

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Taras Lafrance Edwards - Petitioner

vs.

United States of America - Respondent

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

PETITION FOR WRIT OF CERTIORARI

Taras Lafrance Edwards

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QUESTIONS PRESENTED

1. Would Ineffective Assistance of Counsel on appeal excuse the prior procedural default by showing cause and prejudice or actual innocence or for failure to develop material facts in state court will this court grant certiorari for its fundamental miscarriage of justice exception in light of *McQuiggin v. Perkins*, 569 U.S. ___, 133 S.Ct. ___, 185 L.Ed.2d 1019 (2013)?
2. Would a violation of the protection of Double Jeopardy with both courts prosecuting or attempting to prosecute the same element of the state fourth amendment, with which failed to develop material facts in state court and denied a full and fair hearing will this court grant certiorari for its fundamental miscarriage of justice exception in light of *McQuiggin v. Perkins*, 569 U.S. ___, 133 S.Ct. ___, 185 L.Ed.2d 1019 (2013)?
3. Would being denied due process in the state court fourth amendment with which failure to develop material facts and being denied a full fair hearing in state court will this court grant certiorari for its fundamental miscarriage of justice exception in light of *McQuiggin v. Perkins*, 569 U.S. ___, 133 S.Ct. ___, 185 L.Ed.2d 1019 (2013)?

LIST OF PARTIES

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

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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 below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is reported at 343 Fed. Appx. 468.

The opinion of the United States district court appears at Appendix B to the petition and is reported at civil action # 17-00301-CG, criminal action # 08-00206-CG-N, second 2255 - Report and Recommendation.

The opinion of the United States district court appears at Appendix C to the petition and is reported a civil action #09-00717-CG, criminal action # 08-00206-CG-N, first 2255 Report and Recommendation.

[X] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix E to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was January 29, 2018.

[X] No petition for rehearing was timely filed in my case.

This court has jurisdiction under statute 28 U.S.C. § 1254(1) to review the denial of this (COA) dated January 29, 2018, for the second or successive petition 28 U.S.C.S. § 2255. The Petitioner believes that this (COA) has the public importance to justify deviation from normal appellate practice. The statutory provision believed to confer on this court jurisdiction to review on a writ of certiorari the judgment of this (COA).

[X] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix E to the petition and is [X] unpublished.

The date on which the highest state court decided my case was on January 27, 2009. A copy of that decision appears at Appendix E.

This court has jurisdiction under 28 U.S.C. § 1257(a) to review the state court judgment in this case on a writ of certiorari. The state case has a vital role in this petition a fundamental miscarriage of justice would occur. The state court held a hearing on May 8, 2008, on a fourth amendment claim, the proceeding was denied an opportunity to be reviewed by the state fact finding court or be reviewed by the state appellate court. A full and fair hearing was denied because of an unconscionable breakdown was caused by the federal district court of the United States district court for the Southern District of Alabama.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment - The right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment - Person cannot be required to answer for capital or otherwise infamous offense unless a grand jury issues and indictment or presentment, subjected to double jeopardy, compelled to engage in self-incrimination on a criminal matter, deprived of life, liberty, or property without due process of law, or deprived of private property for public use without just compensation.

Sixth Amendment - Guaranteeing in criminal cases to the right to a speedy and public trial by jury, the right to be informed of the nature of the accusation, the right to confront witnesses, the right to effective assistance of counsel, and the right to compulsory process for obtaining favorable witnesses.

Statute 28 U.S.C. § 1254(1) - Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods (1) by writ of certiorari granted upon the petition of any party to any civil or criminal cases, before or after rendition of judgment or decree.

Statute 28 U.S.C. § 1257(A) - final judgments or decree rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a statute of any state is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the constitution or the treaties or statutes of, or any commission held or authority exercised under the United States.

Federal Rule of Criminal Procedure 11 § (b)(1)(H) - (b) considering and accepting a guilty or nolo contendere plea. (1) Advising and questioning the defendant before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath. And the court must address the defendant specifically in open court during this address, the court must inform the defendant of and determine that the defendant understands, the following: (H) Any maximum possible penalty including imprisonment, fine, and term of supervised release.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED Continued

Federal Rule of Criminal Procedure 11 (b)(1)(~~B~~) - Considering and accepting a guilty or nolo contendere plea. (1) Advising and questioning the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, determine if the defendant understands.

28 U.S.C. § 1746 - Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by sworn declaration, verification, certificate statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, or true under penalty of perjury, and dated.

STATEMENT OF THE CASE

What constitutes an opportunity for a full and fair litigation in a state court fourth amendment proceeding? "Failure to develop material facts in state court." In light of *McQuiggin v. Perkins*, 569 U.S. ___, 133 S.Ct. 1924, 185 L.Ed.2d 1019, 1031-32 (2013). The United States Supreme Court miscarriage of justice exception overcomes various procedural defaults, these include successive petitions asserting previously rejected claims, also abusive petitions asserting in a second petition claims that could have been raised in a first petition. See *McQuiggin*, 569 U.S. ___, 133 S.Ct. 1924, 185 L.Ed.2d 1019, 1031 (2013). This case started on February 25, 2008, with a state search and seizure. The state jailer with the state complaint of the charges Edwards was arrested for. The jailer signed a writ of habeas corpus ad prosequendum and allowed Edwards to be transferred without comity with the state district attorney or state district judge. The district court denied the second 2255 on procedural grounds and the appeals court lack of subject-matter jurisdiction. The 2255 issues are to excuse the prior procedural default by establishing cause and prejudice or actual innocence. See *Bousley v. U.S.*, 523 U.S. 614, 118 S.Ct. 1604, 140 L.Ed.2d 828, 840 (1998), or establish cause and prejudice for failure to adequately develop material facts in the state court fourth amendment proceeding. See *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 33, 112 S.Ct. 1715, 118 L.Ed.2d 318, 331 (1992).

Petitioner is contesting in the second 2255 with the first question of ineffective assistance of counsel on the appeal where a convicted person can show cause and prejudice to excuse the procedural default or actual innocence or petitioner Edwards show that material facts were not adequately developed in the earlier state court proceedings. In the first hearing in federal district court, Edwards informed his first counsel, Larry Moorer of the state proceeding having started in the state court on the state fourth amendment proceeding at the evidentiary hearing. The appeal counsel did not appeal anything from the evidentiary hearing transcripts or trial transcripts. On page 3, line 23 of the evidentiary hearing transcripts and on page 4, line 1 through line 3 - Edwards informed his counsel, Larry Moorer, about the state court's proceeding starting on May 8, 2008, and that he was awaiting to go back to state court. Also at the evidentiary hearing it was a plea agreement offered in return of a plea of guilty. On page 12, line 4, of the Evidentiary Hearing transcripts, the Petitioner's rights under federal Rule 11 Section (b)(1)(H) were violated. The judge asked counsel Moorer did he inform his client of the amount of time the Assistant United States Attorney offered if his client pled guilty. This caused Edwards to proceed to trial when the federal district court started a second prosecution. At trial on page 29, line 19-25, the court stated it would not allow the defendant to go behind the search warrant or attack the legality of the search. On page 94, line 19, the court (judge) stated

"well, its not going to be an issue and I'll instruct the jury. Stay away from the search warrant on motion to suppress." Also the two officers that searched the residence, officer Fitch as the arresting officer and officer Myers as the second officer, had two different testimonies of the whereabouts of the search warrants. On page 81, line 8-15, officer Fitch testified the search warrant was inside the residence when Edwards arrived and was placed under arrest. The petitioner objected to that testimony. Officer Myer, testified they went back to the office to make copies and that it was not inside the residence when Edwards was placed under arrest. To the second question, appellate counsel failed to appeal the protection from violation of double jeopardy. The state fourth amendment proceeding started on May 8, 2008, while awaiting in state custody, the federal court indicted on May 29, 2008 and used a writ of habeas corpus ad prosequendum to transfer Edwards to federal court on July 2, 2008 without comity with the state court officials. The federal court empaneled a jury on September 29, 2008 and held trial on October 14, 2008. Edwards' contesting a violation of double jeopardy started when the federal jury was empaneled before being convicted at the federal trial. On December 9, 2008, the state district attorney issued a subpoena for the scheduled hearing on January 27, 2008. The state court nolle prosequi the state proceeding on January 27, 2009. Both counts with the same element in the charge was punishing twice or attempting a second time to punish criminally. The state fourth

amendment proceeding was denied a full and fair hearing and failed to develop the material facts in the state -fourth amendment proceeding. A Petitioner's failure to develop a claim in state court proceeding will be excused and a hearing mandated showing a miscarriage of justice would result from failure to hold a federal evidentiary hearing. To the third question, the appeal counsel failed to appeal being denied due process in the state fourth amendment proceedings. The Petitioner was denied a full and fair hearing if the state fourth amendment proceeding denied an opportunity to develop material facts in that proceeding in which the state provided the process but the federal district precluded Edwards from utilizing that opportunity. Denied due process where a Petitioner's failure to develop a claim in a state court's fourth amendment proceeding will be excused and a hearing mandated showing a miscarriage of justice would result from failure to hold a federal evidentiary hearing.

REASONS FOR GRANTING PETITION

The Petitioner Edwards contesting to the Supreme Court of the United States to liberally construe pro se findings and hold a less stringent standard than formal proceedings than drafted by lawyers. See *Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251, 261-62 (1976). Edwards contesting this petition has national importance that will affect millions of people the exercising due diligence contesting the fundamental miscarriage of justice in this Petition where material facts were not allowed to develop in a state fourth amendment proceeding. A state fourth amendment proceeding was not allowed an opportunity to be full and fair. See *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067, 1077 (1976). State courts, federal district courts, federal appeals courts, and the Supreme Court of the United States have all ruled consistently on "*Stone v. Powell*, full and fair state court fourth amendment proceeding." The state court in the district court of Choctaw County of Alabama, provided the process but the petitioner was precluded from utilizing that process from an unconscionable breakdown caused by the federal district court of the Southern District of Alabama. See *Boyd v. Mintz*, 631 F.2d 247 (3rd Cir. 1980). In *Stone v. Powell*, the court held the state court provided the opportunity irrespective of whether the Petitioner avails himself the opportunity. The state court, like federal courts, have a constitutional obligation to safeguard the Petitioner's liberties and to uphold federal law. The Petitioner shows that

a fundamental miscarriage of justice would occur from failure to entertain these claims. The miscarriage of justice exception survived the passage of the Anti-terrorism And Effective Death Penalty Act of 1996 (AEDPA). statute of limitations.

The Petitioner is showing a substantial showing of the denial of a constitutional right, by demonstrating that a reasonable jurist would find the appeals court decision debatable or wrong, or when the appeals court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim. A (COA) should issue if the petitioner shows, at least that jurists of reason would find it debatable whether the appeals court was correct in its procedural ruling, or that the issues are adequate to deserve encouragement to proceed further. See *Slack v. McDaniel*, 529 U.S. 473, 120 S.Ct. 515, 146 L.Ed.2d 542, 555 (2000).

In the most recent United States Supreme Court certificate of appealability (COA) case, *Buck v. Davis*, 580 U.S. ___, 137 S.Ct. ___, 197 L.Ed.2d 1 (2017), the Supreme Court of the United States held that "issuance of (COA's) should not be rare such issuance ought be fairly common-place." The Supreme Court of the United States ruled that in determining whether or not to issue a (COA) a court is confined to a "limited scope of analysis." That is, the (COA) determination must be made exclusively on the basis of the (COA) criteria, not on the merits of a petitioner's substantive claim.

The high court wrote: "At the first stage, only question

is whether the applicant has shown that jurists of reason could disagree with the appeal court's resolution of his constitutional claims or could conclude the issues presented are adequate to deserve encouragement to proceed further."

Petitioner is entitled to a COA because jurists of reason could disagree with the district court and the appeals court determination that several decisions have found that a fundamental miscarriage of justice, as is present in petitioner's case, is a proper basis for overcoming procedural default and/or proceeding with a successive habeas petition. In light of existing case law, petitioner's claim is deserving of further consideration.

Edwards shows cause, for failure to develop facts in the state court proceedings, and prejudice resulting from such failure. Failure to hear the claim would constitute a fundamental miscarriage of justice. A federal court may hear the merits of a successive or procedurally defaulted claim if failure to hear the claim would constitute a miscarriage of justice. See *Sawyer v. Whitley*, 505 U.S. 333, 112 S.Ct. 2514, 120 L.Ed.2d 269, 279 (1992). On page 2 of 12 in the second 2255 the magistrate judge in the third paragraph stated in the report and recommendation issued August 9, 2011, these claims were procedurally barred as already been raised and rejected on direct appeal. On page 5 of 15, the same magistrate judge stated in the first magistrate report and recommendation in the first paragraph, the third sentence starts by stating "Accordingly,

any grounds raised here that could have been raised on appeal are procedurally defaulted unless Edwards can establish cause and prejudice excusing his default or establish his actual innocence of the crime. Actual innocence is alike a petitioner failing to develop facts in a state court fourth amendment proceeding. A habeas petitioner will be excused and a hearing mandated if he can show a fundamental miscarriage of justice would result from failure to hold a federal evidentiary hearing. See *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 112 S.Ct. 1715, 118 L.Ed.2d 318, 330-31 (1992). Miscarriage of justice exception serves as an additional safeguard against suffering an unconstitutional loss of liberty. See *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976). On page 8 of 15 of the first magistrate report and recommendation, it states it's clear that an offer was presented to Edwards, but it did not specify the precise term of imprisonment. This was the violation of Rule 11 section (b)(1)(H) in the evidentiary hearing. On page 11 of 15 in the first magistrate report and recommendation the magistrate states Edwards proffered copies of the state court proceedings, and neither Edwards nor his habeas counsel identifies or describes how any part of the state court records are relevant to the federal case. On page 12 of 15 in the first paragraph, it states the Petitioner failed to establish how any hearing in state court could be binding on the United States federal district court, which was not a party to the state court action. The petitioner is contesting the federal district court

caused an unconscionable breakdown in the state court fourth amendment proceeding. Edwards is contesting the federal prosecutor's use of the state jailer with the complaint of the charges to indict and transfer Petitioner with a writ of habeas corpus ad prosequendum. A writ of habeas corpus ad prosequendum is used to transfer a petitioner by borrowing from one sovereign to another sovereign and then returned. The Supreme Court of the United States applied the fundamental miscarriage of justice exception to overcome various procedural, failing to develop facts in state court was one of them. See *McQuiggin v. Perkins*, 569 U.S. 133 S.Ct. 1924, 185 L.Ed.2d 1019, 1031-32 (2013). On page 11 of 15, in the eighth ground, denial of a right due to process in the first magistrate report and recommendation, states the state court nolle prosequi on January 27, 2009. Edwards contesting both court's was prosecuting the state fourth amendment proceeding between the dates of May 8, 2008 until January 27, 2009 in with which had the same element in the charge. In the Petitioner's appeal on page 1 of 5 in the first paragraph the appellate counsel appealed only that the district court should have granted the motion for suppression because the officers exceeded the scope of the search warrant. Edwards is contesting that none of these questions were raised in the appeal. There was no communication between counsel and client on what issues would be at a advantage or disadvantage if appealed. The Petitioner is contesting that a fundamental miscarriage of justice is being ignored.

The record that supports these issues were not appealed. Edwards established cause and prejudice or actual innocence is alike the miscarriage of justice exception for failing to develop material facts in the state court fourth amendment proceeding. Edwards prays that the Supreme Court of the United States review these claims on the merits to find that habeas relief is in this petition and prays this court is effective to correct the federal district court mistakes to show this (COA) should be granted for the denial of these constitutional rights, and these issues deserve encouragement to proceed further by sanctioning the exercise of this court's supervisory power.

The Supreme Court of the United States reversed and remanded "Sanders" second and successive 28 U.S.C. § 2255, stating that the ends of justice would be served by a redetermination of the grounds on different factual allegations or by different legal arguments of fact that support a claim for habeas relief. In Sanders v. U.S., 373 U.S. 1, 83 S.Ct. 1068, 10 L.Ed.2d 148, 161-62 (1963) the Supreme Court stated "Identical grounds may often be proved by different factual allegations or supported by different legal arguments or couched in different language of vary in immaterial respects." The government interfered with the state court fourth amendment proceeding using a writ of habeas corpus ad prosequendum without comity with the state court officials. This in a variant case in with which deserves the same redetermination and encouragement to proceed further.

This case started in the state court on February 25, 2008. The State District Attorney motioned the Court for a continuance for the scheduled preliminary hearing on 4/23/2008 for the State Fourth Amendment search and seizure. The motion was granted for the lab report that was not available. Edwards' state counsel motioned the court for a bond reduction on 4/9/2008. The motion was granted on 5/8/2008. Still in physical custody of the state, the federal court indicted and transferred Edwards to federal court with a writ of habeas corpus ad prosequendum. The petition for writ of habeas corpus ad prosequendum was granted on 5/17/2008. The detainee's initial appearance in the district court was scheduled for 7/2/2008 at 2:00 p.m. The writ of habeas corpus ad prosequendum ordered that the detainee remain in federal custody from initial appearance through final disposition of federal charges in contradiction to the court's prior order releasing him from federal custody. See, U.S. v. Blas, LEXIS 135283 (11th Cir. 2013). The writ of habeas corpus ad prosequendum is used to borrow a petitioner from one sovereign to another and then returned. During Edwards' first hearing on 8/8/2008 in federal court, Edwards' counsel was Larry Moorer. Edwards did inform counsel of his ongoing state Fourth Amendment proceeding. Pages and line numbers are from the Evidentiary Hearing transcripts.

Page 3 - Line 23 - Mr. Moorer: He asked me something on the state book or something like that. He said that's entirely different from what

I'm doing. That this should be a state case and I tried to - Page 4 - Line 1 - explain to him how the federal took over this case, that the federal pre-empts state. I tried to explain that to him. Page 4 - Line 3 - Mr. Moorer: And he said no, and what I'm telling him is not what he has been told by the state people, that this should be a state case. My state Attorney told me that they should have not moved me with the state proceeding had already started.

The Petitioner's State Fourth Amendment Claim was not full and fair. See, *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067, 1077 (1976). A full and fair consideration by the fact-finding court, and at least the availability of meaningful appellate review was not allowed. See, *Young v. Jones*, LEXIS 30740 (11th Cir. 2015). A federal petitioner may escape the rule articulated in *Stone v. Powell* on the basis of claim by reason of an unconscionable breakdown in the underlying process. See *Davis v. Jones*, 441 F.Supp.2d 1138 (11th Cir. 2006). The federal court held a hearing for the motion to suppress on 8/8/2008, and then held a trial on 10/14/2008.

The State District Attorney filed a subpoena ordering Edwards back to State Court for a scheduled hearing on 12/17/2008. The state court continued their prosecution. Edwards is contesting the right of due process that was denied in the state court. The state provides the process but in fact the defendant is precluded from utilizing it by reason of an unconscionable breakdown in that process. See *Boyd v. Mintz*, 631 F.2d 247 (3rd Cir. 1980). The federal court caused the unconscionable breakdown in the state Fourth Amendment Claim

with the writ of habeas corpus ad prosequendum by borrowing the Petitioner from the state court. See *Boyd v. Mintz*, 631 F.2d 247 (3rd Cir. 1980). The writ ordered Edwards to be transferred to federal court before having a full and fair hearing. See *Stone v. Powell*, 427 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067, 1077 (1976). The appeal counsel did not appeal any record except for the hearing held for the motion to suppress. At this hearing, the counsel failed to contest the Fourth Amendment violation. The two officers that searched the residence testified that no one was home at the time of the search. They testified they physically forced their way in while Edwards was absent.

Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980), requires a two-part inquiry with the Fourth Amendment proscription of unreasonable searches. First, there must be a reasonable belief that the location to be searched is the suspect's dwelling, and second, the police must have reason to believe that the suspect is within the dwelling. As to the second prong, courts must be sensitive to common sense factors indicating a resident's presence. *Id.* at 661. The arresting officer testified no person or no officer was reported to be in danger. *U.S. v. Edmondson*, 791 F.2d 1512 (11th Cir. 1986). There were no exigent circumstances.

Edwards asked counsel (Jones) to contest the Fourth Amendment right, but Jones did not. The Fourth Amendment provides "the right to be secure in one's person, papers, house, and effects." Jones failed effective assistance of counsel at

the hearing for the motion to suppress. Jones would not contest Edwards' Fourth Amendment right. At trial and before trial the Petitioner requested another counsel and the court turned Edwards down. Edwards had to contest his Fourth Amendment rights, and found out the officers had two different testimonies of the whereabouts of the search warrant. The search warrant was not on the premises. See *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639, 647 (1980). The Petitioner was therefore forced to contest his right at trial as his own counsel and had Jones as standby.

At the beginning of the trial, the judge asked Edwards what he was going to contest to the jury. The petitioner stated his Fourth Amendment right, to be secure on one's person, papers, houses and effects. Therefore, the page and lines numbers are from the trial transcript:

Page 29 - lines 19-25 - The Court stated it would not allow the defendant to go behind the search warrant or attack the legality of the search. Page 94 - Line 19 - the Court "Well, it's not going to be an issue and I'll instruct the jury. Stay away from the search warrant on the motion to suppress."

The Court's instructions prevented jurors from giving meaningful consideration to the constitutionality of the Fourth Amendment right. See, *Abdul-Kabir v. Quarterman*, 550 U.S. 233, 127 S.Ct. 1654, 167 L.Ed.2d 585, 604 (2007). The Court would not allow the jury to rule on the legality of the search or the legality of the execution of the search warrant. The jury instructions at the federal trial denied Edwards' right to due

process. Also, the two officers at the residence - Officer Fitch as the arresting officer and Officer Myers as the second officer - had two different testimonies about the whereabouts of the search warrants. The officers' testimony follows, the page and line number from the trial transcript:

Page 81 - Line 8 - Edwards: Did you have a search warrant to get to show the Defendant at the time?
- Line 14 - Officer Fitch: It was inside your residence as we placed you under arrest. - Line 15 - Edwards: No, excuse me, I object to that.

Page 103 - Line 25 - Officer Myers: We made a copy of the search warrant itself because we had forgotten to make a copy of the search warrant in which is required by law and we had forgotten to make a copy to leave for the Defendant. So that's why we went back to the office to make a copy. -

Page 104 - Line 5 - Edwards: So did y'all haven't left no copy or nothing in the house at the time?
- Line 7 - Officer Myers: Not at the time, because we were still in control of the scene - Redirect Examination U.S. Attorney - Page 106 - Line 16 -
- Mr. May: When officer was it Watson that left to get copies of the search warrant? - Line 18 -
Officer Myers: That's correct - Line 22 - Mr. May: And a copy of the search warrant then eventually was left in the Defendant's residence.
- Line 2 - Officer Myers: It was.

Officer Fitch, the first officer, testified the search warrant was inside the residence when Edwards arrived and was placed under arrest. The Petitioner objected to that testimony. The second officer, Myers, testified they went back to the office to make a copy and that it was not inside the residence when Edwards was placed under arrest.

Question One: Would Ineffective Assistance of Counsel on Appeal by showing cause and prejudice, actual innocence or by showing cause and prejudice for failure to develop material

facts in state court, will this court grant writ of certiorari for it's fundamental miscarriage of justice exception?

A convicted person can show cause and prejudice from ineffective assistance of counsel, a violation of the Sixth Amendment, on the appeal to excuse procedural default or actual innocence or show that material facts were not adequately developed in the earlier state court proceedings. A fundamental miscarriage of justice would result from failure to hold an Evidentiary Hearing. See U.S. v. Nyhuis, 211 F.3d 1340 (11th Cir. 2000).

The Petitioner informed his first counsel, Larry Moorner, of the state proceeding having started in the state court on the state Fourth Amendment proceeding at the evidentiary hearing. The appeal counsel did not appeal anything from the evidentiary hearing transcripts or trial transcripts. Counsel's failure to do so was the product of the appeal counsel's ignorance or oversight, not a deliberate tactic. See, Murray v. Carrier, 477 U.S. 478, 106 S.Ct. 2639, 91 L.Ed.2d 397, 410 (1986). The appellate counsel, Richard Shields, did not consult with Edwards before appealing his case. Shields only appealed the hearing from the motion to suppress. At the hearing, motion was denied, and Shields did not contest the state court Fourth Amendment claim. Out of the evidentiary hearing transcripts - on page 3, line 23, and on page 4, line 1 through page 4, line 3 - Edwards informed his counsel, Larry Moorner, at the first hearing in federal court about the state court's proceedings starting on

5/8/2008, and that he was awaiting to go back to state court. While still in physical custody of the state at the county jail, the federal court used a writ of habeas corpus ad prosequendum to transfer Edwards to federal custody.

The federal court started a second prosecution on the same Fourth Amendment claim which had the same elements as that which was started on 5/8/2008, in the state court. Edwards was being criminally punished twice, as the state court was still attempting its prosecution. This placed Edwards in violation of Double Jeopardy. See *Helvering v. Mitchell*, 303 U.S. 391, 82 L.Ed. 917, 922 (1938).

A state Fourth Amendment claim proven not allowed to be full and fair, federal habeas relief may be granted. The state court continued its proceeding with two scheduled trial hearings: one on 12/17/2008, and the second on 1/27/2009. See *Davis v. Jones*, 441 F.Supp.2d 1138 (11th Cir. 2006).

At the evidentiary hearing it was a plea agreement offered in return of a plea of guilty. On page 12, line 4, of the Evidentiary Hearing transcripts, the Petitioner Edwards' rights under Rule 11 Section (b)(1)(H) were violated. This federal rule provides the Petitioner the right to know any maximum possible penalty, including imprisonment, fine, and term of supervised release. The appeal counsel failed to appeal the offer. See *Missouri v. Frye*, 566 U.S. 134, 132 S.Ct. 1399, 182 L.Ed.2d 379, 392 (2012).

Also Edwards was denied due process in federal court at

trial when the court stated it would not allow the defendant to go behind the search warrant or attack the legality of the search, and the court stated it would instruct the jury to stay away from the search warrant on the motion to suppress, see *Abdul-Kabir v. Quarterman*, 550 U.S. 233, 127 S.Ct. 1654, 167 L.Ed.2d 585, 608 (2007), and at any time prior to the trial and the jury issuing the verdict, the forced entry while Edwards was absent or that the search warrant was not on the premises at the time Edwards arrived back home, was not appealed.

In the appeal, Shields filed that the officers exceeded the scope of the search warrant. By "consult" the court means advising the person about the advantages and disadvantages of making a reasonable effort to discover a client's wishes. Edwards' counsel's failure to consult with him itself constitutes deficient performance. See, *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985, 996-97 (2000). The claims being raised here have merit that is supported by the record. See, *Jones v. Barnes*, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987, 991 (1983). A constitutional requirement of substantial equality and fair process can only be attained where counsel acts in a role of an active advocate on behalf of his client. See, *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493, 498 (1967). A person whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all. See, *Evitts v. Lucey*, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821, 830 (1985). Appeal counsel

filed a frivolous appeal. He did not appeal anything from the record. See *McKnight v. General Motors Corp.*, 511 U.S. 659, 114 S.Ct. 1826, 128 L.Ed.2d 655, 657 (1994).

In light of all the evidence, it is more likely than not that no reasonable jury would have convicted Edwards. Shields deficient performance prejudiced his client starting with the procedural right in the state court to develop the facts in the state court proceeding. The state court must afford a person a full and fair hearing on his claim, so must the person afford the state a full and fair opportunity to address and resolve the claim on the merits. See *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 112, S.Ct. 1715, 118 L.Ed.2d 318, 329 (1992).

Edwards presented to the federal court records showing the state court started on the 5/8/2008 bond hearing, and continued with two scheduled trial hearings on 12/17/2008 and on 1/27/2009.

Due Process of Law is a flexible term for the compliance with the fundamental rules for fair and orderly legal proceedings and to have a fair and impartial jury. The federal prosecutor started a second prosecution on the same Fourth Amendment proceeding. Double Jeopardy is written in terms of potential or risk of trial and conviction, not punishment. *Breed v. Jones*, 421 U.S. 519, 95 S.Ct. 1779, 44 L.Ed.2d 346, 356 (1975). Both courts used the same elements in the two proceedings. This placed Edwards in violation of double jeopardy in that he was being punished twice or attempting to be punished

twice criminally for the same offense. See, *Helvering v. Mitchell*, 303 U.S. 391, 82 L.Ed. 917, 921 (1938). Edwards was placed in jeopardy when the federal jury was empaneled at the jury selection before being convicted at federal trial while the state proceeding continued. See, *Crist v. Bretz*, 437 U.S. 28, 98 S.Ct. 2156, 57 L.Ed.2d 24, 31 (1978). The constitutional prohibition against double jeopardy was designed to protect an individual from being subjected to the hazards of trial and that no man is to be brought into jeopardy of his life more than once for the same offense. See, *Green v. U.S.*, 355 U.S. 184, 78 S.Ct. 221, 2 L.Ed.2d 199, 204 (1957).

Also at the evidentiary hearing when the court questioned the petitioner under Rule 11 (b)(1) advising and questioning the defendant, the petitioner was placed under oath the court informed and determined the petitioner understood each section under Rule 11. The Petitioner's counsel Larry Moorner was ineffective, the counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused. See *Lafler v. Cooper*, 556 U.S. 156, 132 S.Ct. 1376, 182 L.Ed.2d 398, 407 (2012). At the federal trial, the court would not allow Edwards to contest the legality of the search warrant or attack the legality of the search and the court instructed the jury not to rule on the search on the motion to suppress. The petitioner Edwards is contesting that the jury was not given an opportunity to consider the element of the proceeding beyond a reasonable

doubt. Due Process protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. See *Sandstrom v. Montana*, 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39, 48 (1979).

At federal trial, the Fourth Amendment right was contested. The right to be secure in one's person, house, papers and effects from unreasonable search and seizure. The petitioner is contesting he was absent during the search and the search warrant was not on the premises when Edwards was arrested. The two officers had two different testimonies of the whereabouts of the search warrant when Edwards arrived back home. Edwards contested the search warrant was not on the premises. The arresting officers testified no persons' or officers' life was put in danger, there were no exigent circumstances. A warrantless and non-consensual entry into a person's home, and any resulting search and seizure violates the Fourth Amendment unless it is supported by both probable cause and exigent circumstances. See *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639, 649 (1980).

These merits are supported by the record. Prejudice is shown here. These are solid, meritorious arguments that should have been appealed. If appealed, Edwards is confident the outcome would have been different in this case. See, *U.S. v. Phillips*, 210 F.3d 345 (5th Cir. 2000). Counsel's deficient performance created prejudice that was not due to any attempt

to fabricate information on the part of Edwards, but due to counsel's ignorance or oversight. See, *Nix v. Whiteside*, 475 U.S. 157, 106 S.Ct. 988, 89 L.Ed.2d 123, 129 (1986).

The page and line numbers of the testimonies from the judge and officers are included in this motion, and the state motions, subpoena, court order, and petition of writ of habeas corpus ad prosequendum are made part of the records to support this claim of ineffective assistance of counsel on appeal to show cause. Failure to raise these meritorious issues created actual prejudice against Edwards. The state Fourth Amendment claim was not allowed to be full and fair, where the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing. A federal evidentiary hearing is required and federal habeas relief shall be granted. *Davis v. Jones*, 441 F.Supp.2d 1138 (11th Cir. 2006).

Double Jeopardy is written in terms of potential or risk of trial and conviction, not punishment. *Breed v. Jones*, 421 U.S. 519, 95 S.Ct. 1779, 44 L.Ed.2d 346, 356 (1975). Both courts were attempting to impose multiple punishments based on the same elements of the offense, between the dates of 5/8/2008 through 1/27/2009. See, *Helvering v. Mitchell*, 303 U.S. 391, 82 L.Ed. 917, 922 (1938).

The petitioner Edwards' contesting of Double Jeopardy started when the jury was empaneled and before being convicted. See, *Crist v. Bretz*, 437 U.S. 28, 98 S.Ct. 2156, 57 L.Ed.2d 24, 31 (1978). The petitioner was in violation of the Constitution

and Edwards' valued the right to have his state trial completed by a particular tribunal is within the protection of the Fifth Amendment guarantees against double jeopardy.

The court stated it would instruct the jury to stay away from the search warrant on the Motion to Suppress. The petitioner was absent when the search occurred and Edwards was arrested with the warrant not on the premises. When the Fourth Amendment right was contested - the right provided to one to be secure in one's person, papers, house and effects against unreasonable searches and seizures - not to be violated, see *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639, 647 (1980), the court not allowing the jury to rule on the legality of the search or search warrant on the Motion to Suppress denied Edwards' right to Due Process in the federal court. The conviction was not proven beyond a reasonable doubt of ever fact necessary to constitute the crime Edwards was charged with. See *Sandstrom v. Montana*, 422 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39, 49 (1979).

The Petitioner Edwards is confident the outcome would be different if these merits would have been appealed. See *Glover v. U.S.*, 531 U.S. 198, 121 S.Ct. 696, 148 L.Ed.2d 604, 610 (2001). These issues impose the following concerns:

The ~~State court~~ Fourth Amendment proceeding started with a preliminary hearing, but was canceled and a bond hearing was held on 5/8/2008, and the state proceeding nolle prosequi on 1/27/2009. The federal court started a second prosecution on

7/2/2008, with an Evidentiary Hearing on 8/8/2008, for the Motion to Suppress on 8/28/2008, trial on 10/14/2008, and sentencing hearing on 2/13/2009. Contesting the state Fourth Amendment Claim, a full and fair hearing was denied because of an unconscionable breakdown in the state proceedings, caused by the federal court using a writ of habeas corpus ad prosequendum to order Edwards to be transferred from state custody to federal custody. See *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067, 1077 (1976).

Whether by both courts attempting to criminally prosecute Edwards for the same offense, with the same elements, at the same time created a violation of double jeopardy. See *Helvering v. Mitchell*, 303 U.S. 391, 82 L.Ed. 917, 922 (1938).

Whether habeas relief should be granted. Where a full and fair opportunity to litigate a state Fourth Amendment claim was proven to be denied, Edwards was denied due process in the state court. See *Boyd v. Mintz*, 631 F.2d 247 (3rd Cir. 1980).

Whether the federal jury instructions not allowing every fact to be proven beyond a reasonable doubt of every fact necessary to constitute the crime charged. Edwards was denied due process in federal court. See *Sandstrom v. Montana*, 422 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39, 49 (1979).

Whether the legality of the search or the legality of the execution of the search warrant was not proven beyond a reasonable doubt, before the court (Judge) asked the jury for a verdict of (innocence or guilt). See *Payton v. New York*, 445

U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639, 647 (1980).

Whether Federal Rule 11 Section (b)(1)(H) provides Edwards the right of the amount of imprisonment. At the evidentiary hearing when the judge questioned the petitioner did he understand the offer of the plea, the petitioner stated he did not get the amount of time. The judge turned and asked counsel Moorer and he stated "no" on page 12, line 4 of evidentiary hearing transcripts. Edwards would have accepted the plea offer had there been effective assistance of counsel and Edwards is confident the result would have been more favorable by reason of a plea to a lesser charge or sentence to lesser prison time.

This created actual prejudice, these meritorious issues worked as an unfair disadvantage to Edwards.

Edwards is confident that the outcome would have been different had these issues been appealed. See *Glover v. U.S.*, 531 U.S. 198, 121 S.Ct. 696, 148 L.Ed.2d 604, 610 (2001). Appellate counsel Shields made errors so serious that counsel was not functioning as counsel guaranteed by the Sixth Amendment. See *Nix v. Whiteside*, 475 U.S. 157, 106 S.Ct. 988, 89 L.Ed.2d 123, 138 (1986).

Question Two: Whether a violation of the protection of double jeopardy, with both courts prosecuting or attempting to prosecute the same elements of the state fourth amendment, with which failure to develop material facts and being denied a full and fair hearing in state court will this court grant certiorari for its fundamental miscarriage of justice exception?

In the Magistrate Report, the first habeas counsel concedes that being prosecuted separately in state and federal court does not violate the Constitution. The Magistrate Report cites *Abbate v. U.S.*, which held that a prior conviction in state court did not bar a subsequent federal prosecution for the same offense. *Abbate*, however, is not based on a state Fourth Amendment Claim. See, *Abbate v. U.S.*, 359 U.S. 187, 79 S.Ct. 666, 3 L.Ed.2d 729, 733 (1959). A full and fair consideration in the context of Fourth Amendment Claims includes "at least on evidentiary hearing in a trial court and the availability of meaningful appellate review when there are facts in dispute, and full consideration by an appellate court when facts are not in dispute." See, *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067, 1077 (1976).

The case stated on 2/25/2008, with a state search and seizure. The state court scheduled a preliminary hearing on 4/9/2008, for case #DC-08-177-178. The state District Attorney motioned the court for a continuance (motion attached), on page 9 of 15 of the state records, on 4/9/2008, for the aforementioned case. The grounds for said motion is as follows: State has not received a copy of the lab report. At the hearing, the Defendant's counsel filed a motion in court for a bond reduction (motion attached) on page 10 of 15 of the state records, on 4/9/2008, which was granted and the bond was reduced on 5/8/2008. The petitioner Edwards remained in physical custody of the state, the federal court indicted Edwards on 5/29/2008,

and the federal court's granting of a petition for a writ of habeas corpus ad prosequendum on 6/17/2008, (petition attached). Edwards' initial appearance in the district court was scheduled for 7/2/2008, at 2 p.m. A writ of habeas corpus ad prosequendum is only a loan of the prisoner to another jurisdiction for criminal proceedings in the receiving jurisdiction. The federal court caused an unconscionable breakdown in the state's proceedings. See, Causey v. Civiletti, 621 F.2d 691 (5th Cir. 1980). The federal court started a second prosecution on this state Fourth Amendment claim. The federal court used the writ of habeas corpus ad prosequendum without having comity with the state court. See Davis v. Jones, 44 F.Supp.2d 1138 (11th Cir. 2006). On 12/9/2008, the state District Attorney issued a subpoena to order Edwards back to the state court for a scheduled hearing set for 12/17/2008, (subpoena attached) on page 12 of 15 of the state records. On 1/26/2009, the state district judge issued a pick-up order to return Edwards to the county jail for the scheduled hearing on 1/27/2009, (order attached) on page 14 of 15 of the state records. The double jeopardy clause prohibits merely punishing twice or attempting a second time to punish criminally for the same offense. See, Helvering v. Mitchell, 303 U.S. 391, 82 L.Ed. 917, 922 (1938). See also, Reed v. Crews, LEXIS 42334 (11th Cir. 2013). Double Jeopardy is written in terms of potential or risk of trial or conviction, not punishment. Breed v. Jones, at 356.

The state continued to attempt its prosecution on the

on the claim, while being denied a full and fair hearing on the State Fourth Amendment Claim. The state court provides the process but in fact the defendant is precluded from utilizing it by reason of an unconscionable breakdown in that process. See, *Boyd v. Mintz*, 631 F.2d 247 (3rd Cir. 1980). The state started with a bond hearing on 5/8/2008, and Nolle Prosequi on 1/27/2009. The federal court started a second prosecution on 5/29/2008, with an Evidentiary Hearing on 8/8/2008, Suppression Hearing on 8/28/2008, Trial on 10/14/2008, and the Sentencing Hearing on 2/13/2009. Both courts had the same element in this Fourth Amendment claim. Edwards' contesting double jeopardy violation started when the federal jury was empaneled before being convicted at federal trial. The Petitioner valued right to have his state trial completed by a particular tribunal is within the protection of the Fifth Amendment against double jeopardy. See, *Crist v. Bretz*, 437 U.S. 28, 98 S.Ct. 2156, 57 L.Ed.2d 24, 32 (1978). The constitutional prohibition against double jeopardy was designed to protect an individual from being subject to the hazards of trial and that no man is to be brought into jeopardy of his life more than once for the same offense. See, *Green v. U.S.*, 335 U.S. 184 78 S.Ct. 221, 2 L.Ed.2d 199, 204 (1957). A habeas petitioner's failure to develop a claim in state court proceedings will be excused and a hearing mandated showing a miscarriage of justice would result from failure to hold a federal evidentiary hearing. *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 112 S.Ct. 1715, 118 L.Ed.2d 318, 329 (1992). This

federal action placed Edwards in violation of the Fifth Amendment, subjected to double jeopardy. Edwards requests an Evidentiary Hearing.

Question three: Whether being denied due process in the state court fourth amendment with which failure to develop material facts and being denied a full and fair hearing in state court will this court grant certiorari for its fundamental miscarriage of justice exception?

The state court conducted a bond hearing on 5/8/2008, and granted the motion to reduce the bond. The fact-finding procedure of the state court was not allowed to be full and fair. See *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067, 1077 (1976). If state procedure affords the defendant in a criminal case the opportunity to litigate the Fourth Amendment issues, Stone precludes federal habeas corpus consideration of those issues, whether or not the defendant avails himself of that opportunity. Full and fair consideration requires consideration by the fact-finding court, and at least the availability of a meaningful appellate review by a higher state court. See, *Mincey v. Head*, 206 F.3d 1106 (11th Cir. 2000).

The state court provides the process, but in fact Edwards was precluded from utilizing it by reason of an unconscionable breakdown in that process. *Davis v. Jones*, 441 F.Supp.2d 1138 (11th Cir. 2006). The federal court caused an unconscionable breakdown in Edwards' state court Fourth Amendment proceeding.

Writ of habeas corpus ad prosequendum ordered Edwards to be transferred to federal court without having comity with the state court. The state District Attorney issues a subpoena to order Edwards back to state court for the hearing set for 12/17/2008 (subpoena attached), page 12 of 15 of the state records. The state judge issued a pick-up order to return Edwards to the county jail for the scheduled hearing on 1/27/2009, (order attached), on page 14 of 15 of the state records. A federal habeas petitioner may escape the rule articulated in Stone on the basis of a denied opportunity, if he or she is prevented from litigating a state Fourth Amendment Claim by reason of an unconscionable breakdown in the underlying process.

The writ of habeas corpus ad prosequendum ordered Edwards to be transferred and the federal court started a second prosecution on the same Fourth Amendment Claim. The federal court indicted Edwards on 5/29/2008, held an Evidentiary hearing on 8/9/2008, a Suppression Hearing on 8/28/2008, Trial on 10/14/2008, and a Sentencing Hearing on 2/13/2009. Both courts were prosecuting this case at the same time between the dates of May 2008 until January 2009. Edwards failed to develop a full and fair claim in the state court in the Fourth Amendment proceeding, because of federal district court of the Southern District of Alabama. See *Boyd v. Mintz*, 631 F.2d 247 (3rd Cir. 1980).

Federal habeas relief would be granted where a full and

fair hearing was denied in state court in the Fourth Amendment proceeding. See *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067, 1077 (1976). Edwards shows that material facts were not adequately developed in the earlier state court proceedings because of an unconscionable breakdown in the state court Fourth Amendment proceeding which was not allowed to be full and fair. Edwards should be excused and failure to entertain this Petition would result in a fundamental miscarriage of justice resulting from a failure to hold a federal evidentiary hearing. See *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 112 S.Ct. 1715 118 L.Ed.2d 318, 329 (1992).

RELIEF REQUESTED

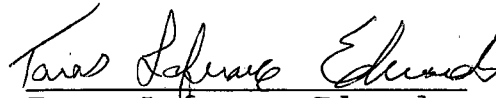
The Petitioner Edwards prays and requests the court grant a Certificate of Appealability for the substantial showing of the denial of constitutional rights. The Petitioner shows the district court and court of appeals procedural ruling is debatable and the claims deserve encouragement to proceed further. Edwards contests Ineffective Assistance of Counsel on the appeal to show cause and prejudice to excuse the procedural default. *U.S. v. Nyhuis*, 211 F.3d 1340 (11th Cir. 2000). The Petitioner Edwards contests habeas relief for the appeal counsel failing to appeal the jury instructions and the Fourth Amendment violation, relief for failing to appeal Ineffective Assistance of Counsel for the violation under Federal Rule 11 Section (b)(1)(H) for the amount of imprisonment the court offered in

the plea Agreement, *Missouri v. Frye*, 566 U.S. 134, 132 S.Ct. 1399, 182 L.Ed.2d 379, 407 (2012). Relief for failing to appeal the federal court starting a second prosecution which precluded Edwards from utilizing the right to have the state Fourth Amendment trial completed and placing Edwards in violation of double jeopardy when the federal jury empaneled before being convicted at federal trial, See *Crist v. Bretz*, 437 U.S. 28, 98 S.Ct. 2156, 57 L.Ed.2d 24, 32 (1978). Relief for failing to appeal the full and fair hearing in the state court was denied. Edwards was denied due process in state court, *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067, 10-77 (1976). Failure to develop a claim in state court proceedings will be excused and a hearing mandated if he can show a fundamental miscarriage of justice would result from failure to hold a federal evidentiary hearing, See *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 112 S.Ct. 1715, 118 L.Ed.2d 318, 329 (1992). Edwards is asking the United States Supreme Court to grant a COA to allow the petitioner to appeal to show a fundamental miscarriage of justice is being ignored, and this case meets the Court's exception on a miscarriage of justice to excuse a procedural default on a second or successive petition in light of *McQuiggin v. Perkins*, 569 U.S. ___, 133 S.Ct. 1924, 185 L.Ed.2d 1019 (2013).

CONCLUSION

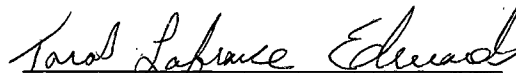
This petition for writ of certiorari contesting cause and prejudice for ineffective assistance of counsel on appeal and cause and prejudice for failure to develop material facts in the state court fourth amendment proceeding. What constitutes a full and fair hearing in a state court fourth amendment proceedings? The state fact finding court or state appellate court was not allowed to review the fourth amendment claim because of an unconscionable breakdown caused by the federal district court of the Southern District of Alabama. Edwards' efforts through due diligence in this petition for this court to liberally construe this pro se findings and hold petitioner to a less stringent standard than that of formal pleadings drafted by a lawyer. Edwards prays this petition for a writ of certiorari to be granted for meeting this court miscarriage of justice exception for a certificate of appealability to excuse the prior procedural default. A fundamental miscarriage of justice survived the passage of the anti-terrorism and effective death penalty act of 1996 (AEDPA) statute of limitations, failure to entertain this petition would result in a fundamental miscarriage of justice. This petition for a writ of certiorari should be granted for the substantive showing of the denial of constitutional rights, and sanction to call for an exercise of this court's supervisory power.

Respectfully Submitted,


Taras Lafrance Edwards

Declaration Under Penalty of Perjury

, Taras Lafrance Edwards, hereby declares under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my belief and knowledge. Executed this 23 day of April, 2018.


Taras Lafrance Edwards