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**IN THE
SUPREME COURT OF THE UNITED STATES**

TOMMY RAY BRYANT - PETITIONER,

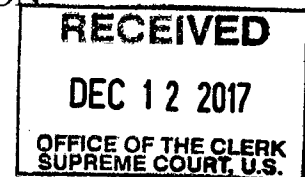
V.

JULIE JONES, SEC'Y, FLA. DEPT. OF CORR. – RESPONDENT(S)

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

PETITION FOR WRIT OF CERTIORI

TOMMY RAY BRYANT, #784990
HARDEE CORRECTIONAL INSTITUTION
6901 STATE ROAD 62
BOWLING GREEN, FLORIDA 33834



QUESTION(S) PRESENTED

QUESTION #1

Whether the lower court's reasonably determined that Bryant's counsel made a "strategic decision" not to pursue the test results from Florida Department of Law Enforcement, prior to advising Bryant to accept the plea?

QUESTION #2

Is the alleged victim's recantation by sworn affidavit, now that she is an adult, sufficient to require an evidentiary hearing?

LIST OF ALL PARTIES

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

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PETITION FOR WRIT OF CERTIORI

To The Honorable Chief Justice and the Associate Justices of the Supreme Court
the Petitioner Tommy Ray Bryant *pro-se*, petitions for a Writ of Certiorari to
review the judgment of the United States Court of Appeals for the Eleventh Circuit
in this case:

OPINIONS BELOW

The opinion of the Court of Appeals for the Eleventh Circuit¹ is not yet
reported. The opinion of the United States District Court for the Middle District of
Florida is reported at². The opinion of the State Trial Court denying the motion to
set aside the conviction is reported at³.

¹ Appendix A.

² Appendix B. *Bryant v. Fla. Dept. of Corr. & A.G.*, 2016 U.S. Dist. Lexis 175497 (M.D. Fla. Dec. 20th 2016).

³ *Bryant v. State*, 80 So.3d 1028 (2nd DCA 2012) Lexis 392.

JURISDICTION

The judgment of the Court of Appeals was entered on July 21st 2017. A copy of that decision appears at Appendix A. A timely Petition For Reconsideration was denied on October 17th 2017. A copy of the Order Denying Reconsideration appears at Appendix C.

In *Hohn v. United States*, 524 U.S. 236 (1998), this court held that the United States Supreme Court has jurisdiction on Certiorari to review a denial of a request for certificate of appealability by a circuit Judge or a panel of the Federal Court of Appeals.

The jurisdiction of the court is involved under Title 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment clause of the United States Constitution provides, in pertinent part:

“In all criminal prosecutions the accused shall enjoy the right...to have the assistance of counsel for his defense.”

The Fourteenth Amendment clause of the United States Constitution provides in pertinent part:

...[n]or shall any state deprive any person of life, liberty, or property, without due process of law.

Title 28 United States code § 2254 provides:

“The Supreme Court a Justice thereof, a Circuit Judge or a District Court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in the custody in violation of the Constitution or laws or treaties of the United States”

Title 28 United States code § 2253 (c) states:

“A certificate of appealability may issue...if the applicant has made a substantial showing of the denial of a constitutional right.”

STATEMENT OF THE CASE

FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED

On August 16, 2005, the Petitioner took his niece outside to play a few hundred feet from the home they shared. The five year old told her uncle that she had to urinate right away, so he rushed her over to the side of a nearby building. He turned his back and blocked her from view of anyone passing by. The Petitioner was helping the child straighten her clothes once she had finished, when the police showed up. The officers rushed towards the Petitioner and the child, shouting and cursing. The Petitioner picked his niece up to soothe her and tried to explain to the police that they were family. The officers snatched the crying child from the Petitioner, sat her down, and then proceeded to beat the Petitioner while

cursing him. After the unnecessary physical assault, the Petitioner was handcuffed and thrown into a squad car, while the child looked on, crying and screaming; “stop hurting my uncle Tommy.”

The people who had called the police were Daniel B. Chamberlain and his elderly mother Carol Taylor. Both of these alleged witnesses stated that they saw the incident from about 1,500 feet away, while peering through a high, thick hedge.

These witnesses stated that the Petitioner “appeared to be molesting a little girl.” The witnesses stories conflict. Chamberlain stated that he was the first to witness the event and called his mother outside. Then his mother stated that she witnessed the incident first and called her son outside. The mother states that the son went to flag down the police and bring them to the scene of the crime. However, the son states that the police just showed up on the scene on their own.

A key question that should be asked in this situation is:

Why would the Petitioner take the child outside to molest her in public, when he had ample opportunity to do so in private, because they lived in the same house? The Petitioner has no record of sex crimes.

It should be noted that the state’s witness, Daniel Chamberlin was in serious conflict with the Petitioner over the allegation that the Petitioner was having a sexual relationship with Chamberlin’s wife.

Chamberlin died on February 18th, 2007, of a drug overdose.

He had a criminal record, which seriously calls into question his credibility as a witness.

The Petitioner was booked into the county jail, and charged with capital sexual battery, and resisting an officer with violence. The Petitioner maintained his innocence for over two years while awaiting trial in jail.

The crime scene technician, LeAnn Whitely, stated in sworn depositions, that a towel involved in the incident had tested positive for blood and semen.

On October 9th, 2007, the Petitioner's attorney told the Petitioner that the state did not have the results of the tests of the towel that the crime scene technician testified was positive for blood and semen. The attorney told the Petitioner that he should plead no contest, and accept what Florida law recognizes as a "best interest plea."

Based solely on the lawyer's advice, Petitioner reluctantly pled no contest to the amended charges of attempted sexual battery on a child less than 12 years of age, and resisting an officer with violence. The Petitioner received 18 years in prison with 4 years probation as a sexual predator.

The Petitioner was led to believe that he had no defense available to him, because his attorney stated at the plea hearing that neither she nor the state had the test results of the towel. However, after diligent research in the prison law library, and filing a public records request, the Petitioner was able to finally receive a copy

of the test results. The test was negative for Petitioner's blood and semen, as he knew it should be, because he was actually innocent of the crime that counsel had advised him to accept the "best interest plea" for. The date on the test was September 2007, one month prior to the plea hearing.

Then on June 15th, 2010, the Petitioner came into possession of a sworn affidavit from the alleged victim, recanting her testimony that incriminated the Petitioner, and affidavits of family members whom she recanted to.

All of the foregoing information was submitted to the state courts in timely, facially sufficient motions. However, the state court erroneously denied the Petitioner relief without the benefit of an evidentiary hearing.

I. BACKGROUND AND PROCEDURAL HISTORY

On September 7th, 2005, the state charged Petitioner by information with two counts of capital sexual battery on a child less than twelve years old, and one count of resisting an officer with violence. On October 9th, 2007, Petitioner entered into a negotiated plea agreement with the state in which an amended information was filed in open court charging Petitioner with attempted sexual battery on a child less than twelve years old (Count One) and resisting an officer with violence (Count Two).

Per the plea agreement, Petitioner was sentenced to eighteen years in prison as a habitual felony offender, to be followed by four years of sex offender

probation on the sexual battery charge.

Petitioner was sentenced to concurrent terms of five years in prison on the resisting arrest with violence charge. Petitioner was also declared a sexual predator. Petitioner did not file a direct appeal.

On November 7, 2007, Petitioner filed his first motion for post-conviction relief pursuant to Rule 3.850 of the Florida Rules of Criminal Procedure (“Rule 3.850 motion”). The motion was dismissed as facially insufficient.

On January 22nd, 2008, Petitioner filed a state petition for writ of *habeas corpus* in the Florida Supreme Court. The Florida Supreme Court construed the petition as a motion to correct an illegal sentence filed pursuant to Rule 3.800 (a) of the Florida Rules of Criminal Procedure and transferred the petition to the circuit court. The resulting consolidated motion was denied. Although Petitioner filed a timely notice of appeal, he subsequently filed a motion for voluntary dismissal.

On January 12th, 2009, Petitioner filed a second Rule 3.850 motion claiming that his speedy trial rights were violated in the trial court and that his designation as a habitual felony offender was illegal. He subsequently filed an amended motion asserting claims of ineffective assistance of counsel based on these same grounds. The post-conviction court denied relief, and Florida’s Second District Court of Appeal affirmed without an opinion. *Bryant v. State*, 80 So.3d 1028 (Fla.

2nd DCA 2012).

Petitioner filed a third Rule 3.850 motion on March 24th, 2011, raising a claim of newly discovered evidence. He attached sworn statements from the victim, the victim's mother, Petitioner's son, and Petitioner's mother asserting his innocence.

He subsequently filed an amended motion. On May 23rd, 2012, the post-conviction court denied both motions. Florida's Second District Court of Appeal affirmed without an opinion. *Bryant v. State*, 109 So.3d 792 (Fla. 2nd DCA 2013).

On July 5th, 2012, Petitioner filed a third Rule 3.800 (a) motion to correct an illegal sentence. The motion was dismissed as successive. Florida's Second District Court of Appeal affirmed.

Petitioner filed a federal *habeas* petition in the Middle District of Florida on October 1st, 2013. He filed an amended petition on December 1st, 2013. On December 20th, 2016, the Middle District denied the *habeas* petition.

Petitioner filed a certificate of appealability to the Eleventh Circuit Court of Appeals on January 27th, 2017. The Eleventh Circuit denied Petitioner's certificate of appealability on August 21st, 2017, stating:

“Petitioner failed to make a substantial showing of the denial of a constitutional right.”

Petitioner filed a motion for reconsideration on August 8th, 2017. The

Eleventh Circuit Court of Appeals denied the Petition for Reconsideration on October 17th, 2017. This timely filed petition for writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

Established Supreme Court Authority

In *Miller-El v. Cockrell*, the court clarified the standards for issuance of a certificate of appealability (COA):

“[A] prisoner seeking a COA need only to determine “a substantial showing of the denial of a constitutional right.” A prisoner satisfies this standard by demonstrating that jurist of reason could disagree with the district court’s resolution of his constitutional claims or that jurist could conclude the issues presented area adequate to deserve encouragement to proceed further...We do not require Petitioner to prove before the issuance of a COA 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 COA has received full consideration that Petitioner will not prevail.”

Id. 123 S. Ct. at 1034 (citing *Slack v. McDaniel*).

DECISION OF THE ELEVENTH CIRCUIT COURT OF APPEALS IS ERRONEOUS

The court of appeals denied Bryant’s motion for certificate of appealability, reasoning that Bryant “had failed to make a substantial showing of the denial of a

constitutional right” in denying Bryant a COA, the circuit court departed from the essential requirement of law as established in this court’s opinions in *Slack* and *Miller-El*.

This departure from clearly established law has far-reaching ramifications affecting many *habeas* Petitioner’s. Such an expansion poses a serious threat to this court’s supervisory power and *pro-se* prisoners in obtaining a COA and has so far departed from accepted constitutional principles and statutory requirements as to call for supervisory review by this court because it directly conflicts with no fewer than eight decisions: *Giglio v. United States*,⁴ *Brady v. Maryland*,⁵ *Dusky v. United States*,⁶ *Drope v. Missouri*,⁷ *Thompson v. Louisville*,⁸ *Jackson v. Virginia*,⁹ *Strickland v. Washington*,¹⁰ *Wiggins v. Smith*,¹¹ and directly contravenes the statutory requirements governing *habeas corpus*,¹² and the rights to seek a certificate of appealability.¹³

Bryant will address the issues for which he made the requisite showing for issuance of a COA.

⁴ 405 U.S. 150 (1970)

⁵ 373 U.S. 83 (1963)

⁶ 362 U.S. 402 (1960)

⁷ 420 U.S. 162 (1975)

⁸ 362 U.S. 199 (1961)

⁹ 447 U.S. 307 (1979)

¹⁰ 446 U.S. 668 (1984)

¹¹ 539 U.S. 510 (2003)

¹² Title 28 U.S.C. Section 2254, 2241

¹³ Title 28 U.S.C. Section 2253(c)

IMPORTANCE OF QUESTIONS PRESENTED

This case presents a fundamental question of the interpretation of this court's decisions in *Strickland v. Washington*,¹⁴ *Hill v. Lockhart*,¹⁵ *Murray v. Carrier*,¹⁶ and *Schlup v. Delo*.¹⁷

The question presented are of great public importance because they affect every individual that requires the assistance of an attorney, whether paid, or court appointed counsel. Ineffectiveness has no boundaries. As rain, it affects the rich and poor alike.

Petitioner's counsel failed to perform his duties to reasonable standards, denying Petitioner his right to effective assistance of counsel guaranteed by the 6th Amendment to the United States Constitution.

The standard reasoning that all recantation is unreliable and not credible, without viewing each case individually and making an independent determination is unreasonable and affects an overwhelming number of accused individuals.

QUESTION #1

Whether the lower court's reasonably determined that Bryant's counsel made a "strategic decision" not to pursue the test results from Florida Department of Law Enforcement, prior to advising Bryant to accept the plea?

¹⁴ 466 U.S. 668 (1984)

¹⁵ 474 U.S. 52 (1985)

¹⁶ 477 U.S. 478 (1985)

¹⁷ 513 U.S. 478 (1995)

Analogous to petitioner's case is *Ross v. Florida Dept. of Corr.*, 517 Fed. App. 731 (11th Cir. 2013).

Petitioner claimed that his lawyer was ineffective for failing to discover and for failing to tell Ross about a D.N.A. report that showed that no D.N.A. evidence was found on the victim. According to Ross, his lawyer told him (or Ross's mother, or both) that the state Prosecutor had said that Ross's D.N.A. was found on the victim. When asked about an actual D.N.A. report, Ross's lawyer told Ross that he was not aware that a D.N.A. report existed. The record shows, however, that a copy of the pertinent D.N.A. report was hand-delivered to Ross's lawyer eight days before Ross pled guilty. Ross asserted that but for his lawyers incorrect, confusing, and misleading advice about D.N.A. evidence and a D.N.A. report, Ross would not have pled guilty.

Whether it was by oversight, complacency, or dishonesty, like Ross's attorney, Bryant's attorney should have known or did know, before advising petitioner Bryant to accept a plea, that the test results were negative for Bryant's D.N.A.

Counsel's decision to not pursue the Florida Department of Law Enforcement lab report before advising petitioner to accept a plea, was not consistent with the professional standards that prevailed at the time, nor reasonable in light of the evidence in the report, excluding petitioner as a D.N.A. contributor.

A reasonably competent attorney would have advised petitioner to not accept a plea.

Petitioner has shown that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different.

QUESTION #2

Is the alleged victim's recantation by sworn affidavit, now that she is an adult, sufficient to require an evidentiary hearing?

As petitioner is well aware that all courts view recantation with "extreme suspicion." *United States v. Dumas*, 280 Fed. App. 848, (11th Cir. 2008):

"This skepticism is especially applicable in cases of child sexual abuse, where recantation is a recurring phenomenon, particularly when family members are involved, and the child has feelings of guilt, or the family members seek to influence the child to change her story." *United States v. Rouse*, 410 F. 3d. 1005, 1009 (8th Cir. 2009).

The alleged victim in Petitioner's case, did in fact, write her own recantation 16 years ago. She has adamantly denied that she was influenced to recant, then or now. She was willing to testify then, but was denied that opportunity.

Now the alleged victim is an adult, a mother, and has no feelings of guilt nor can she be accused of any undue influence by family.

Her only feeling is of injustice and has been determined to see that justice prevails for her uncle. She wants her testimony to be heard now that she is an

adult and mother. An evidentiary hearing is required in this case.

CONCLUSION

Bryant has presented Supreme Court and statutory case law that is on point and supports his claims. Bryant requests that this petition for Writ of Certiorari be granted, the case remanded to the Eleventh Circuit Court of Appeals for an issuance of a certificate of appealability. It is so prayed.

Respectfully submitted,

/s/ Tommy Ray Bryant 784990
Tommy Ray Bryant, #784990