

No. _____

Provided to Suwannee
Correctional Institution on

FEB 28 2018

for mailing, by 

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE GLEN DALE SPIVEY - PLAINTIFF

VS.

SECRETARY, DEPARTMENT
OF CORRECTIONS, ET AL - RESPONDENT(S)

WRIT OF HABEAS CORPUS TO
UNITED STATES DISTRICT COURT, MIDDLE
DISTRICT OF FLORIDA, TAMPA DIVISION

Glen Dale Spivey
Suwannee Correctional,
Institution
5964 US Hwy 90
Live Oak, Florida
32060

TABLE OF CONTENTS

OPINIONS BELOW	
JURISDICTION	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	2-13.
REASONS FOR GRANTING THE WRIT	14-44.
CONCLUSION	44, 45

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

<i>Coleman v. Thompson</i> , 111 S.Ct. 2546, 256-67, 115 L. Ed. 2d 640 (1991) -----	29, 30
<i>Davilla v. Davis</i> , 26 Fed. FLW no. 44 (5) 741 (2017) -----	8, 21, 35
<i>State v. Fleming</i> , 36 Fla. L. WEEKLY (5) (Fla. 2011) -----	38
<i>Haynes v. Thaler</i> , 133 S.Ct. 639 (2012) -----	43

STATUTES AND RULES

784.021, (1)(a) Fla. stat. (1999) -----	40.
843.01, Fla. stat. (1999) -----	39.
Federal Rules of Civil, Procedure, 56(a) ---	1, 11, 12, 13, 20, 22, 24, 41-44.
Federal Rules Civil Procedure. -----	16.
28 U.S.C.A. section 2241, (a), (b), (c) (5) -----	1, 2, 15, 18, 25, 42, 45.
28 U.S.C.A. section 2242 -----	18, 25, 42.
28 U.S.C.A. section 2254 -----	1-6, 9, 11, 13, 20-22, 24, 25, 27, 28, 30.
OTHER	
1-308 -----	19.
1-303 -----	19.
9-210 -----	22.

TABLE of AUTHORITIES CITED

CASES

PAGE

Hutton v. GDCP Warden, 25 Fla. L. Weekly, Fed. C119 (11 th Cir. 2014) -----	28, 30.
Martinez v. Ryan, 132 S. Ct. 1309, (2012) -----	7, 2, 6-9, 17, 26, 29, 31, 32, 34, 35, 43, 44.
North Carolina v. Pearce, 395 U.S. 711, 89 S. Ct. 2072, 711, 23 L. Ed. 2d 656 (1969) -----	38.
Strickland v. Washington, 466 U.S. 668 (1984) -----	6, 30, 32.
Trevino v. Thaler, 133 S. Ct. 1911 (2013) -----	12, 25, 26, 29, 43.
Wemett v. State, 567 So. 2d 882 (Fla. 1990) -----	38.

STATUTES AND RULES

28 U.S.C.A. Section 2254 -----	35, 36, 41, 44.
28 U.S.C.A. Section 2254(c) -----	1, 3-5, 27, 29, 31, 35, 44.
28 U.S.C. Section 1746 -----	45.

LIST OF PARTIES

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

Questions Presented

1. Have *Trevino v. Thaler*, 133 S.Ct. 1911 (2013) and *Martinez v. Ryan*, 132 S.Ct. 1309 (2012) superceded, (overruled) 28 U.S.C.A. Section 2254(i) and, if so, do ineffectiveness or incompetence of counsel during a state first-review collateral postconviction proceeding be a ground for relief in a proceeding arising under section 2254 apply to the Florida State Courts?
2. Have the Judicial Court of Trustees(s) Steven D. Merryday, for the United States District Court, Middle District of Florida, Tampa Division defaulted when failing to counter claim Plaintiff's proof of claims within 14 days of receipt, and, if so, do Florida Department Corrections have to release Plaintiff Claimant Glen Dale Spivey from custody of Florida Department Corrections under Federal Rules of Civil Procedure 56(c), and Writ of habeas corpus 28 U.S.C.A. Section 2241, (a), (b), (c)(5)?

STATEMENT OF THE CASE

This writ of habeas corpus, 28 U.S.C. section 2241 involved decisions from the Thirteenth Judicial Circuit Court, in and for Hillsborough County, Florida, case number, 00-01997, trial court's orders of February 26, 2004, and December 12, 2005), (attached to Plaintiff's writ of habeas corpus 28 U.S.C.A. section 2254 of March 22, 2013, case number, 8:13-CV-00767-SDM-CPT, that is still pending). On and around December of 2012, (In the United States Supreme Court) after exhausting state court remedies the Plaintiff, on March 22, 2013 filed a writ of habeas corpus in the United States District Court, Middle District of Florida, Tampa Division. On January 2, 2015, the Plaintiff filed an Application For Amended And Supplemental Pleading To Petition For Writ of Habeas Corpus 28 U.S.C.A. Section 2254, under the authority of Trevino v. Thaler, 133 S.Ct. 1911 (2013); Martinez v. Ryan, 132 S.Ct. 1309 (2012)

in regards to Ground Two, (xi'), failure to investigate Jose Mack pages 4-22, and Ground Two, (xii), failure to investigate Officer Chaffin, pages 22-33, thus, Plaintiff set forth that the Assistant Attorney General for the State, (of Florida) reasoned because the State Court (of Florida) denied these claims on procedural grounds, they are not reviewable by federal habeas corpus. (see Plaintiff's Application For Amended And Supplemental Pleading To Petition For Writ of Habeas Corpus 28 U.S.C.A. section 2254 of January 2, 2015, attached as appendix E). On January 16, 2015, the Judicial Court of Trustee(s), Steven D. Merryday, for the United States District Court, Middle District of Florida, Tampa Division, rendered an order claiming Spivey seeks to include a claim that he was denied the effective assistance of counsel during the state postconviction proceeding. Section 2254(i) precludes this claim because "[t]he ineffectiveness or incompetence

of counsel during Federal or State collateral postconviction proceedings shall not be a ground for relief in a proceeding arising under section 2254. (see Judicial Court of Trustee(s), Steven D. Merryday, for the United States District Court, Middle District of Florida, Tampa Division, order of January 16, 2015, attached as appendix I). On January 28, 2015, the Plaintiff filed an Application For Motion To Reconsideration of Motion To Amend And Supplemental Pleading To Petition For Habeas Corpus 28 U.S.C.A. section 2254, Plaintiff set forth counter claim in the Standard of Review that Plaintiff contended that the Judicial Court of Trustee(s), Steven D. Merryday, for the United States District Court, Middle District of Florida, Tampa Division order of January 16, 2015, held where the federal district court applied section 2254(i) to preclude the claim of "the ineffectiveness or

incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254" does not apply in the instant cause of action. (see Plaintiff's Application For Motion To Reconsideration of Motion To Amend And Supplemental Pleading To Petition For Habeas Corpus 28 U.S.C.A. section 2254 of January 28, 2015, page 3, attached as appendix F). On February 5, 2015, the Judicial Court of Trustees, Steven D. Merryday, for the United States District Court, Middle District of Florida, Tampa Division, proof of counter claim was that: The earlier order, (January 16, 2015) understood the proposed paper as an attempt to include a claim that Spivey was denied the effective assistance of counsel during the state postconviction proceeding. Since 2254(i) precludes that claim because "the ineffectiveness or incompetence

of counsel during Federal or State collateral postconviction proceeding shall not be a ground for relief in a proceeding arising under section 2254. (see Judicial Court of Trustee(s), Steven D. Merryday, for the United States District Court, Middle District of Florida, Tampa. Division order of February 5, 2015 attached as appendix J). On February 19, 2015, the Respondent(s) conceded Plaintiff's counter claim that Plaintiff may establish cause for default of a claim of ineffective assistance of trial counsel by showing that counsel was not appointed in the state postconviction proceeding, or that appointed postconviction counsel was ineffective under the standards of Strickland v. Washington, 466 U.S. 668, 688 (1984) and that the defaulted claim is a "substantial one, which is to say that the Plaintiff must demonstrate that the claim has some merit." Martinez v. Ryan, 132 S. Ct. 1309, 1318-1319 (2012). (see Respondent's Response To Supplement To Petition of February 19, 2015, attached as

appendix K). On March 10, 2015, Plaintiff counter claimed with a Reply To Respondent's Response To Supplement To Petition in Ground Two, (xi) the Respondent had substantiated in Ground Two, (xi) that after the trial counsel had investigated Jose Mack, and found out Jose Mack was arrested for aggravated battery on a pregnant woman, he should had investigated further, and the resolution is the credibility that if Jose Mack was being dishonest about being legally employed as an armed security guard, thus, Jose Mack was Also being dishonest about being attacked with a knife by the Plaintiff, establishing cause for default, under Martinez v. Ryan, 132 S.Ct. 1309, 1318-1319 (2012). Also, in Ground Two, (xii) Plaintiff set forth proof of claim that the prosecutor represented this unknown mystery witness as a good Samaritan, and Officer Chaffin committed fraud upon the court, by testifying

knowingly that the witness name was, (not) James Wilson, and officer Chaffin and James Wilson's hearsay statement by Officer McAlevey did extreme damage to the Plaintiff's/Petitioner's case where if James Wilson's true identity would have been discovered during pre-trial, Officer Chaffin credibility would have been destroyed during jury trial. (see Plaintiff's Reply To Respondent's Response To Supplement To Petition of March 10, 2015, attached as appendix H). Also, on March 10, 2017, the Plaintiff set forth proof of claim that the United States Supreme Court, on June 26, 2017, decided Davilla v. Davis, 26 Fed. FLW, no. 44, (S) 741 (2017) stating: where the Supreme Court in Martinez announced a narrow "equitable qualification" of the rule in Coleman that applies where state law requires prisoners, (Plaintiff) to raise claims of ineffective assistance of trial counsel" in an

initial-review collateral proceeding "rather than on direct appeal. Martinez, 566 U.S. at 16, 17. (see Plaintiff's Application For Supplemental Authority To Petition For Habeas Corpus 28 U.S.C.A. section 2254 of October 10, 2017, attached as appendix G).

On September 29, 2017, the Judicial Court of Trustee(s), Steven D. Merryday, for the United States District Court, Middle District of Florida, Tampa Division rendered an order of Stayed And Administratively Closed this instant cause of action, and ordered Respondent to serve the Plaintiff a copy of the appendix by October 30, 2017. (see Judicial Court of Trustee(s), Steven D. Merryday, for the United States District Court, Middle District of Florida, Tampa Division order of September 29, 2017, attached as appendix L).

On November 7, 2017, the Plaintiff set forth proof of claims in a writ compelling Striking Respondent's Updated/Corrected/Amended Response To Petition A Notice of Summary Judgment For Partial Summary Judgment, and on November 28, 2017, the Judicial Court of Trustees, Steven D. Merryday, for the United States District Court, Middle District of Florida, Tampa Division failed to rebut or dispute Plaintiff's proof of claims of A Notice of Summary Judgment For Partial Summary Judgment within 14 days of receipt of the clerk's office for the Judicial Court of Trustees, for the United States District Court, Middle District of Florida, Tampa Division. (see Judicial Court of Trustees, Steven D. Merryday, for the United States District Court, Middle District of Florida, Tampa Division order of November 28, 2017, setting forth matters that Spivey moves, (Doc. 67) to strike the response apparently based on Spivey's conclusion that the response is longer than permitted under the local rules. Spivey's motion lacks merit

because the district court granted leave to file the extended response, (Doc. 65) attached as appendix M). Also see Plaintiff's Writ Compelling Partial Summary Judgment Under Federal Rules of Civil Procedure 56(a) for Writ of Habeas Corpus 28 U.S.C.A. section 2254 of December 13, 2017, with a clerk's receipt of December 19, 2017, along with appendix A, of Plaintiff's Writ Compelling Striking Respondent's UPDATED/ CORRECTED/ AMENDED/ RESPONSE To Petition A Notice of Summary Judgment For Partial summary Judgment, attached as appendix D). Also, on December 13, 2017, Plaintiff set forth proof of claims with matters in a Writ Compelling Partial Summary Judgment Under Federal Rules of Civil Procedure 56(a) For Writ of Habeas Corpus 28 U.S.C.A. section 2254, where Respondents failed to set forth valid 3rd party prima facie evidence documented within 14 days from receipt of filing date

constitute acceptance of full knowledge
disclosure of Plaintiff's Claimant's
Glen Dale Spivey proof of claims. See
Plaintiff's Judicial Notice Memorandum of
Record with Proof of claims (1) that the
sentencing transcript for the proceeding
of September 5, 2001 reads: The Court:
count 6, the sentence will remain the
same except for count 6 will be 15
year concurrent sentence to run
concurrent with his other counts. Also,
see Amended sentence order of September
5, 2001, where trial court judge, (Perry)
ran count 6 concurrent with counts
1, 3, 4, and 5.

Also, (2) Plaintiff set forth proof of
claims counter claims that Respondent 3
failed to rebutt Plaintiff's proof of
claims that the aggravated factor(s)
(elements) of the offense must
be charged in the information, submitted
to the jury, (with jury instructions)
and proven beyond a reasonable doubt

(with interrogatory question(s) in the jury verdict form) is a matter of State and federal law. (Plaintiff asserts that in regards to the Respondent's Response To Petition of June 4, 2013, shows and demonstrate that the Florida State courts do not have no directions, or is violating six and fourteenth amendments to the United States Constitution on how to convict and sentence the offenders in the State of Florida) thus, Respondents has failed to rebutt or dispute Plaintiff's proof of claims and Respondents are in default of Plaintiff Claimant Beneficiary "GLEN DALE SPIVEY" d/b/a C-410286, Glen Dale Spivey Writ Compelling Partial Summary Judgment Under Federal Rules of Civil Procedure 56(a) For Writ of Habeas Corpus 28 U.S.C.A. section 2254 of December 13, 2017, attached as appendix D).

REASONS FOR GRANTING THE PETITION

The Plaintiff/Claimant/Beneficiary
"GLEN DALE SPIVEY" DC# C-410286

Glen Dale Spivey asserts after Direct Appeal, or during the first-review collateral postconviction proceeding, it is the practice of Florida State Courts to deprive the offenders effective assistance of appointed counsel. The Plaintiff asserts that the instant cause of action is a prime example how the Florida State Courts set forth 3rd party prima facie documented evidence were appointed counsel go into cahoots with the prosecutor to conceal 3rd party prima facie evidence to evade Plaintiff a New Trial, because the Florida State Courts do not recognize by existing Florida law, ineffective assistance of appointed postconviction counsel as a ground for relief.

Reasons For Not Making Application For
Writ of Habeas Corpus 28 U.S.C. Section
2241, To The District Court of The District
Court of The District In Which The
Applicant Is Held.

The Plaintiff/Claimant/Beneficiary
"GLEN DALE SPIVEY" DC# C-410286

Glen Dale Spivey, asserts that the matters
that will be set forth in this writ of
habeas corpus under section 28 U.S.C.
section 2241, is pending before the
United States District Court, Middle District
of Florida, Tampa Division, (case number
8:13-cv-00767-SDM-CPT).

On July 22, 2013, the United States
District Court, Middle District of Florida,
Tampa Division, Judicial Court Trustees,
Steven D. Merryday rendered an order
denying discovery, (Doc. 24) of a claim
that was both the subject of an
evidentiary hearing on the merits in
state postconviction proceeding, also

the state court order rejecting consideration of an untimely claim based on newly discovered evidence that is the focus of this writ of habeas corpus. (see Judicial Court Trustee, Steven D. Merryday order of July 22, 2013, attached as appendix A). On November 7, 2013, the United States Court of Appeals, for the Eleventh Circuit dismissed Plaintiff's appeal, (in regard to Judicial Court Trustee, Steven D. Merryday order of July 22, 2013) sua sponte for lack of jurisdiction of the Plaintiff's motion for reconsideration, (under rule 60(b) of Federal Rules of Civil Procedure), (case number, 13-14167-L), also On January 21, 2014, the clerk for the United States Court of Appeals, for the Eleventh Circuit received Plaintiff's letter to The Clerk on

Petition for Rehearing or Rehearing
En banc For Supplemental Authorities,
and on February 6, 2014, Judicial Court
Trustee, clerk of Court, John Ley,
returned Plaintiff's letter to the
clerk on petition for Rehearing or
Rehearing En banc For Supplemental
Authorities, (dated January 17, 2014,
attached as appendix B). On June 20,
2013, the Plaintiff set forth 3rd party
prima facie evidence with the
Judicial Court Trustee(s) for the United
States District Court, Middle District
of Florida, Tampa Division to evaluate
a procedural default claim in
Martinez v. Ryan, 132 S.Ct. 1309 (2012).
See Plaintiff's Reply to Respondent's
Response to Petition of June 20, 2013,
pages, 16-19 for Ground Two, (xi) and
Ground Two, (xii) attached as appendix
C).

Writ of Habeas Corpus of U.S.C. Sections
2241 and 2242 Compelling Judicial
Court Trustees Action Regarding Action
Matters of Great Public Importance
Due To Administrative And Judicial
Agents Failure To Render Ministerial
Duty And Remedy Regarding Liberty
Statutory And Constitutional Matters

Comes Now, Plaintiff/Claimant
Beneficiary "GLEN DALE SPIVEY"
DL# C-410286, Glen Dale Spivey, sole
authorize agent representative attorney-
in-fact 3rd party INTERVENOR for
"GLEN DALE SPIVEY" who set forth
the following matters for Writ of
habeas corpus of U.S.C. sections
2241 and 2242 Compelling Judicial
Court Trustees Action Regarding
Action Matters of Great Public
Importance Due To Administrative

And Judicial Agents Failure To
Render Ministerial Duty And Remedy
Regarding Liberty Statutory And
Constitutional Matters in accord as
hereby Proof of Claims counter Claims
set forth irrefutable irrefragable
irrevokable material facts evidence
cause of action attaching liability
with knowledge full disclosure
rendered in support compelling court
order relief remedy releasing Plaintiff/
Claimant/Beneficiary "GLEN DALE SPIVEY"
DL# C-410286, Glen Dale Spivey from
Florida Department Corrections, (FDC)
Plaintiff [T] hereby being illegally detained
by FDC agents, staff, and officers.
Plaintiff noticed this Judicial Court Trustee(s)
of the Supreme Court of the United
States that Plaintiff reserves all rights
without prejudice UCC, 1-308 code shall
not be precluded. UCC, 1-303 claim
counter claim was not rebutted

in regards to Plaintiff's previous accounting
Statements for Writ Compelling Partial
Summary Judgment Under Federal Rules
of Civil Procedure 56(a) For Writ of
Habeas Corpus 28 U.S.C.A section
2254 that was provided to Suwannee
Correctional Institution on December
13, 2017, and received in the United
States District Court, Middle District
of Florida, Tampa Division at 5:04pm
December 19, 2017, attached as
appendix D). (Note: case number,
8:13-cv-767-T-23TBM have been
changed to: 8:13-cv-00767-SDM-CPT)
(see also document number 79).
Also see Plaintiff's Application
For Amended And Supplemental
Pleading To Petition For Writ of
Habeas Corpus 28 U.S.C.A section 2254

that was provided to Florida State Prison
January 2, 2015 attached as appendix

E). Also see Plaintiff's application for
motion to reconsideration of motion
to amend and supplemental pleading
to petition for Habeas Corpus 28
U.S.C.A. section 2254 of January 28,
2015 attached as appendix F). Also
see Plaintiff's application for supplemental
authority to petition for Habeas Corpus
28 U.S.C.A. section 2254 for United
States Supreme Court decision in Davilla v,
Davis, 26 Fla. L. Weekly Fed. (5) 741
(2017) dated, October 10, 2017, attached

as appendix G). Also see Plaintiff's
Reply to Respondent's Response to
Supplement To Petition of March 10,
2015 attached as appendix H).
Therefore, Plaintiff reasserts

all matters previously set forth for this Judicial Court of Trustees for the United States Supreme Court's review, UCC - 4-210. Respondent's claims counter claims failed to dispute leve rebuttal counter claims within 14 days of receipt barred said such [T]hereafter by latches and estoppel in accord Plaintiff asserts that the Respondents and the Judicial Court of Trustees for the United States District Court, Middle District of Florida, Tampa Division are in Default with Plaintiff's Writ Compelling Partial Summary Judgment Under Federal Rule of Civil Procedure 56(a) For Writ of Habeas Corpus 28 USCA section 2254 of December 13, 2017, and December 19, 2017 was received by the United States District Court Clerk for the Middle District of Florida

Tampa Division. see Plaintiff's writ compelling partial summary judgment under federal rule of civil procedure 56(a) for writ of habeas corpus 28 USCA section 2254 of December 13, 2017, that was provided to Suwannee Correctional Institution, and also, see the front page, which was provided to the Judicial Court Trustee, clerk of court, a second front page for verification of receipt of December 19, (this writ of habeas corpus should have two front pages for writ compelling partial summary judgment under federal rule of civil procedure 56(a) for writ of habeas corpus 28 USCA section 2254 attached as appendix D). Thus, Respondents and Judicial Court of Trustee(s) for the United States District Court,

Middle District of Florida, Tampa Division
failed to prove contrary to Plaintiff's
assertions proof of claims set forth
with documented valid proof within
14 days of filing date constitute
acceptance in full of all Plaintiff's
Claimant's Glen Dale Spivey assertions
proof of claims and matters compelled
relief remedy by granting Plaintiff's
writ compelling Partial Summary Judgment
Under Federal Rule of Civil Procedure
56(a) for writ of habeas corpus
28 USC section 2254 and release
Plaintiff/Claimant/Beneficiary
"GLEN DALE SPIVEY" D2#
Glen Dale Spivey C-410286
from Florida
Department Corrections fail not.
This Judicial Court of Trustees for
the Supreme Court of the United
States are noticed. In support.

of this true 'll affidavit accounting statement
with proof of claims set forth direct cause
of action for this Judicial Court of Trustee(s)
for the United States Supreme Court to
render compelled relief remedy as set-
forth in this writ of habeas corpus
28 U.S.C. sections 2241 and 2242.

CAVEAT

Judicial Notice Memorandum of Record With Proof of Claims

1. Plaintiff set forth proof of claims counter
claims where Plaintiff set forth 3rd
party prima facie evidence with an
Application For Amended And Supplemental
Pleading To Petition for Writ of Habeas
Corpus 28 U.S.C.A. section 2254 of
January 2, 2015, that Spivey should be
allowed to amend his federal habeas
corpus petition under the authority
of Trevino v. Thaler, 133 S.Ct. 1911

(2013), and *Martinez v. Ryan*, 132 S.Ct. 1309 (2012), in regards to Ground Two, (xi) and Ground Two, (xii) of Petitioner's/ Plaintiff's petition for writ of habeas corpus of March 22, 2013. Thus, Martinez created a limited equitable exception to *Coleman v. Thompson*, 111 S.Ct. 2546, 256-67, 115 L.Ed.2d 640 (1991) where (1) "a State requires a prisoner to raise an ineffective assistance of trial counsel claim in a collateral proceeding, as opposed to on direct appeal; (2) appointed counsel in the initial review collateral proceeding where the claim should have been raised, was ineffective under the standards of *Strickland*; and (3) the underlying ineffective assistance of trial counsel claim is a substantial one. *Martinez*, 132 S.Ct. 1318-19. See Plaintiff's Application For Amended

And Supplemental Pleading To Petition For Writ of Habeas Corpus 28 U.S.C.A. section 2254 of January 2, 2015, attached as appendix E).

Judicial Court of Trustees for the United States District Court, Middle District of Florida, Tampa Division rendered an order of January 16, 2015, stating: Spivey seeks to include a claim that he was denied the effective assistance of counsel during the section 2254(i) precludes this claim because "[t]he ineffectiveness or incompetence of counsel during Federal or State collateral postconviction proceeding shall not be a ground for relief in a proceeding arising under section 2254. (see Judicial Court of Trustee(s) for the United States District Court, Middle District of Florida, Tampa Division, Steven D. Merryday order of January 16, 2015.

attached as appendix I)

on January 28, 2015, the Plaintiff counter claim Judicial Court of Trustee(s) Steven D. Merryday's order of January 16, 2015, with 3rd party prima facie evidence set forth with matters in an Application For Motion To Reconsideration of Motion To Amend And Supplemental Pleading To Petition For Habeas Corpus 28 U.S.C.A. section 2254 that the Eleventh Circuit Court in *Hilton v. GDCP Warden*, 25 Fla. L. Weekly, Fed. C 119 (11th Cir. 2014) set forth. The Plaintiff set forth with 3rd party evidence that the Eleventh Circuit Court opined: where a petitioner seeks to overcome procedural default by way of *Martinez*, the court initially tasked with necessarily have to decide whether the claims are substantial, (the district court) without the

benefit of a state-court determination on the merits. *Hitton*, *Supra*, at C141. (see Plaintiff's Application For Motion To Reconsideration of Motion To Amend And Supplemental Pleading To Petition For Habeas Corpus 28 U.S.C.A. section 2254 of January 28, 2015, attached as appendix F).

The Plaintiff contends that the Judicial Court of Trustees(s) for the United States District Court, Middle District of Florida, Tampa Division, Steven D. Merryday's order of February 5, 2015, failed to rebut or refute Plaintiff's claim that the decisions in *Trevino*, *Supra*, and *Martinez*, *Supra*, superceded 28 U.S.C.A. section 2254 (i) to the extent that where the Supreme Court of the United States in *Trevino v. Thaler*, 133 S.Ct. 1911 (2013) created a three prong requirement in *Martinez* in regards

to a limited equitable exception to
Coleman v. Thompson, 111 S.Ct. 2546 (1991)
where, (1) "a State requires a prisoner
to raise an ineffective-assistance-
of-trial-counsel claim in a collateral
proceeding," as opposed to on direct
appeal, (2) appointed counsel in the
initial-reveiw collateral proceeding,
where the claim should have been
raised, was ineffective under the
standards of Strickland; and (3) the
ineffective-assistance-
of-trial-counsel claim is a
substantial one, Martinez, 132 S.Ct.
at 1318-19. *Hilton*, supra, at 134.
(see Plaintiff's Application For Motion
To Reconsideration of Motion To
Amend And Supplemental Pleading
To Petition For Habeas Corpus 28
U.S.C.A. section 2254 of January 28, 2015)
page 4, attached as appendix F).
Also see Judicial Court of Trustee(s).

for the United States District Court, Middle District of Florida, Tampa Division, Steven D. Merryday's order of February 5, 2015, failing to dispute or rebut 3rd party prima facie evidence when stating:

" The earlier order understood the proposed paper as an attempt to include a claim that Spivey was denied the effective assistance of counsel during the state post-conviction proceeding, (that's exactly what Plaintiff claim was in regards to Martinez, supra), Section 2254(i) precludes that claim because

" [t]he ineffectiveness or incompetence of counsel during Federal or state collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254, see order of February 5, 2015, attached as appendix J).

Moreover, the Plaintiff asserts that the Respondent's Response To Supplement To Petition of February 19, 2015

concedes to the fact that a prisoner may establish cause for default of a claim of ineffective assistance of trial counsel by showing that counsel was not appointed in the state postconviction proceeding, or that appointed postconviction counsel was ineffective under the standards of *Strickland v. Washington*, 466 U.S. 668, 688 (1984), and that the defaulted claim is a "substantial one, which is to say that the prisoner must demonstrate that the claim has some merit." *Martinez v. Ryan*, 132 S.Ct. 1309, 1318-1319 (2012). See Respondent's 2, of February 19, 2015, attached as appendix K).

Plaintiff's counter claim to the Respondent's Response To Supplement To Petition of February 19, 2015, is set forth with 3rd party prima facie evidence with matters in a Reply To Respondent's Response To Supplement To Petition of March 10, 2015, where in Ground Two, (xi) the respondent have substantiated Plaintiff's/Petitioner's claim that after the trial counsel

had investigated Jose Mack, and found out Jose Mack was arrested for aggravated battery on a pregnant woman, he should have investigated further. And the resolution is the credibility that if Jose Mack was being dishonest about being legally employed as an armed security guard, then he, (Jose Mack) was also being dishonest about being attacked (by Plaintiff) with a knife. Thus, Plaintiff established cause for default of this claim, (Ground Two, (xi) under Martinez v. Ryan, 132 S. Ct. 1309, 1318-1319 (2012).

The Plaintiff's proof of counter claim in regards to Ground Two, (xi'), set forth that the prosecutor, (during jury trial) represented this unknown mystery witness as a good samaritan, and Officer Chaffin committed fraud upon the court by testifying knowingly that the witness was, (not) James Wilson.

Officer Chaffin and James Wilson's

hearsay statement by Officer McAlevey did extreme damage to the Plaintiff's case at bar. If James Wilson's true identity would have been discovered during pre-trial, Officer Chaffin's credibility would have been destroyed during jury trial. The jury could have reasoned that if Officer Chaffin was deceitful about James Wilson's true identity, then Officer Chaffin was deceitful about the Plaintiff recognizing Officer Chaffin initially a police officer. Therefore, the Plaintiff has established cause for default of this claim of Ground Two, (xii) under Martinez, Supra, in this instant cause of action. (see Plaintiff's Reply to Respondent's Response to Supplement To Petition of March 10, 2015, attached as appendix H).

The Plaintiff set forth proof of claims with the Judicial Court of Trustee(s) for the United States District Court, Middle District of Florida, Tampa Division, that on June 26, 2017, the

Supreme Court of the United States decided Davila v. Davis, 26 Fed. FLW, no. 44, (S) 741 (2017) where the Supreme Court in Martinez announced a narrow "equitable qualification" of the rule in Coleman that applies where state law requires prisoners to raise claims of ineffective assistance of trial counsel "in a initial-review collateral proceeding," rather than on direct appeal. Martinez v. Ryan, 566 U.S. at 16, 17. The Supreme Court also clarified in Davila that if a prisoner can establish ineffective assistance of trial counsel under Martinez, he ordinarily is entitled to a new trial, superceding 28 U.S.C.A. section 2254 (i). (see Plaintiff's Application For Supplemental Authority To Petition For Habeas Corpus 28 U.S.C.A. section 2254 of October 10, 2017, attached as appendix G).

Sentence will remain the same except for count 6 will be 15 year concurrent sentence to run concurrent with his other counts, also the Amended Sentence order of September 5, 2001, trial court judge, (Perry) ran count 6 concurrent with counts 1, 3, 4, 5. Plaintiff also set forth that trial court Judge, (Perry) clarified the Amended Sentence order of September 5, 2001 with four (4) other orders, (July 23, 2002; August 21, 2003; February 26, 2004; and December 12, 2005) after the September 5, 2001 proceeding with the statement of the facts and case held: On September 5, 2001, the court set aside Plaintiff's June 8, 2000 sentence on count six only, and sentenced Plaintiff to fifteen, (15) years Florida State Prison on count six to run concurrently with count one, three, four, and five, (and attached Amended Sentence order of September 5, 2001 as exhibits).

Thus, the Plaintiff counter claim the Respondent's assertions in Ground Four, (v) failing to rebutt or dispute Plaintiff's claim that circuit court Judge, (sleet) on March 13, 2009 Vindictively resentenced Plaintiff to a more severe sentence without collateral grounds violating federal law in North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 711, 23 L.Ed.2d 656 (1969) (Whenever a judge imposes a more serve sentence upon a Plaintiff after a new trial, (as in Plaintiff's situation, after successfully attacking an illegal sentence) and the reasons for the more severe sentence must affirmatively appear in the record). See State v. Fleming, 36 Fla.L. Weekly, (5) 50 (Fla. 2011); also see Wernett v. State, 567 So.2d 882 (Fla. 1990).

3. Plaintiff set forth proof of counter claims and claim that Respondent

failed to rebutt Plaintiff's proof of claims that the aggravating factors, (elements) of the offense must be charged in the information, submitted to the jury, (with jury's instructions) and proven beyond a reasonable doubt, (with interrogatory questions in the jury's verdict form) is a matter of state and Federal law. Plaintiff asserts that the Respondent failed to rebut or dispute Plaintiff's proof of claim that knowledge of the officer's status is an essential element of the crime and offense of resisting or opposing an officer with violence under section 843.01, Fla. Stat. (1999). Plaintiff also set forth that the Florida Supreme Court clarified and decided in *Ramroop v. State*, 42 Fla. L. Weekly, (5) 381 (Fla. 2017) (that the United States Constitution guarantees

each criminal defendant the right " to a jury determination [of guilt] on every element of the crime with which he is charged, beyond a reasonable doubt. Ramroop, *Supra*. (resisting or opposing an officer with violence is count five of Plaintiff's information of offenses for the instant cause of action).

Also, the Plaintiff set forth proof of claims that count one of the information aggravated assault, under section 784.021, (1)(a), Fla. Stat. (1999) as a matter of law the trial court must prove that the Plaintiff's finger-nail-file was used as a deadly weapon to cause death or great bodily harm. Whereupon the jury necessary found that Plaintiff was guilty of the unaggravated form of aggravated assault especially when a common pocket-knife is excepted from the deadly weapon statute, 790.001, (13) Fla. Stat.

3. Lastly, Plaintiff set forth proof of claims with the United States District Court, Middle District of Florida, Tampa Division as Judicial Court Trustees who failed to rebutt or dispute within 14 days of receipt constitute acceptance in full of all Plaintiff's Claimant's Glen Dale Spivey assertions proof of claims and matters compelled relief remedy by granting Plaintiff's writ of Habeas Corpus of U.S.C. Sections 2241 and 2242 Compelling Judicial Court Trustees Action Regarding Action Matters of Great Public Importance Due To Administrative And Judicial Agents Failure To Render Ministerial Duty And Remedy Regarding Liberty Statutory And Constitutional matters. Plaintiff's proof of claim in regard to Partial Summary Judgment under Federal Rules of Civil Procedure, 56(a) which reads: Motion Judgment identifying each claim or

defense - on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to Judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

The Plaintiff asserts that the instant cause of action is apposite to the Supreme Court in *Haynes v. Thaler*, 133 S.Ct. 639 (2012) where the Plaintiff would be entitled under *Martinez*, *supra*, and is excused of Spivey's alleged procedural default of the Ground Two, (xi) and Ground Two, (xii) claims in Plaintiff's writ of habeas corpus enabling the United States District Court, Middle District of Florida, Tampa Division to rule on the claims, where this Judicial Court of Trustee(s) for the United States Supreme Court render remedy relief that Trevino, *supra*,

and Martinez, Supra, have superceded 28 U.S.C.A. Section 2254 (i). Moreover, the Plaintiff asserts that the Judicial Court of Trustee(s), Steven D. Merryday, for the United States District Court, Middle District of Florida, Tampa Division have defaulted and is in default, when failing to counter claim Plaintiff's proof of claims with 3rd party prima facie documented evidence within 14 days of receipt by the clerk of Plaintiff's proof of claims writ Compelling Partial Summary Judgment Under Federal Rules of Civil Procedure 56(a) For Writ of Habeas Corpus 28 USCA Section 2254 of receipt December 19, 2017 of said such.

Therefore, the Plaintiff request this Judicial Court of Trustee(s) for the Supreme Court of the United States to render relief remedy to immediately release Plaintiff Claimant Glen Dale Spivey DCH# C-410286 from Florida Department Corrections consistent