph VIII of the order rejected his claim that a third party had consensual sex with the victims at the time of the sexual assaults as "inherently incredible."

In 2017, Scott filed an amended second or successive motion for postconviction release raising 33 claims, with only six relevant to this appeal. In state claim 1, he repeated his claim that the state failed to turn over an allegedly exculpatory video recording but acknowledged that the state alleged he was the one who made the admission. In state claim 2, he alleged that his trial counsel was ineffective for failing to investigate the identity of the person who allegedly made the admission on the recording. He alleged he did not raise the claim earlier because he did not know what investigation his attorney performed until he received his client file. In state claim 4, he alleged that his trial counsel was ineffective for failing to interview, depose, or call state and county Combined DNA Index System administrators to testify regarding a lab report that his counsel possessed. In state claim 8, he alleged that his trial counsel was ineffective for failing to object to a "constructive charging information." In state claim 19, he alleged that his trial counsel was ineffective for failing to assist him in filing a postconviction motion in another case used as evidence in this case. In state claim 21, he

alleged that his trial counsel was ineffective for failing to impeach the state's DNA expert, David Arnold, when his attorney had a report that undermined Arnold's testimony that he was not an administrator. Scott acknowledged that he had previously raised claim 1. He stated that he did not raise claims 2, 4, 8, and 21 before because his trial counsel failed to turn over his file and he had limited knowledge of the law. He did not provide a reason for failing to raise claim 19.

The state postconviction court denied Scott's motion. It ruled that some claims were successive and others meritless. The Third District Court of Appeal summarily affirmed in a *per curiam* order.

Scott then filed a second amended *pro se* petition for a writ of habeas corpus in the district court. He raised 33 claims, with only five relevant to this appeal. He raised state claims 2, 4, 8, 19, and 21 as federal claims 14, 4, 16, 22, and 11 respectively. The state admitted in its response that federal claim 11 was exhausted but argued that federal claims 4, 14, 16, and 22 were procedurally defaulted because they had been denied on procedural grounds.

The district court dismissed Scott's second amended petition in part and denied it in part. As relevant to this appeal, the district court dismissed federal claims 4, 11, 14, 16, and 22 as procedurally defaulted under state law. It denied a certificate of appealability. We granted a certificate of appealability as to whether the district court erred in finding that federal claims 4, 11, 14, 16, and 22 of his petition were procedurally barred.

## II. STANDARD OF REVIEW

We review *de novo* a ruling that a claim is procedurally barred. *Carey v. Dep't of Corr.*, 57 F.4th 985, 989 (11th Cir. 2023). Whether a state procedural bar serves as an independent and adequate ground is a question of federal law. *Lee v. Kemna*, 534 U.S. 362, 375 (2002). Because the Florida Third District Court of Appeal summarily affirmed, we must "look through that unexplained decision to the last related state-court decision that does provide a relevant rationale." *Carey*, 57 F.4th at 992 (citation and internal quotation marks omitted).

## III. DISCUSSION

We divide our discussion into five parts. First, we explain that the district court erred in dismissing federal claim 11 because the state postconviction court addressed the claim on the merits without relying on a state procedural bar. Second, we explain that the district court erred in dismissing federal claim 14 because it was not clear that the state postconviction court relied on a state procedural bar. Third, we explain that the district court erred in dismissing federal claim 16 because the state procedural bar that the state postconviction court relied on was not adequate. Fourth, we explain that the district court did not err in dismissing federal claim 4 because the state postconviction court relied on an independent and adequate procedural bar. Fifth, we explain that the district court did not err in dismissing federal claim 22 because the state

postconviction court relied on an independent and adequate procedural bar.

*A. The District Court Erred in Dismissing Federal Claim 11.*

The district court erred in dismissing federal claim 11 (state claim 21) as procedurally barred. "A state court's rejection of a petitioner's constitutional claim on state procedural grounds will generally preclude any subsequent federal habeas review of that claim" if it rests on an "independent and adequate state ground." *Judd v. Haley*, 250 F.3d 1308, 1313 (11th Cir. 2001) (internal quotation marks omitted). We have established a three-part test to determine whether a state procedural ground is independent and adequate: the state court must clearly and expressly rely on a state procedural rule without reaching the merits of the claim; the procedural rule must be independent of federal law; and the rule must be adequate such that it is not applied in an "arbitrary or unprecedented fashion." *Id.* To satisfy the first requirement, the "state court must actually have relied on the procedural bar as an independent basis for its disposition of the case." *Harris v. Reed*, 489 U.S. 255, 261–62 (1989).

The state concedes that the district court erred in dismissing federal claim 11 as procedurally defaulted because the state court addressed the merits of the claim without relying on a state procedural bar. *See id.* The state's arguments that Scott waived that error by not raising it in his *pro se* post-judgment motion and that the claim lacks merit exceed the scope of the certificate of appealability, *see Murray v. United States*, 145 F.3d 1249, 1251 (11th Cir. 1998)

("[A]ppellate review is limited to the issues specified in the COA."), and cannot be considered a timely application for expansion of the certificate of appealability, *see Tompkins v. Moore*, 193 F.3d 1327, 1332 (11th Cir. 1999). The district court erred in dismissing federal claim 11.

*B. The District Court Erred in Dismissing Federal Claim 14.*

The district court erred in dismissing federal claim 14 (state claim 2) as procedurally barred. As we have explained, a state court must have actually relied on a procedural bar as an independent basis for its decision. *See Harris*, 489 U.S. at 261–62. State court judgments are presumed not to rest on independent and adequate state grounds "when the decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion." *Coleman v. Thompson*, 501 U.S. 722, 735 (1991) (citation and internal quotation marks omitted). When making this determination, we must read the state court's decision "as a whole." *Heath v. Jones*, 941 F.2d 1126, 1137 (11th Cir. 1991).

The state postconviction court did mention the state procedural bar on successive motions when analyzing federal claim 14, but it is unclear from the decision whether the state court actually relied on this procedural rule in denying the claim. *See Coleman*, 501 U.S. at 735. The court analyzed state claims 1 and 2 (federal claim 14) together because they both involved access to a digital video disc. It stated that both claims "are denied as successive and

inherently incredible." The state court stated that "his claim regarding the DVD was previously raised by" Scott. State claim 1 was denied on the merits as "inherently incredible" such that that claim would be successive. *See* Fla. R. Crim. P. 3.850(h)(2) ("[A] court may dismiss a second or successive motion if the court finds that it fails to allege new or different grounds for relief and the prior determination was on the merits."). But Scott did not raise state claim 2 in the first motion, so that claim could only be denied as successive if the court concluded that raising it now constituted an abuse of the procedure or that Scott had not shown good cause, and nothing in the state court's decision suggests it reached that conclusion. *See id.* (A court may dismiss a second or successive motion "if new and different grounds are alleged" and "the judge finds that the failure of the defendant or the attorney to assert those grounds in a prior motion constituted an abuse of the procedure or there was no good cause.").

The statements about Scott's ineffective assistance of counsel claim in claim 2—that there was no basis for claiming a third party made the admission, that any post-arrest statement was the subject of a motion *in limine*, and that Scott did not state any investigative actions his attorney should have taken—were relevant to the deficient-performance inquiry, which is a merits determination. *See Strickland v. Washington*, 466 U.S. 668, 687–88 (1984). And any ruling that considered the substantive claim regarding exculpatory evidence in claim 1 and the ineffective assistance of counsel claim in claim 2 as the same such that they would be barred as successive together would be "interwoven with the federal law,"

*Coleman*, 501 U.S. at 735, because a claim of ineffective assistance of counsel is analytically distinct from an underlying violation of federal law, *see Bailey v. Nagle*, 172 F.3d 1299, 1304 n.8 (11th Cir. 1999). Absent a statement explaining why state claim 2 was successive, the presumption that a state court decision does not rest on adequate and independent state grounds applies since "the adequacy and independence of any possible state law ground is not clear from the face of the opinion." *Coleman*, 501 U.S. at 735. The district court erred in dismissing federal claim 14.

*C. The District Court Erred in Dismissing Federal Claim 16.*

The district court erred in dismissing federal claim 16 (state claim 8) as procedurally barred. The requirement that a state court relies on an independent state procedural ground is satisfied when a state court relies on a procedural rule and reaches the merits of a federal claim in an alternative holding "as long as the state court explicitly invokes a state procedural bar rule as a separate basis for decision." *Harris*, 489 U.S. at 264 n.10. We have held that a denial of a petition as successive under state law and on the merits meant the state court decision was denied on adequate and independent state procedural grounds, even though the state court cited the federal standard, did not cite the state rule on successive motions, and "could have been more explicit." *Bailey*, 172 F.3d at 1304–05.

Only in exceptional cases will a state procedural rule that is "firmly entrenched" in state law be considered inadequate because its application is "manifestly unfair in its treatment of the petitioner's federal constitutional claim." *Judd*, 250 F.3d at 1313, 1316

(citation and internal quotation marks omitted). A state court rule must be correctly applied. *Bailey*, 172 F.3d at 1302; *see also Walker v. Engle*, 703 F.2d 959, 966 (6th Cir. 1983) ("[W]hen a state appellate court applies a procedural bar that has no foundation in the record or state law, the federal courts need not honor that bar."). But "it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions." *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991).

The state postconviction court's reliance on successiveness to deny claim 16 was not an adequate procedural bar. The court relied on an alternative, independent procedural ground by stating that the claim was denied as successive and "also" denied on the merits under *Strickland*. *See Harris*, 489 U.S. at 264 n.10; *see also Sochor v. Florida*, 504 U.S. 527, 533–34 (1992) (holding that a state court relied on an alternative state procedural ground when it stated that errors were not "objected to at trial . . . . In any event, Sochor's claims here have no merit"). This is true even though it cited federal law and not state law. *See Bailey*, 172 F.3d at 1304–05.

Although the bar on successive motions under Rule 3.850 may serve as an independent and adequate bar, which Scott does not contest on appeal, this is an exceptional case when such a firmly established rule is inadequate because the state court applied Rule 3.850 in a way that was unsupported by the record. It stated Scott's claim was "denied as successive as [Scott] presents no reason for having failed to include this claim in his motion that was denied." Scott stated in his motion that his attorney had failed to provide his

client file and referenced state claim 8, so Scott provided a reason. Because the court's decision is refuted by the record, ruling on that ground was "manifestly unfair in its treatment" of Scott's claim. *Judd*, 250 F.3d at 1313; *see Walker*, 703 F.2d at 966. The state post-conviction court's ruling on successiveness was not adequate to support the decision, and the district court erred in dismissing federal claim 16.

*D. The District Court Did Not Err in Dismissing Federal Claim 4.*

The district court did not err in dismissing federal claim 4 (state claim 4) as procedurally barred. As with federal claim 16, the state postconviction court relied on an independent procedural ground by stating that the claim was denied as successive and "also" denied on the merits under *Strickland* as an alternative basis for its decision. *See Harris*, 489 U.S. at 264 n.10; *Sochor*, 504 U.S. at 533–34; *Bailey*, 172 F.3d at 1304–05. But unlike federal claim 16, there are no extraordinary circumstances such that the state procedural bar was inadequate because the determination was not refuted by the record. The state court stated that testimony regarding this claim was brought out at trial and "[t]hus, [Scott] has no basis for having failed to include this ground in his previous motion . . . and this claim is denied a[s] successive." Scott argues that the state court incorrectly applied state law. But "it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions." *Estelle*, 502 U.S. at 67–68. Unlike the court's ruling on federal claim 16, the determination as to federal claim 4 is not refuted by the record. The state court cited

information from Scott's own motion to find he did not have a reason for failing to raise the argument earlier. And Scott does not argue that he presented cause and prejudice for any procedural default, so we need not reach that issue.

*E. The District Court Did Not Err in Dismissing Federal Claim 22.*

The district court did not err in dismissing federal claim 22 (state claim 19) as procedurally barred. The state postconviction court relied on an independent procedural ground by stating that the claim was denied as successive and "[a]dditionally" he did not have a right to postconviction counsel and "[f]inally" denied the claim based on a reasonable probability of a different result, a merits determination under *Strickland*, as an alternative basis for its decision. *See Harris*, 489 U.S. at 264 n.10; *Sochor*, 504 U.S. at 533–34; *Bailey*, 172 F.3d at 1304–05; *Strickland*, 466 U.S. at 694. And unlike federal claim 16, there are no extraordinary circumstances making the state procedural ground inadequate because the court's determination was not refuted by the record. The court stated that Scott "present[ed] no reason for his failure to have included this claim in his post-conviction motion" and denied it as successive. And Scott did not allege any reason for failing to raise federal claim 22 in his first motion. Scott does not argue that he presented cause and prejudice for any procedural default, so we need not reach that issue.

## IV. CONCLUSION

We **AFFIRM** the district court's dismissal of claims 4 and 22. We **VACATE** the district court's dismissal of claims 11, 14, and 16 and **REMAND** for consideration of those claims on the merits.

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF FLORIDA**

**Case No. 21-cv-22439-BLOOM**

PLEADRO J. SCOTT,

Petitioner,

v.

FLORIDA DEPARTMENT
OF CORRECTIONS,

Respondent.
_____/

**ORDER ON SECOND AMENDED**
**PETITION FOR WRIT OF HABEAS CORPUS**

**THIS CAUSE** is before the Court on Petitioner Pleadro J. Scott's *pro se* Second Amended Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254, ECF No. [29-1] ("Petition"). Petitioner challenges the constitutionality of his state convictions and sentences on charges of armed burglary, robbery, kidnapping, sexual battery, and unlawful sexual activity with two minors in Florida's Eleventh Judicial Circuit for Miami-Dade County. *See generally id.*

Respondent filed a Second Amended Response, ECF No. [36], and an Appendix, ECF No. [23], with attached Exhibits 1–36, ECF Nos. [23-1]–[23-3], as well as a Notice of Filing Transcripts, ECF No. [24], with attached transcripts, ECF Nos. [24-1]–[24-7]. Petitioner thereafter filed a Reply to the Second Amended Response, ECF No. [37]. The Court has carefully considered the Petition, all supporting and opposing submissions, the record in this case, the applicable law, and is otherwise fully advised. For the reasons set forth below, the Petition is dismissed in part and denied in part.

## I. BACKGROUND

At trial, three victims testified to being accosted by Petitioner at gunpoint, threatened, robbed, and sexually assaulted. *See generally* ECF Nos. [24-2]–[24-6]. Two of the victims were under the age of 18. *See id.* The victims identified Petitioner as the assailant and DNA evidence linked him to the crimes. *See id.* Petitioner testified in his own defense and denied the allegations. *See id.*

On February 13, 2014, a Miami-Dade County jury found Petitioner guilty on counts of armed burglary with assault and battery in an occupied dwelling, armed kidnapping, armed robbery, attempted armed robbery, armed sexual battery, and two counts of unlawful sexual activity with a minor. *See* ECF No. [23-1] at 129–34.[1] Petitioner was sentenced to three concurrent life sentences on Counts 1–3 with several lesser sentences on the remaining charges. *See id.* at 136–46.

On direct appeal, Petitioner raised the following claims:

> 1. THE FAILURE TO A *NELSON* HEARING IS PER SE REVERSIBLE ERROR.
> 2. THE ADMISSION OF THE *WILLIAMS* RULE EVIDENCE WAS HARMFUL ERROR.

ECF No. [23-1] at 153. The district court per curiam affirmed the judgment and sentence. *See Scott v. State*, 181 So. 3d 497 (Fla. 3d DCA 2015). On September 6, 2016, Petitioner filed a motion to vacate set aside or correct sentencing (sic)[2] under Florida Rule of Criminal Procedure 3.850. He raised the following claims:

> 1. FAILURE TO PROPERLY PRESERVE FOR APPELLANT REVIEW TRIAL COURT'S RULING ON STATE'S MOTION IN LIMINE
> 2. FAILURE TO OBJECT TO PROSECUTOR MISCONDUCT

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[1] The Court uses the pagination generated by the electronic CM/ECF database, which appears in the headers of all court filings.

[2] Quotes from Petitioner's various filings are copied verbatim and, unless indicated, spelling, grammatical, and other errors are as they appear in the original.

3. FAILURE TO IMPEACH WILLIAMS RULE WITNESS WITH SUGGESTIVE IDENTIFICATION
4. FAILURE TO IMPEACH WILLIAMS RULE WITNESS OUT OF COURT IDENTIFICATION
5. FAILURE TO IMPEACH WILLIAMS RULE WITNESS MS. Y.A. WITH SUGGESTIVE IDENTIFICATION
6. FAILURE TO IMPEACH WILLIAMS RULE WITNESS MS. Y.A. WITH HER PHONE RECORDS
7. FAILURE TO SUPPRESS SUGGESTIVE IDENTIFICATION MADE BY WILLIAMS RULE WITNESS MS. K.G.
8. FAILURE TO SUPPRESS SUGGESTIVE IDENTIFICATION MADE BY WILLIAMS RULE WITNESS MS. Y.A.
9. FAILURE TO ADEQUATELY ADVISE DEFENDANT ON RIGHT TO TESTIFY TO BIAS AND CORRUPTION
10. FAILURE TO IMPEACH DETECTIVE R. GERBIER WITH EVIDENCE OF FRAUD AND CORRUPTION
11. FAILURE TO OBJECT TO PROSECUTOR MISCONDUCT
12. FAILURE TO IMPEACH IDENTIFICATION WITNESS
13. STATE FAILED TO TURN OVER EXCULPATORY EVIDENCE
14. TRIAL COURT DEPRIVED DEFENDANT OF RIGHT TO A COMPLETE DEFENSE
15. THE CUMULATIVE EFFECT OF TRIAL COUNSEL'S ERRORS AND OMISSIONS CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL

ECF No. [23-1] at 218–38. The trial court denied the motion on July 18, 2017. *See* ECF No. [23-2] at 2–6. Petitioner failed to timely appeal, and his petition for belated appeal was denied. *See Scott v. State*, 254 So. 3d 393 (Fla. 3d DCA 2018).

On December 18, 2017, Petitioner filed an amended second or successive motion for postconviction relief. He raised the following claims:

1. STATE FAILED TO TURN OVER EXCULPATORY EVIDENCE
2. FAILURE TO INVESTIGATE THE IDENTITY OF THE PERSON WHO ALLEGEDLY MADE AN ADMISSION
3. IT IS UNCONSTITUTIONALLY IMPERMISSIBLE FOR THE SENTENCING COURT TO SUBJECT DEFENDANT TO MULTIPLE PUNISHMENT [sic] BASED ON THE SAME ACT AND/OR PUNISHMENT
4. TRIAL COUNSEL UNCONSTITUTIONALLY IMPERMISSIBLE [sic] DENIED DEFENDANT OF [sic] DUE PROCESS BY HIS FAILURE TO INTERVIEW DEPOSE OR CALL AVAILABLE STATE AND COUNTY CODIS ADMINISTRATORS TO TESTIFY
5. IT IS [sic] UNCONSTITUTIONALLY IMPERMISSIBLE DENIAL OF DUE PROCESS TO CONVICT AND ADJUDICATE DEFENDANT GUILTY OF A

CRIME LACKING ANY PROOF OF THE ESSENTIAL ELEMENTS OF THE CHARGED OFFENSES
6. FAILURE OF COUNSEL TO OBJECT TO DNA EVIDENCE/TESTIMONY BEING OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE MISLEADING THE JURY WAS UNCONSTITUTIONAL DENIAL OF DUE PROCESS
7. FLORIDA DEPARTMENT OF CORRECTIONS OFFICIALS [sic] FAILURE TO FORWARD LEGAL DOCUMENTS TO CLERK OF COURTS DENIED DEFENDANT OF DUE PROCESS OF LAW
8. FAILURE TO OBJECT TO CONSTRUCTIVE CHARGING INFORMATION
9. THE POST-CONVICTION COURT ERRORED [sic] IN DENYING DEFENDANT'S ORIGINAL 3.850 MOTION ENTITLED MOTION TO VACATE SET ASIDE OR CORRECT SENTENCING WITHOUT A [sic] EVIDENTIARY HEARING RELYING ON THE STATE'S RESPONSE
10. FAILURE TO PROPERLY PRESERVE FOR APPELLANT REVIEW TRIAL COURTS RULING ON THE STATE'S MOTION IN LIMINE
11. TRIAL COURT DEPRIVED DEFENDANT OF RIGHT TO A COMPLETE DEFENSE
12. FAILURE TO IMPEACH DETECTIVE R. GERBIER WITH EVIDENCE OF FRAUD AND CORRUPTION
13. FAILURE TO ADEQUATELY ADVISE DEFENDANT ON RIGHT TO TESTIFY TO BIAS AND CORRUPTION
14. TRIAL COUNSEL FAILED TO IMPEACH WILLIAMS RULE WITNESS M.S. K.G. WITH SIGNIFICANT THAT THIS WITNESS MADE TO POLICE ON [sic]
15. FAILURE TO IMPEACH WILLIAMS RULE WITNESS M.S. Y.A. WITH SUGGESTIVE IDENTIFICATION
16. FAILURE TO IMPEACH WILLIAMS RULE WITNESS M.S. Y.A. WITH HER PHONE RECORDS
17. FAILURE TO SUPPRESS SUGGESTIVE IDENTIFICATION MADE BY WILLIAMS RULE WITNESS M.S. K.G.
18. FAILURE TO SUPPRESS SUGGESTIVE IDENTIFICATION MADE BY WILLIAMS RULE WITNESS M.S. Y.A.
19. FAILURE TO ASSIST DEFENDANT IN THE FILING OF A POST-CONVICTION MOTION IN CASE NUMBER F08008261 WHICH WAS [sic] WILLIAMS RULE CASE
20. FAILURE TO OBJECT TO PROSECUTOR MISCONDUCT
21. FAILURE TO IMPEACH DNA EXPERT MR. DAVID ARNOLD
22. FAILURE TO CORRECT FALSE AND PERJURED TESTIMONY
23. FAILURE TO IMPEACH WILLIAMS RULE WITNESS WITH SUGGESTIVE IDENTIFICATION
24. FAILURE TO IMPEACH WILLIAMS RULE WITNESS OUT OF COURT IDENTIFICATION
25. FAILURE TO PROPERLY PRESERVE FOR APPELLATE REVIEW CROSS-EXAMINATION OF R. GERBIER
26. FAILURE TO LAY FOUNDATION FOR ADMISSION OF THE EVIDENCE

27. THE TRIAL COURT ERRONOUS [sic] RULING UNDER THE RAPE SHIELD WAS AN UNCONSTITUTIONAL IMPERMISSIBLE DENIAL OF DUE PROCESS, THE RIGHT TO A COMPLETE DEFENSE AND THE RIGHT TO CONFRONT DEFENDANT'S ACCUSER
28. FAILURE TO INTRODUCE EXCULPATORY EVIDENCE
29. THE FAILURE TO A [sic] NELSON HEARING IS PER SE REVERSIBLE ERROR
30. THE ADMISSION OF THE WILLIAMS RULE EVIDENCE WAS HARMFUL ERROR VIOLATING DUE PROCESS
31. FAILURE TO INTERVIEW AND/OR DEPOSE WITNESS
32. FAILURE TO RAISE DEFENSE OF FABRICATED STORY
33. THE CUMULATIVE EFFECT OF TRIAL COUNSEL'S ERROR AND OMISSIONS CONSTITUTE INEFFECTIVE ASSISTANCE

ECF No. [23-2] at 199–234. The trial court denied Petitioner's amended second or successive motion for postconviction relief on September 1, 2020. *See* ECF No. [23-2] at 242–46. On October 7, 2020, Petitioner filed a writ of habeas corpus for belated appeal of the September 1, 2020 Order. *See id.* at 248–49. A belated appeal was granted, and the district court affirmed the trial court's denial of the amended second or successive motion for postconviction relief. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021).

Petitioner filed the instant Petition on March 1, 2022.[3]

## II. LEGAL STANDARD

### A. Deference Under § 2254

A court's review of a state prisoner's federal habeas corpus petition is governed by the Antiterrorism and Effective Death Penalty Act ("AEDPA"). *See Abdul-Kabir v. Quarterman*, 550 U.S. 233, 246 (2007). "The purpose of AEDPA is to ensure that federal habeas relief functions as a guard against extreme malfunctions in the state criminal justice systems, and not as a means of

[3] "Under the 'prison mailbox rule,' a *pro se* prisoner's court filing is deemed filed on the date it is delivered to prison authorities for mailing." *Williams v. McNeil*, 557 F.3d 1287, 1290 n.2 (11th Cir. 2009).

error correction." *Ledford v. Warden, Ga. Diagnostic & Classification Prison*, 818 F.3d 600, 642 (11th Cir. 2016). This standard is "difficult to meet." *White v. Woodall*, 572 U.S. 415, 419 (2014).

According to AEDPA, a federal court may not grant a habeas petitioner relief on any claim adjudicated on the merits in state court unless the state court's decision (1) "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States;" or (2) "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d); *see also Rimmer v. Sec'y, Fla. Dep't of Corr.*, 876 F.3d 1039, 1053 (11th Cir. 2017) (citing 28 U.S.C. § 2254(d)).

A state court decision is "contrary to" established Supreme Court precedent when it (1) applies a rule that contradicts the governing law set forth by the Supreme Court; or (2) confronts a set of facts materially indistinguishable from a decision of the Supreme Court and nevertheless arrives at a result different from Supreme Court precedent. *Williams v. Taylor*, 529 U.S. 362, 405–06 (2000). An "unreasonable application" of clearly established federal law is different from an incorrect application of federal law. *Id.* at 410. Consequently, "[a] state court's determination that a claim lacks merit precludes federal habeas relief so long as fairminded jurists could disagree on the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101 (2011). If the last state court to decide a prisoner's federal claim provides an explanation for its merits-based decision in a reasoned opinion, "a federal habeas court simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable." *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018).

Even summary rejection of a claim, without explanation, qualifies as an adjudication on the merits, warranting deference. *See Meders v. Warden, Ga. Diagnostic Prison*, 911 F.3d 1335,

1351 (11th Cir. 2019). If the state court's merits determination is unaccompanied by an explanation, federal courts should "'look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale" and "presume that the unexplained decision adopted the same reasoning." *Wilson*, 138 S. Ct. at 1192. Furthermore, a decision is still an adjudication on the merits when it "addresses some but not all of a defendant's claims." *Johnson v. Williams*, 568 U.S. 289, 298 (2013).

AEDPA "imposes a highly deferential standard for evaluating state-court rulings . . . , and demands that state-court decisions be given the benefit of the doubt[.]" *Renico v. Lett*, 559 U.S. 766, 773 (2010). Deferential review under § 2254(d) is generally limited to the record that was before the state court that adjudicated the claim on the merits. *See Cullen v. Pinholster*, 563 U.S. 170, 182 (2011).

**B. Ineffective Assistance of Counsel**

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to assistance of counsel during criminal proceedings. *See Strickland v. Washington*, 466 U.S. 668, 684-85 (1984). When assessing counsel's performance under *Strickland*, the Court employs a strong presumption that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* at 690. "[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]" *Burt v. Titlow*, 571 U.S. 12, 20 (2013). "Where the highly deferential standards mandated by *Strickland* and AEDPA both apply, they combine to produce a doubly deferential form of review that asks only 'whether there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard.'" *Gissendaner v. Seaboldt*, 735 F.3d 1311, 1323 (11th Cir. 2013) (quoting *Harrington v. Richter*, 562 U.S. 86, 105 (2011)).

To prevail on a claim of ineffective assistance of counsel, a petitioner must demonstrate both (1) that counsel's performance was deficient; and (2) a reasonable probability that the deficient performance prejudiced the defense. *See Strickland*, 466 U.S. at 687-88; *see also Harrington*, 562 U.S. at 104.

To establish deficient performance, the petitioner must show that, considering all circumstances, "counsel's conduct fell 'outside the wide range of professionally competent assistance.'" *Cummings v. Sec'y for Dep't of Corr.*, 588 F.3d 1331, 1356 (11th Cir. 2009) (quoting *Strickland*, 466 U.S. at 690). Strategic choices made after thorough investigation of the law and facts relevant to plausible options are virtually unchallengeable. *See Strickland*, 466 U.S. at 690-91. The court's review of counsel's performance should focus on "not what is possible or 'what is prudent or appropriate, but only [on] what is constitutionally compelled.'" *Chandler v. United States*, 218 F.3d 1305, 1313 (11th Cir. 2000) (footnote omitted; quoting *Burger v. Kemp*, 483 U.S. 776, 794 (1987)). Counsel is not ineffective for failing to raise non-meritorious issues, *see Chandler v. Moore*, 240 F.3d 907, 917 (11th Cir. 2001); nor is counsel required to present every non-frivolous argument, *see Dell v. United States*, 710 F.3d 1267, 1282 (11th Cir. 2013).

Regarding the prejudice component, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* A court need not address both prongs of *Strickland* if the defendant makes an insufficient showing on one of the prongs. *See id.* at 697; *Brown v. United States*, 720 F.3d 1316, 1326 (11th Cir. 2013).

## III. DISCUSSION

### A. Timeliness

Respondent concedes, and the Court confirms, that the Petition was timely filed. *See* ECF No. [36] at 20.

### B. Exhaustion/Procedural Default[4]

A federal district court may not grant habeas corpus relief under 28 U.S.C. § 2254 unless "the applicant has exhausted the remedies available in the courts of the State[.]" 28 U.S.C. § 2254(b)(1)(A). The Court will address Petitioner's 33 grounds for relief below along with any exhaustion/procedural default challenges.

### C. The Merits

**Ground One**

Petitioner asserts "ARBITRARY CONSTRUCTION OF STATE PROCEDURAL RULE IS AN UNCONSTITUTIONAL DENIAL OF DUE PROCESS[.]" ECF No. [29-1] at 5. He states that his initial Rule 3.850 motion for postconviction relief was denied "due to a technical defect." *Id.* He therefore argues that the trial court violated his due process rights by denying his amended second or successive motion for postconviction relief as an unauthorized successive motion. *See id.*

The record shows that the trial court properly denied the motion as successive because Petitioner had already filed a Rule 3.850 motion. *See* ECF No. [23-1] at 218. The first Rule 3.850

[4] There are two equitable exceptions to the procedural default rule: "cause and prejudice" and "actual innocence." *Dretke v. Haley*, 541 U.S. 386, 393 (2004). Petitioner bears the sole burden of proving that either one of these exceptions would excuse a procedural default. *See Gordon v. Nagle*, 2 F.3d 385, 388 (11th Cir. 1993) ("A defendant has the burden of establishing cause and prejudice."); *Arthur v. Allen*, 452 F.3d 1234, 1245 (11th Cir. 2006) ("The petitioner must support the actual innocence claim with new reliable evidence[.]"). The Court concludes that Petitioner fails to establish that either of these exceptions excuses his procedurally defaulted claims. *See generally* ECF No. [29-1].

motion was denied on the merits and not on a technical defect as Petitioner suggests. *See* ECF No. [23-2] at 1–6. Thus, the second Rule 3.850 motion was properly denied as successive under Florida Rule of Criminal Procedure 3.850(f). *See Heinritz v. McNeil*, 2011 WL 1195395, at *6 (S.D. Fla. Feb. 24, 2011), *report and recommendation adopted*, 2011 WL 1157367 (S.D. Fla. Mar. 29, 2011) ("Florida law bars successive Rule 3.850 motions.") (collecting cases). Accordingly, Ground One is denied.

**Ground Two**

Petitioner asserts "THE ADMISSION OF WILLIAMS RULE[5] EVIDENCE WAS HARMFUL ERROR VIOLATING DUE PROCESS." ECF No. [29-1] at 7. Petitioner's claim is not cognizable on federal habeas review. *See Twardokus v. Sec'y, DOC*, 2015 WL 926035, at *8 (M.D. Fla. Mar. 4, 2015) ("[A] challenge to the admission of evidence under state evidentiary rules is a matter of state law that provides no basis for federal habeas corpus relief because the ground does not present a federal constitutional question." (citing 28 U.S.C. § 2254(a)); *see also Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991) ("[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions."); *Machin v. Wainwright*, 758 F.2d 1431, 1433 (11th Cir. 1985) ("It is established that [a] state's interpretation of its own laws or rules provides no basis for federal habeas corpus relief, since no question of a constitutional nature is involved.") (cleaned up).

In sum, federal habeas corpus review of a state law claim is precluded if no federal constitutional violations are alleged. *See* 28 U.S.C. § 2254(a). This limitation remains even if the petitioner couches a claim as a federal violation when it actually involves state law issues. *See Branan v. Booth*, 861 F.2d 1507, 1508 (11th Cir. 1988) ("Although petitioner alleges violations of

[5] *See Williams v. State*, 110 So. 2d 654 (Fla. 1959).

federal law, it is clear that this petition is based exclusively on state law issues which are merely couched in terms of equal protection and due process.") (cleaned up). Although Petitioner couches his claim in terms of due process, Ground Two actually involves the admission of *Williams* rule evidence under state law. *See id.* Because the Court may not "reexamine state-court determinations on state-law questions[,]" Ground Two is denied. *Estelle*, 502 U.S. at 67–68.

**Ground Three**

Petitioner asserts "THE STATE FAILED TO CORRECT FALSE AND PERJURED TESTIMONY." ECF No. [29-1] at 8. He alleges "the State's DNA expert falsely testified that he is not the CODIS administrator[,]"and "the State allowed it to go uncorrected[.]" *Id.* Respondent counters that whether the DNA expert "was, or was not, the CODIS administrator was not the material issue in this case." ECF No. [36] at 31. The Court agrees.

Given the weight of the evidence against him, Petitioner fails to show prejudice. As explained, the victims identified Petitioner and DNA was but one category of evidence linking him to the crimes. Moreover, Petitioner does not dispute the accuracy of the DNA results, *see* ECF No. [29-1] at 8, and the Court agrees with Respondent that the expert's status as the CODIS administrator is not of consequence. In sum, the Court finds nothing unreasonable with the state courts' rejection of this claim. *See* 28 U.S.C. § 2254(d). Ground Three is thus denied.

**Ground Four**

Petitioner asserts "TRIAL COUNSEL UNCONSTITUTIONALLY UNPERMISSABLE DENIED DEFENDANT OF DUE PROCESS BY HIS FAILURE TO INTERVIEW DEPOSE OR CALL AVAILABLE STATE AND COUNTY CODIS ADMINISTRATORS TO TESTIFY." ECF No. [29-1] at 10. Respondent counters that "[t]his claim is unexhausted and procedurally defaulted." ECF No. [36] at 32. The Court agrees.

Petitioner raised this issue as claim four in his amended second or successive motion for postconviction relief, the trial court denied the claim on procedural grounds, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). As such, the Court concludes that Ground Four is barred under the independent and adequate state procedural ground doctrine. That doctrine precludes a federal court from reviewing a petitioner's habeas claims—even if it raises valid matters of federal constitutional law—if "(1) a state court has declined to address those claims because the prisoner had failed to meet a state procedural requirement, and (2) the state judgment rests on independent and adequate state procedural grounds." *Maples v. Thomas*, 565 U.S. 266, 280 (2012) (cleaned up). Ground Four is thus dismissed as procedurally defaulted.

**Ground Five**

Petitioner asserts "THE TRIAL COURT ERRONOUS RULING UNDER THE RAPE SHIELD WAS AN UNCONSTITUTIONAL UNPERMISABLE DENIAL OF DUE PROCESS THE RIGHT TO A COMPLETE DEFENSE, AND THE RIGHT TO CONFRONT DEFENDANT'S ACCUSER." ECF No. [29-1] at 12. Petitioner raised this issue as claim 27 in his amended second or successive motion for postconviction relief, the trial court denied the claim on state procedural grounds, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Five is dismissed as procedurally defaulted.

**Ground Six**

Petitioner asserts "THE STATE FAILED TO TURN OVER EXCULPATORY EVIDENCE." ECF No. [29-1] at 13. The trial court denied this claim on state procedural grounds

in Petitioner's amended second postconviction motion and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Six is dismissed as procedurally defaulted.

**Ground Seven**

Petitioner asserts "FAILURE TO INTRODUCE EXCULPATORY EVIDENCE." ECF No. [29-1] at 15. He states that "[p]rior to trial[,] counsel explained to the court[,] the jury[,] and defendant that the evidence will show that the DNA from the Williams Rule case does not match defendant[.]" *Id.* However, he asserts his counsel was ineffective for failing to call a DNA expert. *See id.* Having reviewed the record in full, the Court finds nothing unreasonable with the state court's rejection of this claim. *See* 28 U.S.C. § 2254(d).

"[C]omplaints about uncalled witnesses are not favored, because the presentation of testimony involves trial strategy and allegations of what a witness would have testified are largely speculative." *Shaw v. United States*, 729 F. App'x 757, 759 (11th Cir. 2018) (cleaned up). In assessing a claim of ineffective assistance of counsel, "which witnesses, if any, to call, and when to call them, is the epitome of a strategic decision, and it is one that the court will seldom, if ever, second-guess." *Rhode v. Hall*, 582 F.3d 1273, 1284 (11th Cir. 2009) (cleaned up). It was thus reasonable for the state court to reject Petitioner's speculative claim of prejudice concerning the testimony of uncalled witnesses, and this claim is denied under the performance and prejudice prongs of *Strickland*, 466 U.S. at 687–88.

**Ground Eight**

Petitioner asserts a double jeopardy violation based on his convictions in Count Five for sexual battery with a firearm and Counts Six and Seven for sexual activity with a minor. *See* ECF

No. [29-1] at 15. Respondent counters that the claim is procedurally defaulted because it "could have been and should have been raised on direct appeal." ECF No. [36] at 40. The Court agrees.

Where a petitioner has not "*properly* presented his claims to the state courts," the petitioner will have "procedurally defaulted his claims" in federal court. *O'Sullivan v. Boerckel*, 526 U.S. 838, 848 (1999) (emphasis in original). Accordingly, Ground Eight is dismissed as procedurally defaulted.

**Ground Nine**

Petitioner asserts his "trial counsel was deficient for failing to file [a] motion to suppress suggestive identification made by Williams rule witness Ms. K.G." ECF No. [29-1] at 18. Petitioner raised this claim in his initial motion for postconviction relief but failed to appeal the trial court's denial of the motion, and the district court denied his petition for belated appeal. *See Scott v. State*, 254 So. 3d 393 (Fla. 3d DCA 2018). Petitioner again raised the issue in his amended second or successive motion for postconviction relief, the trial court denied the motion as successive, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Nine is dismissed as procedurally defaulted.

**Ground Ten**

Petitioner asserts "IT IS UNCONSTITUTIONALLY IMPERMISSIBLE DENIAL OF DUE PROCESS TO CONVICT AND ADJUDICATE DEFENDANT GUILTY OF A CRIME LACKING ANY PROOF OF THE ESSENTIAL ELEMENTS OF THE CHARGED OFFENSE." ECF No. [29-1] at 20. Petitioner refers to the attempted armed robbery charge in Count Four and attacks the credibility of the "only witness testifying to the events[.]" *Id.* Petitioner raised this claim

in his amended second or successive motion for postconviction relief, the trial court denied the claim on state procedural grounds, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Ten is dismissed as procedurally defaulted.

**Ground Eleven**

Petitioner asserts his counsel was ineffective for failing "to impeach DNA expert Mr. David Arnold." ECF No. [29-1] at 22. Petitioner raised this claim in his amended second or successive motion for postconviction relief, the trial court denied the claim on state procedural grounds, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Eleven is dismissed as procedurally defaulted.

**Ground Twelve**

Petitioner asserts his counsel was ineffective for "FAILURE TO PROPERLY PRESERVE FOR APPELLANT REVIEW TRIAL COURT'S RULING ON STATE'S MOTION IN LIMINE." ECF No. [29-1] at 23. Petitioner raised this claim in his amended second or successive motion for postconviction relief, the trial court denied the claim on state procedural grounds, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Twelve is dismissed as procedurally defaulted.

**Ground Thirteen**

Petitioner asserts "FAILURE OF COUNSEL TO OBJECT TO DNA EVIDENCE/TESTIMONY BEING OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE MISLEADING THE JURY WAS UNCONSTITUTIONAL DENIAL OF DUE PROCESS." ECF No. [29-1] at 25. Petitioner raised this claim in his amended second or successive motion for postconviction relief, the trial court denied the claim on state procedural grounds, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Twelve is dismissed as procedurally defaulted.

**Ground Fourteen**

Petitioner asserts his counsel was ineffective for "FAILURE TO INVESTIGATE THE IDENTITY OF THE PERSON WHO ALLEGEDLY MADE AN ADMISSION." ECF No. [29-1] at 27. Petitioner raised this claim in his amended second or successive motion for postconviction relief, the trial court denied the claim on state procedural grounds, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Fourteen is dismissed as procedurally defaulted.

**Ground Fifteen**

Petitioner asserts his counsel was ineffective for "FAILURE TO INTERVIEW AND/OR DEPOSE AVAILABLE WITNESSES." ECF No. [29-1] at 28. Petitioner raised this claim in his amended second or successive motion for postconviction relief, the trial court denied the claim on state procedural grounds, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla.

3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Fifteen is dismissed as procedurally defaulted.

**Ground Sixteen**

Petitioner asserts his counsel was ineffective for "FAILURE TO OBJECT TO CONSTRUCTIVE CHARGING INFORMATION." ECF No. [29-1] at 30. Petitioner raised this claim in his amended second or successive motion for postconviction relief, the trial court denied the claim on state procedural grounds, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Sixteen is dismissed as procedurally defaulted.

**Ground Seventeen**

Petitioner asserts his counsel was ineffective for "FAILURE TO IMPEACH WILLIAMS RULE WITNESS MS. Y.A. WITH HER PHONE RECORDS." ECF No. [29-1] at 32. Petitioner raised this claim in his amended second or successive motion for postconviction relief, the trial court denied the claim on state procedural grounds, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Seventeen is dismissed as procedurally defaulted.

**Ground Eighteen**

Petitioner asserts his counsel was ineffective for "FAILURE TO IMPEACH WILLIAMS RULE WITNESS OUT OF COURT IDENTIFICATION." ECF No. [29-1] at 33. Petitioner raised this claim in his initial motion for postconviction relief but failed to appeal the trial court's denial

of the motion, and the district court denied his petition for belated appeal. *See Scott v. State*, 254 So. 3d 393 (Fla. 3d DCA 2018). Petitioner again raised the issue in his amended second or successive motion for postconviction relief, the trial court denied the motion as successive, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Eighteen is dismissed as procedurally defaulted.

**Ground Nineteen**

Petitioner asserts his trial counsel was ineffective for "FAILURE TO OBJECT TO PROSECUTOR MISCONDUCT." ECF No. [29-1] at 35. He states that his counsel failed to object to victim N.B.'s in-court identification when the prosecutor stated "let the record reflect the witness identified the defendant." *Id.* Petitioner raised this claim in his initial motion for postconviction relief but failed to appeal the trial court's denial of the motion, and the district court denied his petition for belated appeal. *See Scott v. State*, 254 So. 3d 393 (Fla. 3d DCA 2018). Petitioner again raised the issue in his amended second or successive motion for postconviction relief, the trial court denied the motion as successive, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Nineteen is dismissed as procedurally defaulted.

**Ground Twenty**

Petitioner asserts his trial counsel was deficient for "FAILURE TO SUPPRESS SUGGESTIVE IDENTIFICATION MADE BY WILLIAMS RULE WITNESS MS. K.G." ECF No. [29-1] at 37. Petitioner raised this claim in his initial motion for postconviction relief but failed

to appeal the trial court's denial of the motion, and the district court denied his petition for belated appeal. *See Scott v. State*, 254 So. 3d 393 (Fla. 3d DCA 2018). Petitioner again raised the issue in his amended second or successive motion for postconviction relief, the trial court denied the motion as successive, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Twenty is dismissed as procedurally defaulted.

**Ground Twenty-One**

Petitioner asserts his trial counsel was deficient for "FAILURE TO SUPPRESS SUGGESTIVE IDENTIFICATION MADE BY WILLIAMS RULE WITNESS MR. Y.A." ECF No. [29-1] at 38. Petitioner raised this claim in his initial motion for postconviction relief but failed to appeal the trial court's denial of the motion, and the district court denied his petition for belated appeal. *See Scott v. State*, 254 So. 3d 393 (Fla. 3d DCA 2018). Petitioner again raised the issue in his amended second or successive motion for postconviction relief, the trial court denied the motion as successive, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Twenty-One is dismissed as procedurally defaulted.

**Ground Twenty-Two**

Petitioner asserts his "trial counsel deficiently declined to assist Petitioner in the filing of a 3.850 motion in the Williams rule case F08008261[.]" ECF No. [29-1] at 40. Petitioner raised this claim in his amended second or successive motion for postconviction relief, the trial court denied the claim on state procedural grounds, and the district court affirmed. *See Scott v. State*,

319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Twenty-Two is dismissed as procedurally defaulted.

**Ground Twenty-Three**

Petitioner asserts his "counsel deficiently failed to impeach Williams rule witness Ms. K.G. with her statements made to the police that her assailant had very white teeth[.]" ECF No. [29-1] at 41. Petitioner raised this claim in his amended second or successive motion for postconviction relief, the trial court denied the claim on state procedural grounds, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Twenty-Three is dismissed as procedurally defaulted.

**Ground Twenty-Five**[6]

Petitioner asserts his trial counsel deficiently failed "TO ADEQUATELY ADVISE DEFENDANT ON RIGHT TO TESTIFY TO BIAS AND CORRUPTION." ECF No. [29-1] at 43. Petitioner raised this claim in his initial motion for postconviction relief but failed to appeal the trial court's denial of the motion, and the district court denied his petition for belated appeal. *See Scott v. State*, 254 So. 3d 393 (Fla. 3d DCA 2018). Petitioner again raised the issue in his amended second or successive motion for postconviction relief, the trial court denied the motion as successive, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Twenty-Five is dismissed as procedurally defaulted.

[6] Petitioner skipped Ground Twenty-Four.

**Ground Twenty-Six**

Petitioner asserts the "TRIAL COURT DEPRIVED DEFENDANT OF RIGHT TO A COMPLETE DEFENSE." ECF No. [29-1] at 45. Petitioner raised this claim in his initial motion for postconviction relief but failed to appeal the trial court's denial of the motion, and the district court denied his petition for belated appeal. *See Scott v. State*, 254 So. 3d 393 (Fla. 3d DCA 2018). Petitioner again raised the issue in his amended second or successive motion for postconviction relief, the trial court denied the motion as successive, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Twenty-Six is dismissed as procedurally defaulted.

**Ground Twenty-Seven**

Petitioner asserts "IT'S [AN] UNCONSTITUTIONAL DENIAL OF DUE PROCESS TO DENY PETITIONER [AN] EVIDENTIARY HEARING TO PRESENT EVIDENCE IN SUPPORT OF THE ALLEGATIONS IN HIS 3.850 MOTION." ECF No. [29-1] at 46. Petitioner raised this claim in his amended second or successive motion for postconviction relief, the trial court denied the claim on state procedural grounds, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Twenty-Seven is dismissed as procedurally defaulted.

**Ground Twenty-Eight**

Petitioner asserts his trial counsel was deficient for failing "TO IMPEACH DETECTIVE R. GERBIER WITH EVIDENCE OF FRAUD AND CORRUPTION." ECF No. [29-1] at 48. Petitioner raised this claim in his initial motion for postconviction relief but failed to appeal the

trial court's denial of the motion, and the district court denied his petition for belated appeal. *See Scott v. State*, 254 So. 3d 393 (Fla. 3d DCA 2018). Petitioner again raised the issue in his amended second or successive motion for postconviction relief, the trial court denied the motion as successive, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Twenty-Eight is dismissed as procedurally defaulted.

**Ground Twenty-Nine**

Petitioner asserts "THE CUMULATIVE EFFECT OF TRIAL COUNSEL'S ERRORS AND OMISSIONS CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL." ECF No. [29-1] at 50. Petitioner raised this claim in his initial motion for postconviction relief but failed to appeal the trial court's denial of the motion, and the district court denied his petition for belated appeal. *See Scott v. State*, 254 So. 3d 393 (Fla. 3d DCA 2018). Petitioner again raised the issue in his amended second or successive motion for postconviction relief, the trial court denied the motion as successive, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Twenty-Nine is dismissed as procedurally defaulted.

**Ground Thirty**

Petitioner asserts "FAILURE TO A NELSON HEARING IS PER SE REVERSIBLE ERROR." ECF No. [29-1] at 52. Petitioner argues that before the jury was sworn, he expressed his lack of confidence in his legal representation, requested another attorney, but was denied a *Nelson* hearing. *See id.* Petitioner's claim is not cognizable on federal habeas review as "it is not

the province of a federal habeas court to reexamine state-court determinations on state-law questions." *Estelle*, 502 U.S. at 67–68. Federal habeas corpus review of a state law claim is precluded if no federal constitutional violations are alleged, *see* 28 U.S.C. § 2254(a), and this limitation remains even if the petitioner couches a claim as a federal violation when it actually involves state law issues. *See Branan*, 861 F.2d at 1508. Although Petitioner mentions the Sixth and Fourteenth Amendments, the right to a hearing under Florida law pursuant to *Nelson v. State*, 274 So. 2d 256, 257 (Fla. 4d DCA 1973), is actually a state law issue precluded on federal habeas review. Ground Thirty is thus denied.

**Ground Thirty-One**

Petitioner asserts "FLORIDA DEPARTMENT OF CORRECTIONS OFFICIALS FAILURE TO FORWARD LEGAL DOCUMENTS TO THE CLERK OF COURTS DENIED DEFENDANT DUE PROCESS OF LAW." ECF No. [29-1] at 53. Petitioner raised this claim in his amended second or successive motion for postconviction relief, the trial court denied the claim on state procedural grounds, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Thirty-One is dismissed as procedurally defaulted.

**Ground Thirty-Two**

Petitioner asserts his "trial counsel was deficient for failing to lay proper foundation for admission of testimony of the incident report by Detective R. Gerber that the offender was bald." ECF No. [29-1] at 55. Petitioner raised this claim in his amended second or successive motion for postconviction relief, the trial court denied the claim on state procedural grounds, and the district court affirmed. *See Scott v. State*, 319 So. 3d 94, 95 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8,

2021). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Thirty-Two is dismissed as procedurally defaulted.

**Ground Thirty-Three**

Petitioner asserts his "trial counsel was deficient for failing to impeach victim N.B. identification with evidence of a gun shot wound to Petitioner's leg that occurred six days prior to the allege[d] assault in this case causing a noticeable limp at the time of the commission of this crime[.]" ECF No. [29-1] at 57. Petitioner raised this claim in his initial motion for postconviction relief but failed to appeal the trial court's denial of the motion, and the district court denied his petition for belated appeal. *See Scott v. State*, 254 So. 3d 393 (Fla. 3d DCA 2018). This claim is thus barred under the independent and adequate state procedural ground doctrine. *See Maples*, 565 U.S. at 280. Accordingly, Ground Thirty-Three is dismissed as procedurally defaulted.

**D. Evidentiary Hearing**

In a habeas corpus proceeding, the burden is on the petitioner to establish the need for a federal evidentiary hearing. *See Chavez v. Sec'y, Fla. Dep't of Corrs.*, 647 F.3d 1057, 1060 (11th Cir. 2011). "[I]f the record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing." *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007). Here, the pertinent facts of the case are fully developed in the record. Because the Court can "adequately assess [Petitioner's] claim[s] without further factual development[,]" Petitioner is not entitled to an evidentiary hearing. *Turner v. Crosby*, 339 F.3d 1247, 1275 (11th Cir. 2003).

### E. Certificate of Appealability

A prisoner seeking to appeal a district court's final order denying his petition for a writ of habeas corpus has no absolute entitlement to appeal and must obtain a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1); *Harbison v. Bell*, 556 U.S. 180, 183 (2009). A certificate of appealability shall issue only if Petitioner makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing, Petitioner must demonstrate that "reasonable jurists" would find the correctness of the district court's rulings "debatable." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Upon consideration of the record, the Court concludes there is no basis to issue a certificate of appealability.

## IV. CONCLUSION

For the foregoing reasons, it is **ORDERED AND ADJUDGED** as follows:

1. Petitioner Pleadro J. Scott's Second Amended Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254, **ECF No. [29-1]**, is **DISMISSED in part** and **DENIED in part**. Grounds 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 31, 32, and 33 are **DISMISSED** as procedurally defaulted. Grounds 1, 2, 3, 7, and 30 are **DENIED**.
2. A certificate of appealability is **DENIED**. Because there are no issues with arguable merit, an appeal would not be taken in good faith, and thus, Petitioner is not entitled to appeal *in forma pauperis*.
3. To the extent not otherwise disposed of, any pending motions are **DENIED AS MOOT** and all deadlines are **TERMINATED**.
4. The Clerk of Court is directed to **CLOSE** this case.

**DONE AND ORDERED** in Chambers at Miami, Florida, on April 10, 2023.

**BETH BLOOM**
**UNITED STATES DISTRICT JUDGE**

Copies to:

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In the

# United States Court of Appeals

## For the Eleventh Circuit

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No. 23-11508

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PLEADRO J. SCOTT,

Petitioner-Appellant,

*versus*

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

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Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:21-cv-22439-BB

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Before WILLIAM PRYOR, Chief Judge, and ROSENBAUM and LUCK, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Pleadro J. Scott is DENIED.