

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL METAYER, -- PETITIONER

VS.

UNITED STATES OF AMERICA, -- RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE ELEVENTH U.S. CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

MICHAEL METAYER
95533-004 M03-304L
MCRAE CORRECTIONAL FACILITY
P. O. DRAWER 55030
MCRAE HELENA, GA
31055

QUESTION PRESENTED

Whether Petitioner, a foreign national, wholly unfamiliar with the United States criminal justice system, suffered a violation of his Sixth Amendment right to the effective assistance of counsel where his attorney failed to discuss with Petitioner the criminal justice system, failed to provide Petitioner with the various options as to how the case could be resolved, failed to discuss the Federal Sentencing Guidelines, failed to inform Petitioner of the benefits of pleading guilty as opposed to going to trial and failed to inform Petitioner of discussions and informal plea negotiations in which his attorney had been engaged with the AUSA, where Petitioner could have received a minimum of two years in prison and where Petitioner eventually proceeded to trial, was convicted and received a ten-year sentence, which is five times greater than what the discussions and informal plea negotiations had envisioned?

LIST OF PARTIES

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

Baker, The Honorable David A.

Bentley, III, Arthur Lee

Bodnar, Jr., Robert Edward

Bodnar, Roberta J.

Cakmis, Rosemary

Charles, Sandra

Cummins, Tiffany Lynn

Curry, Patrick Joseph

Dalton, Jr., The Honorable Roy B.

Elm, Donna Lee

Ferrilus, Kerline

Goodman, The Honorable Jonathan

Henderson, Larry B.

Hussain, Akhtar

Irick, The Honorable Daniel C.

Kamalzadeh, Ali

Kelly, The Honorable Gregory J.

Metayer, Darline Mesidor

Metayer, Jeon Remy

Metayer, John

Metayer, Leon

Metayer, Michael

Moncoeur, Christiane

Moncoeur, Moline

Michaels, Alexander J.

Muldrow, W. Stephen

Presnell, The Honorable Gregory A.

Rhodes, David P.

Skuthan, James T.

Spaulding, The Honorable Karla R.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The September 20, 2017 opinion of the Eleventh U.S. Circuit Court of Appeals denying a Certificate of Appealability is unpublished and attached as Appendix A. The February 28, 2017 order of the U.S. District Court for the Middle District of Florida denying Petitioner's 2255 after the Evidentiary Hearing and denying a Certificate of Appealability is unpublished and attached as Appendix B. The December 3, 2015 order of the U.S. District Court for the Middle District of Florida, granting an Evidentiary Hearing, in part and denying in part, Petitioner's 2255 is unpublished and attached as Appendix C.

JURISDICTION

The Court of Appeals entered its judgment on September 20, 2017. This court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves a federal criminal defendant's constitutional rights under the Sixth Amendment which provides in relevant part:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

This case also involves the application of 28 U.S.C. § 2253(c) (2), which states, in relevant part:

"...(c) (1) unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from – ...
(B) The final order in a proceeding under section 2255.

(2) a certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right..."

STATEMENT OF THE CASE

On October 19, 2011, Petitioner was charged by a one count indictment with conspiracy to possess with intent to distribute 500 or more grams of cocaine hydrochloride in violation of 21 U.S.C. §§ 841(b)(1)(B)(ii) and 846. On July 26, 2012, a jury found Petitioner guilty with regard to count one of the indictment. The district court sentenced Petitioner to a 120-month term of imprisonment. Petitioner appealed and the Eleventh U.S. Circuit Court of Appeals affirmed his conviction. On May 12, 2014, Petitioner moved to vacate his sentence under 28 U.S.C. § 2255, asserting twenty-three (23) grounds for relief. The government filed a response in opposition and Petitioner filed a reply. On December 3, 2015, the district court entered an order denying in part all but one of Petitioner's grounds, and ordering an evidentiary hearing be held as to ground sixteen (16), that his trial counsel failed to convey a plea offer to him. On October 19, 2016, the district court conducted an evidentiary hearing as to ground sixteen. At the conclusion of the evidentiary hearing, the district court granted leave for the parties to file additional briefing on the Applicability of the Eleventh Circuit's opinion in Carmichael v. United States, 659 Fed. Appx. 1013 (11th Cir. 2016) (unpublished). Petitioner submitted his memorandum and the government filed their response. On February 28, 2017, the district court entered an order denying ground sixteen and Petitioner's amended § 2255 motion, and denying a Certificate of Appealability. On September 20, 2017, the Eleventh U.S. Circuit Court of Appeals also denied a Certificate of Appealability.

STATEMENT OF THE FACTS

In Petitioner's amended § 2255 petition, Petitioner contended that his trial attorney was ineffective for failing to communicate discussions regarding plea negotiations and informal plea offers. Petitioner was not aware that any plea discussions or informal offers had transpired until after he had been sentenced and only after he had filed a grievance with The Florida Bar against his trial attorney for not responding to his requests for a copy of his file.

In his grievance letter to The Florida Bar, Petitioner stated that he and his family had unsuccessfully attempted to contact his attorney in order to obtain a copy of his case file. The Attorney/Consumer Assistance Program (ACAP) of The Florida Bar wrote to both Petitioner's attorney and Petitioner informing both parties of the grievance. ACAP requested that Petitioner's attorney contact Petitioner in order to resolve the issue and to avoid the possibility of a disciplinary action by the Bar. Further, the letter stated that if ACAP had not heard from either party within thirty days of their letter, ACAP "would assume the matter has been resolved."

Petitioner's attorney responded to the Bar by letter informing ACAP that he was in contact with Petitioner and his family and was open to complying with their request for the case file. However, Petitioner's attorney volunteered additional information in his correspondence with ACAP, specifically stating, "I advised Petitioner not to go to trial and that his best course of action was to take a plea because he had a difficult case to win. I had worked out a deal with the prosecutor where he would have received approximately 2 years in prison."

Upon receipt of Petitioner's attorney's response letter to ACAP, Petitioner, for the first time, became aware of a "plea offer" as explained by his attorney in his letter to the Bar. Thereafter, Petitioner drafted his § 2255 petition. In its response to Petitioner's 2255 petition, the government refuted any claim that a formal plea offer had been conveyed to Petitioner's attorney, rather, the government presented an email where the AUSA had memorialized plea discussions explaining to Petitioner's attorney by email that "Petitioner had the ability, with or without a plea agreement, to potentially obtain a sentence of less than five years if he elected to plead guilty, accept responsibility for his crime and further avail himself of an additional "safety valve" reduction at sentencing."

Petitioner filed his reply stating that his attorney's letter to The Florida Bar and the government's email outlining plea discussions represented:

"[A] perfect example of the lack of communication [Petitioner] is attempting to present to this Court. Just like the attached email that the government has provided as evidence to show the offered plea. [Petitioner] asserts that this was the very first time that he has seen this information as well. Therefore, how could the Petitioner claim that his attorney did not convey this plea to him, when it has always been his position that his attorney never discussed any plea offers whatsoever. [Petitioner] only presented the letter as evidence to show that there were actual plea discussions that were never conveyed to him." (See Appendix D).

The district court entered an order denying all but one of the twenty-three claims Petitioner raised and set an evidentiary hearing as to ground sixteen stating: "An evidentiary hearing is needed to determine whether (1) the Government made a plea offer, (2) Petitioner was advised of the plea offer, and (3) if so, whether Petitioner rejected the plea offer."

EVIDENCE PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing conducted on October 19, 2016, three witnesses testified: one on behalf of Petitioner, Petitioner himself; and on behalf of the government, Petitioner's trial attorney and the Assistant U.S. Attorney.

A REVIEW OF PETITIONER'S TESTIMONY

On direct and cross examination, Petitioner testified that he had no prior experience with the criminal justice system which was supported by the lack of any criminal activity or history in his Presentence Investigation Report. Further, Petitioner testified that he first retained an Immigration attorney who assisted Petitioner's family with Immigration matters, but he understood at the time that the attorney did not handle criminal matters but because he was the family's Immigration attorney Petitioner trusted him. On cross examination, the government attempted to present the Immigration attorney, Mr. Hussain, as an experienced criminal defense attorney:

THE AUSA: And Mr. Hussain had prior criminal experience, didn't he?

PETITIONER: I don't really know. But I know he was an immigration lawyer. And he said that he was a criminal lawyer, too. I think.

THE AUSA: Okay. So it was your understanding that Mr. Hussain had prior experience defending criminal defendants: is that right?

PETITIONER: As far as I know, yes.

No evidence was presented to substantiate that Mr. Hussain was an experienced criminal defense attorney. However, the district court, in its order

denying relief, made a finding that Petitioner was “represented by two experienced criminal attorneys,” which is inaccurate and not supported by the evidence at the evidentiary hearing.

Petitioner testified that his family accompanied him to the majority of the attorney consultation with Mr. Alexander Michaels, specifically his younger brother Leon Metayer. Petitioner stated that his brother had recommended Mr. Michaels as an attorney to replace Mr. Hussain who had to withdraw due to an injury. On cross examination, the government attempted to frame Mr. Metayer’s younger brother’s prior interaction with a criminal proceeding as someone having “prior criminal experience” and who has experience “work[ing] with a defense attorney” and that his brother was “nearly at every meeting ... with Mr. Michaels.” The government, in effect, attempted to infer Mr. Leon Metayer’s minimal legal experience of the criminal legal system to Petitioner.

The district court, in its order denying relief, relied on the following finding of fact regarding Petitioner’s brother: “In addition, Petitioner was always accompanied by his brother ...when he met with Michaels. Petitioner’s brother had experience in the criminal justice system and had been represented by Michaels. See Williams v. Smith, 434 F.2d 592, 595 (5th Cir. 1970) (holding in a habeas corpus proceeding, the burden of proof is on the Petitioner to establish his right to relief by the fair preponderance of all the credible evidence and from the reasonable deductions and inferences which can be drawn therefrom.). It is undisputed that the burden to establish relief falls on Petitioner, however, the district court’s reliance on slender inferences is not fair, nor reasonable.

Petitioner testified that neither Mr. Hussain nor Mr. Michaels ever discussed the actual charge he was facing, the federal sentencing guidelines,

acceptance of responsibility, the possibility of safety valve relief, or the differences between pleading guilty and going to trial. He testified that he was never told that the alleged crime had a five-year mandatory minimum penalty of imprisonment. Further, Petitioner stated that both Mr. Hussain and Mr. Michaels never advised him of plea discussions or negotiations with the AUSA.

As far as Petitioner was aware, the only communications from the AUSA were related to discovery. The one exception being a single phone conversation where Mr. Michaels called Petitioner "out of the blue" and wanted to know if he was a "snitch." When Petitioner replied that he was not, Mr. Michaels said that was good because "they aren't going to do anything for you" and informed Petitioner that he had rejected a request from the United States for him to cooperate. Petitioner explained that, based on that conversation, he believed the United States wanted him to become some type of informant.

Petitioner's testimony reflected that Mr. Michaels' lack of communication and false assurances, in combination with his inexperience with the legal system, let alone the federal criminal justice system, kept him in the dark as to the reality and gravity of the circumstances in proceeding to trial. Throughout direct and cross examination, Petitioner was soft-spoken, maintained a calm and relaxed demeanor, answered questions to the best of his knowledge and understanding, and did not provide conflicting testimony.

**PETITIONER'S TESTIMONY THAT HE FIRST BECAME AWARE OF PLEA
DISCUSSIONS AFTER HE HAD ARRIVED IN PRISON**

A: But at that time the only person – when I spoke to my sister on the phone, she was the only one who basically told me that my

nephew, he was – he went to Mr. Michaels’ office and Mr. Michaels said that he could have got me approximately two years in prison.

But then I still told my sister that I don’t believe that, I said, that was a lie. Because Mr. Michaels never told me nothing about this. But this is while I was in prison.

That’s when I get to realize when she told me that, as I’m going back and forth with Mr. Michaels, I’m trying to get – so when I received this letter now, it really surprised me. I was like, wow, I could not believe that they really talk about a plea, but then they didn’t really let me know nothing.

E.H.T. Pg. 68-69

Petitioner first became aware of a potential plea agreement after he had gotten to prison. Petitioner had retained Mr. Michaels in April of 2012. Thereafter, for the next three months that Petitioner was awaiting trial on pre-trial bond, Petitioner had been unaware that Mr. Michaels had been in discussions with the prosecutor about a potential resolution of this case with a plea. Mr. Michaels has testified that he does not like “snitches” or the federal government, therefore, it would have been unreasonable to expect that he would have even approached the government to attempt to obtain a plea bargain for Petitioner, much less encourage Petitioner to cooperate with the government. Mr. Michaels was therefore untruthful in his testimony as to any discussions he had about plea discussions or negotiations with Petitioner.

A REVIEW OF ATTORNEY ALEXANDER MICHAELS’ TESTIMONY

The government called Mr. Michaels and, on direct examination as well as on cross examination, Mr. Michaels exhibited erratic and at times belligerent behavior. Throughout the line of questioning, the district court had to address Mr. Michaels’ behavior toward Petitioner’s attorney when answering questions

and at one point threatened to fine Mr. Michaels \$500 for every time he would not answer a question directly by defense attorney. However, the district court found Mr. Michaels' testimony to be credible over Petitioner's. The district court is tasked with assessing the credibility of witnesses. See Castle v. Sangamo Weston, Inc., 837 F.2d 1550, 1559 (11th Cir. 1988) ("Assessing the weight of evidence and credibility of witnesses is reserved for the trier of fact."). "[T]o adequately determine the credibility of a witness ... the fact-finder must observe the witness." United States v. Powell, 628 F.3d 1254, 1257 (11th Cir. 2010)(quoting Louis v. Blackburn, 630 F.2d 1105, 1110 (5th Cir. 1980)). "A proper credibility determination ... includes [consideration of] 'the internal consistency of the [witness's] testimony, or his candor or demeanor on the stand.'" United States v. Ramirez-Chilel, 289 F.3d 744, 749 (11th Cir. 2002) (quoting Gallego v. United States, 174 F.3d 1196, 1198 (11th Cir. 1999)).

The record is clear that Mr. Michaels provided inconsistent and incredible testimony with regard to his statement he made to The Florida Bar regarding the plea offer he stated the government had offered, stating that he made a typo in his letter to the Bar. The district court's reliance on Mr. Michaels' credible testimony is misplaced and inapposite to the facts of the case.

Mr. Michaels testified that he did not take notes concerning his representation of Petitioner and his memory was vague as to the specifics of meetings and conversations he had with him. He recalled that he met with Petitioner "several times," and, as a practice, he did not go through the case with the client in the beginning because he waits to talk with the prosecutor and review the discovery. He testified that he is never concerned about his availability for trial in any case and he was not concerned about whether he was a member

of the Bar of the Court where the case would be tried. He testified that he had a laminated chart in his office that he used with all clients to explain the federal sentencing guidelines and that he always told his clients that he never knew what their guideline sentence would be, because it is inevitably determined by the trial judge.

MR. MICHAELS' TESTIMONY REGARDING THE SPAN OF HIS LEGAL PRACTICE

Q: And roughly what's the breakdown between your federal and state work?

A: I will guess 75 percent State, 25 percent federal. I practice, I tried to list – I tried when I was waiting I, wrote down some judges' names that I not practice only but actually tried federal cases. I tried federal cases in different jurisdiction.

And I appeared in different – I've been in Arizona, Colorado, Carolina. Practice for the law Southern, Middle District, and Northern District of Florida. I can try to remember. And I wrote down on a piece of paper at least 10 judges' names that actually I tried cases in front of.

But I don't – my State work is very busy. So 75/25 reflects basically my intense State practice.

E.H.T. Pg.80-81

Mr. Michaels clearly had far less experience in litigating federal cases than state cases. As a result, he literally dealt with Petitioner's case as if it was a state case. Mr. Michaels was ineffective by not informing Petitioner as to any discussions or informal plea negotiations that he was having with the prosecutor and by not informing Petitioner as to any other option that was available to him.

MR. MICHAELS' TESTIMONY REGARDING HIS ROUTINE PRACTICE WITH CLIENTS

Q: When you encounter a, meet a client at the inception of your representation—

A: Okay.

Q: -- do you have sort of standard things that you go through with them when you meet them?

A: At the beginning, no. Because I need to get familiarized with the case, get some of the discovery. I like to – and I think I always do it, in fact, call the prosecutor on a case, see, try to feel them out, where they're coming from, what they really – how they want to approach the case with.

I talk about the facts of the case. I don't make any – at this point, I don't – I always tell the client eventually you're the boss. We're going to come to a point in time where you're going to have to make a decision if you want to go to trial or if you want to enter into negotiation, a plea.

I will do the best I can for you, whichever road you choose to take. I cannot make the decision for you. I can recommend to you what I think you should do based on the evaluation of the case, the discovery, standard discovery and everything else.

And, of course, my interview with him or her also is a criteria that will help me decide how to advise him the best.

E.H.T. Pg. 84-85

Mr. Michaels testified about what his "standard practice" was with his clients. However, it is Petitioner's position that Mr. Michaels did not comply with his "standard practice" in regard to Petitioner. Mr. Michaels never followed any of his so-called "standard practice" with Petitioner. In fact, on only one occasion, Mr. Michaels called Petitioner "out of the blue" and asked Petitioner if he was a "snitch" to which Petitioner replied "no." Mr. Michaels then said that the

prosecutor had called him and said that he wanted to sit down and speak with Petitioner but Mr. Michaels had rejected the offer because, Mr. Michaels had stated that “they would not do anything for you anyway.” This is a very clear indication that Mr. Michaels did not discuss with Petitioner anything about any potential plea or about any informal discussions that he and the prosecutor may have had. To be sure, on one occasion, when Petitioner visited Mr. Michaels’ office before the status conference hearing, Mr. Michaels requested some money from Petitioner. When Petitioner stated that he did not have any money, Mr. Michaels ordered Petitioner to get out of his office and stated that an attorney’s performance can be “very poor” if he did not receive his money in full. Is this Mr. Michaels’ “standard practice” for when his client does not have any money?

MR. MICHAELS’ TESTIMONY REGARDING HIS LETTER TO THE FLORIDA BAR

Q: And then it says that – the next sentence says, I had worked out a deal with the prosecutor where he would have received approximately 2 years in prison?

A: Okay. This is very well known, everybody knows, when someone take a plea they explain that. This is my educated guess. It’s an estimate that I told him most likely during our conversation.

I receive an email which I have a chance to review today something that Mr. Bodnar indicate to me the safety valve, I believe, and that acceptance would be somewhere under five. And I don’t believe he has any prior.

Be skeptical if you want. I kind of guess and estimate that he probably would have got somewhere around that. That was my estimating, my guess.

E.H.T. Pg. 98-99

**MR. MICHAELS' CONFLICTING TESTIMONY REGARDING
HIS VOICE MAIL TO THE AUSA AND HIS RECEIPT OF THE AUSA'S EMAIL**

Q: So the voice mail was left prior to this email, correct?

A: Absolutely. Makes sense, yes.

Q: Okay. In terms of the voice mail that you left, I want to talk about that for one more second.

A: Sure.

Q: Why did you, what prompted you to leave this voice mail for Mr. Bodnar?

A: Prior conversation between me and Mr. Bodnar about the benefits of the plea as opposed to consequences if we go to trial and he's found guilty.

Also, you brought earlier my response to the Bar. One other factor I rely on in two and a half years is this email, which indicated he would get well under five years. So that was another factor.

Also, if I recall, some of the co-defendants in the case were more or less situated the same in term of a guideline sentence. They got the very low sentence of about two years.

So it comes to me now when I read this and other factor, that's one reason I put in the response to the Bar approximately two years.

Q: Okay. Prior to leaving the voice mail for Mr. Bodnar when you called and left that message, had you had a conversation or any conversations with Mr. Metayer regarding –

A: Of course, I did. The voice mail itself indicates that I talk with him, and I can't get him to consider a plea.

Q: Okay. And now, turning your attention back to Exhibit 17 here, if I can direct your attention to the second paragraph.

A: Yes.

Q: Do you see that?

And just to clarify the record, you had testified previously regarding the letter you sent to The Florida Bar and the quote approximate two-year deal.

A: Right

Q: What is the relationship between this email and that representation, if you can explain that one more time for the Court?

A: Yeah, it's the fact that Mr. Bodnar obviously tells me in writing that my client could still plead and get the safety valve, which I was aware of that. And he was facing much less than five years.

Q: Okay. Did Mr. Bodnar ever say anything to you about an approximate two-year sentence or –

A: No. He himself did not mention any number except what's here.

Q: Okay. So –

A: I'm sorry. To me, much less than five years, it's somewhere around two and a half years.

Q: Okay. (See Appendix E, Mr. Bodnar's email to Mr. Michaels).

E.H.T. Pg.104-106

The foregoing testimony clearly demonstrates that Mr. Michaels misled both The Florida Bar and Petitioner when he wrote that he had "worked out a deal with the prosecutor where [Petitioner] would have received approximately 2 years in prison" when in fact there had been no plea deal; it had only been an informal discussion of a potential plea deal which had never materialized.

**TESTIMONY DEMONSTRATING THAT MR. MICHAELS
WAS NOT A MEMBER OF THE FLORIDA BAR IN GOOD STANDING
DURING HIS REPRESENTATION OF PETITIONER**

Q: We began, the Government began your testimony pointing out that you're a member of several bars in the State of Florida, correct?

A: No. You're wrong. I'm a member of The Florida Bar only. There's only one state bar in Florida, The Florida Bar. I remember different federal district courts, Southern and Central and, I believe, Northern Florida, too.

Q: Yes, sir. Let's explore that.

A: Sure.

Q: This is according to the Bar website, if you agree with it.

It indicates that you're a member in good standing of The Florida Bar and that you were admitted to practice on November 19th of 1984.

Does that sound correct to you?

A: Sounds about right.

Q: So that's when you became a member of The Florida Bar?

A: That's correct.

Q: And The Florida Bar has ethical rules and standards that you are supposed to comply with; isn't that true?

A: Absolutely.

Q: And you have been reprimanded in the past for violating those ethical-

A: Many times. I've been placed on probation several times. I've been held on contempt. I've been sent to jail by some judges who because of my very aggressive representation of my client.

I've never been reprimanded for use of drug or money or anything like that. Everything I did is cross, in their mind, a line. In my mind, I did the best I could and even go to jail for my clients. But their finding of guilty I'm not going to jail.

Yes, sir?

I practice kind of like this which hurts me sometime.

Q: So your answer is yes, you have been sanctioned by The Florida Bar for violating their ethical rules?

A: For violating their ethical rule and for basically being too aggressive in defense of my client. I want you to understand that. I didn't violate any rule regarding money, drugs, or anything like that. I am too aggressive. And I fight with the prosecutor. I fight with cops. I fight sometimes with judges.

And like I said, I've been in jail several times. But all of these cases that you refer to the Bar recently or in the past, if I recall, my client were free.

Q: You violated ethical requirements?

A: Yes, I did, sir. According to the Bar, I did.

Q: And now, those ethical requirements entail not only aggressive and zealous representation of clients, but it also requires candor to tribunals –

A: I'm sorry? Requires what?

Q: It requires you to be truthful to third parties and to the Court?

A: I don't think I've ever lied to a Court or anybody for that matter. In fact – well, it doesn't matter. Go ahead.

Q: Now, you're also required to keep your client fully apprised of his case?

A: Absolutely.

Q: And that helps your client make informed and intelligent decisions?

A: Absolutely. But it's nothing to do with The Florida Bar and ethics that you mentioned before. I want you to understand that.

Q: Okay. Now –

THE COURT: Mr. Michaels, Mr. Michaels, listen to Mr. Henderson's question. Answer that question. If the Government wants to pursue something –

THE WITNESS: That's fine.

THE COURT: -- further with you, they'll have an opportunity to redirect you.

THE WITNESS: Yes, sir.

THE COURT: So answer the question as directly and succinctly as you can.

THE WITNESS: Yes, sir.

BY MR. HENDERSON:

Q: So, Mr. Michaels, you're – you're admitted to The Florida Bar. And you were also admitted to the Bar of the Middle District of Florida originally in 1996.

Does that sound correct?

A: Possibly, yes. Sounds about right.

Q: And as far as the admission process, you have to pay an application fee. And you have to read the local rules.

A: That's correct.

Q: And you're sworn in. And when you're sworn in you become a member in good standing, right?

A: Yes.

Q: And then periodically you have to pay dues or fees to keep your good standing current?

A: Honest, I don't know. I don't remember. But you're probably right.

Q: Well, isn't it true that in that -- after your first admission to the Middle District of Florida Bar that you lapsed in our payment of dues to the Court?

A: I have no clue,, but if you say so I probably did.

Q: And isn't it true that you found yourself at one point reapplying to become a member in good standing of the Bar of the Middle District of Florida?

A: It's possible. I have no direct recollection of this. But if you say so and check, I probably -- you're right.

Q: Do you remember that during the the time that you filed your notice of appearance you were not a member of the, in this case, you were not a member in good standing of the Bar?

A: No.

Q: Middle District of Florida?

A: No, I do not remember that. And, no, I don't think so.

Q: Do you remember that just prior to sentencing -- it would have been I believe in June of 2014 -- that you reapplied to the Middle District of Florida --

A: No, sir.

Q: -- for your membership?

A: I don't remember that. But you're probably right. If you check it, that's what the facts are in the computer probably. I have no independent recollection of that fact.

Q: So as you sit here today, you do not know whether you were a current member in good standing of the Middle District of Florida when you were representing Mr. Metayer in this case?

A: I assume I was.

Q: Are you currently a member in good standing?

A: I have no idea.

MS. CUMMINS: Objection, Your Honor.

THE COURT: Objection is overruled.

You can answer the question.

THE WITNESS: Yeah. I have no idea because I don't think I have to be a member to be a witness. I got subpoenaed to be here.

BY MR. HENDERSON:

Q: Fair enough.

Now, you typically practice in the Southern District of Florida?

A: Mostly. But I've been in other states in the United States.

Q: And you pride yourself at being a trial lawyer?

A: Yes, I do.

Q: And in the Southern District of Florida, they have their own local rules of court that you're very familiar with?

A: Yes, yes.

Q: Are you familiar with the local rules here in the Middle District of Florida?

A: Well, I was at sentencing. If you quiz me now, I'm probably going to fail. I haven't had a case here since 2012. I guess this is my last case here. I've had cases in the past in Tampa that I went to trial.

Q: Well, let me ask you, we were supposed to have a hearing in this matter in September of this year, 13. And we received notice that you were at the hospital, so the evidentiary hearing was canceled.

A: Yeah. Like any good boy, I brought a note from my mother. So, I mean, it's not – it's a joke. Not from my mother. It's from a doctor from the hospital.

If you want to see it, sir, I was in hospital. I do not lie, sir. I was in hospital sick on the 13 th.

Please, if you can – I have this for you.

THE COURT: Mr. Michaels, Mr. Michaels.

THE WITNESS: Yes, sir.

THE COURT: Listen to the question. Answer the question. This is not combat.

THE WITNESS: No. It's not.

THE COURT: All right. Listen to the question. Answer the question.

THE WITNESS: I was in hospital.

THE COURT: I understand.

THE WITNESS: I brought the letter.

THE COURT: I understand. You've answered the question.

We'll get a new one, and we'll proceed. E.H.T. Pg. 110-118

Mr. Michaels did not fulfill his obligations to The Florida Bar as he was not a member in good standing at the very time that he represented Petitioner. If he did not accomplish this minor technicality for himself, it is reasonable to assume that he certainly would not have fulfilled his obligations to Petitioner.

MR. MICHAELS' TESTIMONY LACKS CREDIBILITY BECAUSE HE COULD NOT HAVE ADVISED PETITIONER WHEN HE SAID THAT HE DID BECAUSE HE HAD NOT YET RECEIVED DISCOVERY WHEN HE LEFT THE VOICEMAIL TO THE AUSA

THE COURT: Mr. Michaels.

THE WITNESS: Yes, sir.

THE COURT: I would like for you just to answer the questions as directly as you can and not add all of the additional information that you're trying to add to your response.

Just answer the question directly. And we'll all, we'll all move through this procedure in a much more efficient way.

THE WITNESS: I apologize. I think that's what I am trying to do.

THE COURT: Okay.

THE WITNESS: Maybe I'm not doing a good job. Maybe I'm not a great witness. But I'm trying to do just that.

THE COURT: Okay. Well, you're not doing a good job.

THE WITNESS: Okay.

THE COURT: Let's try harder.

THE WITNESS: Okay.

THE COURT: All right. Mr. Henderson, new question.

MR. HENDERSON: Yes, Your Honor.

BY MR. HENDERSON:

Q: I understood you to say that in the five to six meetings that you had with Mr. Metayer that you advised him not to go to trial, to take a plea. Correct?

A: After I did my initial work, yes.

Q: So at what point was that that you made the determination Mr. Metayer you should not go to trial?

A: At the point where I receive all the discovery. I evaluate the discovery. I talk with his witnesses. If I'm not – I mean, I know he brought some people to me that I talk with them, defense witnesses.

I don't recall if I list them or not. Probably if I didn't list them, it was probably because the testimony was not very helpful. But I met with his witnesses as well.

This is a party. There are a lot of people in the yard during this party when the transaction, the coke transaction took place.

Q: Okay. Let me take a step back. How many times in total did you meet with Mr. Metayer?

A: As I said earlier, I can't recall. I don't keep log of how many – I have probably a thousand of clients. I can't keep a log.

Q: Okay.

A: Several times, sir. Several times.

Q: Yes. And it was just your testimony that you told him five or six times that he should not go to trial?

A: That's correct. Every time I met with him after I finish my evaluation of the case, I beg him, I advise him to try to take a plea

And I can –

THE COURT: Mr. Michaels, the question was how many times did you advise him?

THE WITNESS: Five, six times, Judge.

THE COURT: Thank you.

THE WITNESS: Sorry.

E.H.T. Pg. 131-134

Mr. Michaels had previously testified that his routine practice was to not advise his clients on how to proceed until he had received discovery, analyzed it and interviewed any potential defense witnesses. As demonstrated above, Mr. Michaels left the voicemail to Mr. Bodnar on June 5, 2012, informing Mr. Bodnar that Petitioner would be going to trial. However, the status conference had not been scheduled for another fifteen days, June 20, 2012. Furthermore, Mr. Michaels received the email response from Mr. Bodnar on July 9, 2012. Therefore, it is readily apparent that Mr. Michaels, according to his own testimony regarding his "standard practice," would not have yet advised Petitioner as to his recommendation whether to consider a plea or proceed to trial. Clearly Mr. Michaels' testimony at the evidentiary hearing was false.

MR. MICHAELS WAS UNABLE TO EXPLAIN THE SENTENCING GUIDELINES

Q: And at what point did you explain the guidelines to Mr.

Metayer?

A: Explained to him probably, if not the first time we met, definitely the second time. And subsequently several more time.

He understood exactly what he was doing, my client, my former client and your client today. He understood everything that

we were doing. He had another lawyer before that explained to him probably the same thing.

Q: I'm talking about what you explained to him. Can you in as much detail as possible relate to me what you told Mr. Metayer throughout your representation as to the federal guidelines and how they apply?

A: I have in my office -- I don't have it here with me -- a photocopy which is like one page of the guideline. It's a -- how you call this, plastic. It's in a plastic case. Just for my clients.

And every time I talk with a federal client, I take this out and I tell him, this is an elevator. It goes up and down based on A, B, C, D, E, F. If you're down at this level, that's what your recommended guidelines is. If your down at this level, that's what recommended is.

Can you tell me my guidelines? No, I can't. I need find the discovery, find the facts.

This is the initial conversation. And I tell him all this, and including Mr. Metayer, that in federal court you do not work like state court a deal on the years. In state court --

You asked me what I told him. That's what I told him.

Q: Yes.

A: Okay, I said in state court you can negotiate the plea exact -- you know in advance how much you're going to do, 100 percent. You shook hands with the prosecutor. That's good enough. If the Court rejects the plea in state court, you're not guilty. You go back to the drawing board.

But understand in federal court, I can never ever -- and I told him that. And I told every client. I'll never ever be able to tell you for sure what number you're going to get.

I can tell you if you qualify for this, qualify for that. And then if I work with the Government, I can tell you that they are not going to ask for this. They're not going to ask for that.

However, I told him and I told everybody the same thing. The FBI, the presentence investigation, is prepared by independent body

who reports to the Court. So just because me and the Government, I believe that maybe your role should be minor, I cannot guarantee you that role will be minor in the PSI because probation can come and say it's a major, or whatever the other term is.

I told them, including Mr. Metayer, there's never a guarantee. However, Mr. Metayer, based on my conversation with the prosecutor, I told him that it's my belief, 99 percent. I never make a promise in my entire life as a lawyer.

But I say based on my conversation, I believe you're going to qualify for safety valve. You most likely are going to to waive the min/man. The quantity is going to be low. Most likely you're going to get somewhere below five.

He conveyed that to me later. But I did not – that email he sent me was the day of the trial, I believe, or a week before. It doesn't mean we never talk about that.

Q: Well, I understand.

A: But I told him, yes, I told him everything. And I told him if you're facing 12 years and you lose trial and he gives you 15, I'm not going to use the word I use in my private life because I have a dirty mouth.

But I say, do you know what? Forget about the Government. Okay. We go to trial, I agree. You're not going to waive a trial when you can face four or five years more than you face if you take a plea. That's BS. Okay?

I don't do that. You want to do that, get another lawyer. In fact, I told him that. I tell everybody that. I don't roll over.

But when often – and I believe it's going to end up being somewhere around two and you face 18, you need to consider that. You know, figure out, make a compromise.

I believe you're not guilty. I know I told him that. Because he was very animated about that. And, in fact, the thought was never in his head. So I told him I believe you. Whether I believe you or not makes no difference.

E.H.T. Pg. 137-140

EXCERPT OF THE DISTRICT COURT'S ORDER
RECOGNIZING THAT A PLEA OFFER HAD IN FACT BEEN MADE

It is important to note that in its order granting Petitioner's 2255 in part, and ordering an evidentiary hearing, even the district court had been convinced that a plea offer had in fact been made by the government:

"In the instant case, the Government asserts that it never made a two-year plea offer to Petitioner's attorney and petitioner continued to maintain his innocence even after trial. The Government notes it engaged in plea discussions with defense attorney Alexander Michaels, wherein the Government only told Michaels that Petitioner would be in a better position if he pled guilty, with or without a plea agreement, because he could receive a sentence less than the five-year minimum mandatory. To support its argument, the Government relies on an email from Assistant United States Attorney Robert Bodnar, Jr. to Michaels asking if petitioner was certain he wanted to proceed to trial and detailing the potential benefits of entering a plea with or without an agreement. The Government however, seemingly concedes that it did make a plea offer (the Government stating, "Importantly, Metayer does not claim that counsel did not convey the plea offer the United States actually made. Specifically, Metayer does not allege that counsel failed to advise him that his sentence would be lower if he were sentenced based on a guilty plea and an acceptance of responsibility."). Nevertheless, it is not clear what that offer entailed. Petitioner maintains there was a two-year plea offer as evidenced by Michaels' letter to The Florida Bar. In the letter, Michaels states, "I had worked out a deal with the prosecutor where [Petitioner] would have received approximately 2 years in prison." Petitioner further contends that Michaels never apprised him of the plea offer actually made by the Government, which is presumably memorialized in the email from AUSA Bodnar.

Petitioner has presented evidence supporting his position that there was a plea offer of two years or otherwise made by the Government. He further maintains that Michaels did not apprise him of any plea offers from the Government, and he would have accepted a two-year plea offer had he been told of it. Although Michaels said at the sentencing hearing that Petitioner maintained his innocence and in his letter to The Florida Bar that Petitioner chose to go to trial despite the “deal” with the prosecutor, Petitioner’s purported denial of guilt “is not dispositive on the question of whether he would have accepted the government’s plea offer.” Osley v. United States, 751 F.3d 1214, 1224 (11th Cir. 2014). Instead, “it is ... a relevant consideration.” (See Appendix C).

THIS COURT’S STANDARD FOR THE INEFFECTIVE ASSISTANCE OF COUNSEL

Strickland v. Washington, 104 S.Ct. 2052 (1984), established a two-part test for determining whether a convicted person is entitled to relief on the ground that his counsel rendered ineffective assistance: (1) whether counsel’s performance was deficient and “fell below an objective standard of reasonableness”; and (2) whether the deficient performance prejudiced the defense. Id. at 2064. The right to effective assistance of counsel extends to plea negotiations. Lafler v. Cooper, 132 S.Ct. 1376, 1384 (2012). From those plea negotiations, counsel has “particular duties to consult with the defendant on important decisions and to keep [him] informed of important developments in the course of the prosecution.” Strickland, 104 S.Ct. at 2065.

In Lee v. United States, 137 S.Ct. 1958 (2017), this court reversed and remanded the Sixth Circuit Court of Appeals’ decision in a similar case involving a

Legal Permanent Resident who had been indicted on drug-trafficking offenses. This court emphasized that its decision in Missouri v. Frye, 566 U.S. 1133 (2012), where “the Court did not focus solely on whether the defendant would have accepted the plea. It instead required the defendant to show that the ultimate outcome would have been different.” Id.

**PETITIONER TOTALLY RELIED UPON HIS ATTORNEY
WHO WAS CONSTITUTIONALLY INEFFECTIVE FOR
FAILING TO COMMUNICATE PLEA NEGOTIATIONS AND INFORMAL PLEA OFFERS**

Petitioner is a Legal Permanent Resident of the United States and a national of the Commonwealth of the Bahamas. Prior to the instant case, Petitioner has never had any exposure to the United States criminal justice system whatsoever and has no prior criminal history. As such, he was totally dependent on the representations of his attorneys – especially Mr. Michaels.

Petitioner testified that from his first attorney, then to Mr. Michaels, and lastly with his jail-house “lawyer,” he relied upon their advice and representations as to his best interests, albeit to a fault. His first attorney, the family’s Immigration attorney, advised Petitioner that a plea was not an option due to the legal ramifications as to his resident alien status. However, counsel did not advise what a “plea” was, nor did he explain the risks involved in proceeding to trial. Mr. Michaels did not convey plea discussions nor did he advise Petitioner as to the benefits or risks associated with a plea or trial. More importantly, trial counsel repeatedly assured Petitioner that the evidence would be suppressed and his case was an easy one to win at trial. Petitioner testified that he had no independent understanding of the criminal legal system and its workings. Only

that he followed counsel's instructions to which he did not question. Throughout the prosecution of the criminal case, the AUSA made many overtures and offers to trial counsel in discussing plea opportunities. Based on testimony by the AUSA and the voicemail recording left by Mr. Michaels, both attorneys had been in plea discussions and negotiations. Mr. Michaels interpreted these discussions as plea offers and memorialized them as the same in his letter to The Florida Bar. However, Mr. Michaels failed to keep Petitioner informed of any plea discussions and his failure to communicate plea negotiations is, at a minimum, inconsistent with his duty to "consult with his client on important decisions and to keep him informed of important developments in the course of the prosecution." Diaz v. United States, 930 F.2d 832, 834 (11th Cir. 1991).

Petitioner believes that Carmichael is instructive. The facts in Carmichael involved the alleged failure of trial counsel to convey to his client "any pre-trial plea negotiations" had with the prosecutor. Carmichael, 2016 WL 4524461 at*5. The Eleventh Circuit held that the claim warranted an evidentiary hearing and explained that, "[a]lthough the government's plea offers were informal, Carmichael's counsel had a continuing obligation to consult with Carmichael regarding important developments, including plea negotiations in his case. Otherwise, such informal plea negotiations would be unlikely to turn into formal plea offers." Carmichael, 2016 WL 4524461 at *9 (citing Diaz, 930 F.2d at 834; Missouri v. Frye, 132 S.Ct. 1399, 1407).

Carmichael is analogous to what happened in Petitioner's case. Petitioner's criminal trial attorney did not keep his client informed about the plea opportunities and the overtures made by the United States. He did not adequately explain to his client the consequences of going to trial as opposed to

pleading guilty. Petitioner was resolute: he was never informed by trial counsel regarding plea discussions, overtures, or offers. Mr. Michaels testified that he disfavored “snitches,” had a reputation as an aggressive trial attorney, however, he begged Petitioner not to proceed to trial. The credibility assessment of witnesses is reserved for the Court. See Castle v. Sangamo Weston, Inc., 837 F.2d 1550, 1559 (11th Cir. 1988) (“Assessing the weight of evidence and credibility of witnesses is reserved for the trier of fact.”). “[T]o adequately determine the credibility of a witness ...the fact-finder must observe the witness.” United States v. Powell, 628 F.3d 1254, 1257 (11th Cir. 2010) (quoting Louis v. Blackburn, 30 F.2d 1105, 1110 (5th Cir. 1980)). “A proper credibility determination ... includes [consideration of] ‘the internal consistency of the [witness’s] testimony, or his candor or demeanor on the stand.’” United States v. Ramirez-Chilel, 289 F.3d 744, 749 (11th Cir. 2002)(quoting Gallego v. United States, 174 F.3d 1196, 1198 (11th Cir. 1999)). The district court endured and observed several hours of Mr. Michaels’ testimony, compared to Petitioner’s testimony in explaining why he inevitably proceeded to trial. Petitioner’s was truthful as to his involvement and that had he been given the opportunity, he would have admitted his role in the offense, accepted responsibility, and pled guilty. The testimony by the AUSA only crystalized the inconsistent statements made by Mr. Michaels and noted that he observed some “defiant” behavior, but agreed that it could have been the product of what Petitioner’s attorney had been telling him about the case.

Part two of the Strickland test requires a determination as to whether trial attorney’s deficient performance prejudiced the defense. Strickland, 104 S.Ct. at 2064. Petitioner’s advisory guidelines range, at his original sentencing hearing, began at 151 to 188 months’ imprisonment. Mr. Michaels objected to the

inclusion of additional quantities of cocaine and the Court sustained the objection and reduced Petitioner's guideline range to 97 to 121 months. Had Petitioner been afforded the opportunity to plea, he may have been awarded the safety valve. However, whether relief would have been awarded under the safety valve is not dispositive or particularly relevant at this juncture because it cannot be demonstrated that the Court would, in any event, have exercised its discretion and awarded a two-level reduction had Petitioner pled guilty. That said, the advisory range upon entry of a guilty plea, definitely, would have been markedly less, and the Court would not have been exposed to the information subsequently used to sentence Petitioner near the top end of the recommended guideline range. Rather, it would have been a straightforward guilty plea to conspiracy to possess with the intent to distribute 4 kilograms of cocaine. With no prior record, the recommended guidelines range would have decreased from 151-188 months to 78-97 months and, with the additional decrease under Amendment 782, Petitioner's guidelines range would currently be 63-78 months.

MISSOURI V. FRYE EXTENDS TO PLEA NEGOTIATIONS AND DISCUSSIONS

In Missouri v. Frye, 132 S.Ct. 1399 (2012), this court considered "whether the constitutional right to counsel extends to plea negotiations." The court first discussed two cases considering the role of counsel in advising a client where a plea offer is consummated by a guilty plea, and pointed to the opportunity by the Court and the government to cure any deficiencies in understanding and/or performance of trial counsel by conducting a thorough plea colloquy to ensure that an intelligent plea is knowingly and voluntarily being entered. Frye, 132 S.Ct., at 1406-07. But the Court also discussed the interaction between the prosecutor and the defense attorney with the backdrop that:

“[n]inety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas” and concluded, “[i]n today’s criminal justice system, therefore, the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant.”

This Court held that the failure to communicate plea negotiations would be sufficient in establishing deficient performance of counsel. Id. To demonstrate prejudice where the Petitioner did not enter a guilty plea but instead proceeded to trial, the Petitioner must show that, but for the ineffective assistance of counsel, a reasonable probability existed that (1) the plea offer would have been presented to the court (i.e. the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances); (2) the court would have accepted its terms; and (3) the conviction or sentence, or both, under the offer’s terms would have been less severe than under the judgment and sentence that were, in fact, imposed. Lafler, 132 S.Ct. at 1385.

**RECENT CASES THAT HAVE PRESENTED THE SAME ISSUE
AND WHICH HAVE RECEIVED FAVORABLE RULINGS**

A variety of recent cases that have presented this same issue have received favorable results, demonstrating the significant nature of Petitioner’s claim. These include MacLloyd v. United States, 2017 WL 1242126 (6th Cir. 2017)(reversed and remanded for hearing on counsel’s failure to properly advise defendant on plea offer); United States v. Velasquez, 855 F.3d 1021 (9th Cir. 2017)(vacated and remanded due to district court’s lack of inquiry into defendant’s counsel’s representation during the plea-bargaining stage); Weldon v. United States, 840 F.3d 865 (7th Cir. 2016)(vacated and remanded where

counsel was ineffective for persuading defendant to plead guilty because the defendant “had no possible defense”); United States v. Marquez-Perez, 835 F.3d 153 (1st Cir. 2016)(remand to the district court for evidentiary hearing was warranted on defendant’s ineffective assistance of counsel claim); Torres-Chavez v. United States, 828 F.3d 582 (7th Cir. 2016)(remanded for an evidentiary hearing where counsel was ineffective for advising defendant to reject government’s plea offer and proceed to trial); United States v. Pirk, 2017 WL 713659 (W.D.N.Y. 2017)(district court granted government’s motion to conduct a Frye and Lafler colloquy); United States v. Arrendondo-Meza, 213 F.Supp.3d 1311 (D. Idaho 2016)(defense counsel was ineffective in communicating plea offer to defendant); Green v. Attorney General, State of Florida, 193 F.Supp.3d 1274 (M.D. Fla.)(counsel provided ineffective assistance by not following up with defendant regarding plea offer as he said he would, not communicating defendant’s interest in accepting that offer to the state, and allowing plea offer to lapse without further communication with defendant.)

PETITIONER WAS PREJUDICED

In Frye, this Court cited the American Bar Association’s recommendation that defense counsel “promptly communicate and explain to the defendant all plea offers made by the prosecuting attorney” and alluded to Diaz v. United States, 930 F.2d 832 (11th Cir. 1991), in which the Eleventh Circuit pointed to the description of his attorney’s advice as to the derogatory worth of the plea offer as evidence that the defense attorney had, indeed, informed his client about the offer, Frye, 132 S.Ct. at 1408. The fact that the record showed that the offer was communicated and explained by the defense attorney created the inference that,

had Diaz not agreed with the decision to reject it, he had ample opportunities to openly disagree with its rejection. That is not the case here. Rather, plea negotiations amounted to one-sided overtures by the prosecutor that were then unilaterally rejected by the trial defense attorney. The plea options were never conveyed, much more explained, to Petitioner by Mr. Michaels. That is deficient performance and a clear breach of the fundamental duty of every lawyer to consult with the client on important decisions and keep him informed of important developments in the course of the prosecution. That deficient performance resulted in prejudice to Petitioner.

**THE SUPREME COURT'S STANDARD
FOR A CERTIFICATE OF APPEALABILITY**

This Court's precedent is clear: a Certificate of Appealability involves only a threshold analysis and preserves full appellate review of potentially meritorious claims. Thus, "a prisoner seeking a COA need only demonstrate "a substantial showing" that the district court erred in denying relief. Miller-El v. Cockrell, 537 U.S. 322, 327 (quoting Slack v. McDaniel, 529 U.S. at 473, 484 (2000) and 28 U.S.C. § 2253(c)(2)). This "threshold inquiry" is satisfied so long as reasonable jurists could either disagree with the district court's decision of "conclude the issues presented are adequate to deserve encouragement to proceed further." Id. at 327, 336. A COA is not contingent upon proof "that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration that Petitioner will not prevail." Id. at 338.

In sum, the touchstone is “the debatability of the underlying constitutional claim [or procedural issue], not the resolution of that debate.” Id. at 342.

REASONS FOR GRANTING THE PETITION

“[T]he Supreme Court has said [that] the [Certificate of Appealability] statute’s “threshold inquiry” is satisfied so long as “the issues presented are adequate to deserve encouragement to proceed further.” Miller-El v. Cockrell, 537 U.S. 322, 327, 123 S.Ct. 1029, 1034, 154 L.Ed.2d 931 (2003). This “does not require a showing that the appeal will succeed.” Id. at 337, 123 S.Ct. at 1039. It doesn’t even mean that “some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the ... case has received full consideration, that [Petitioner] will not prevail.” Id. at 338, 123 S.Ct. at 1040. ... A COA requires “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).”

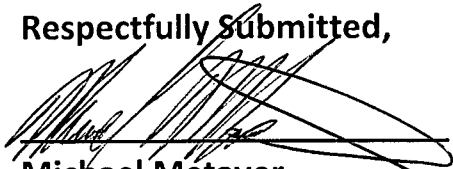
The foregoing facts and evidence clearly exceed these standards. Nevertheless, in spite of this fairly lenient standard, and all of the foregoing irrefutable evidence of Petitioner’s showing of the ineffective assistance of counsel, both the district court and the Eleventh Circuit have refused to grant Petitioner a Certificate of Appealability. This court should grant this Petition and issue a Certificate of Appealability on Petitioner’s single issue of the ineffective assistance of counsel as Petitioner has demonstrated “a substantial showing of the denial of a constitutional right.”

CONCLUSION

Petitioner has no legal training but has endeavored to present to this court the facts and relevant case law to the very best of his ability. Petitioner, a foreign national, went to trial, principally because of his unfamiliarity with the United States criminal justice system and that he believed that he had no alternative. Although the evidence of his attorney's abject failure to inform Petitioner of his options and to keep Petitioner aware of the discussions and informal plea negotiations that his attorney had been having with the prosecutor his attorney's dearth of experience with federal criminal trials and his attorney's unfamiliarity with the federal sentencing guidelines, the lower courts have refused to grant Petitioner the justice that he deserves. Nevertheless, for all of the foregoing reasons - especially this Court's recent precedents regarding this very issue - Petitioner respectfully submits that his case is significant and extraordinary. At a minimum, reasonable jurists could so conclude, which means a COA must issue. This court's review is warranted in order to maintain public confidence in the federal criminal justice system that courts will not permit a conviction to stand or an inmate to languish in prison without a full-throated analysis of his habeas claims on their merits. The Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

Date: December 14, 2017



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