

No. \_\_\_\_\_ (CAPITAL CASE)

IN THE  
SUPREME COURT OF THE UNITED STATES

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NATHANIEL WOODS,

Petitioner,

v.

WARDEN HOLMAN CF,  
ATTORNEY GENERAL, STATE OF ALABAMA,

Respondents.

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

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**PETITION FOR A WRIT OF CERTIORARI**

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**CAPITAL CASE**

**QUESTION PRESENTED**

Could reasonable jurists disagree with the district court's rejection of Mr. Woods' claim that *Martinez v. Ryan*, 566 U.S. 1 (2012), and *Trevino v. Thaler*, 569 U.S. 413 (2013) excused the default of his federal habeas claim that trial counsel was ineffective during plea negotiations, and, accordingly, did the Eleventh Circuit err in denying a certificate of appealability?

## **PARTIES TO THE PROCEEDINGS**

This petition stems from a habeas corpus proceeding in which petitioner, Nathaniel Woods, was the Petitioner before the United States District Court for the Northern District of Alabama, as well as the Applicant and the Appellant before the United States United States Court of Appeals for the Eleventh Circuit. Mr. Woods is a prisoner sentenced to death and in the custody of the warden of Holman Correctional Facility of the Alabama Department of Corrections. The Attorney General of Alabama represents the Warden in these proceedings. The warden, the Attorney General and their predecessors were the Respondents before the United States District Court for the Northern District of Alabama, as well as the Respondent and the Appellee before the United States Court of Appeals for the Eleventh Circuit.

Mr. Woods asks that the Court issue a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit.

## **CORPORATE DISCLOSURE**

The Petitioner, Nathaniel Woods, is an individual, so there are not disclosures to be made pursuant to Supreme Court Rule 29.6.

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## PETITION FOR A WRIT OF CERTIORARI

Nathaniel Woods respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

### OPINIONS BELOW

The Eleventh Circuit issued an order denying Mr. Woods' request for a certificate of appealability on February 22, 2019. This order is attached to the petition as *Appendix A*. The district court issued a memorandum opinion denying Mr. Woods' petition for a writ of habeas corpus on July 18, 2019. This opinion is attached as *Appendix B*.

### STATEMENT OF JURISDICTION

The district court had jurisdiction over the habeas cause under 28 U.S.C. § 2254. Under 28 U.S.C. § 2253, the Eleventh Circuit had jurisdiction over uncertified issues presented in the Application for a Certificate of Appealability ("COA"). This Court has jurisdiction, pursuant to 28 U.S.C. § 1254(1), over all issues presented to the Eleventh Circuit under 28 U.S.C. §§ 1291 & 2253.

### RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution, Amendment VI provides: "In all criminal prosecutions, the accused shall enjoy the right \* \* \* to have the Assistance of Counsel for his defence."

28 U.S.C. § 2253(c) provides: "[a] certificate of appealability may issue \* \* \*only if the applicant has made a substantial showing of the denial of a constitutional right."

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## STATEMENT OF THE CASE

### 1. Statement of the Facts

Nathaniel Woods was convicted in Jefferson County, Alabama of four counts of capital murder for the shooting deaths of City of Birmingham police officers Carlos Owen, Harley A. Chisholm III, and Charles R. Bennett, while they were on duty, violations of § 13A-5-40(a)(5), Ala. Code 1975. Mr. Woods was also convicted of one count of capital murder for murdering the three officers pursuant to one scheme or course of conduct, a violation of § 13A-5-40(a)(10). Mr. Woods was sentenced to death for his involvement with these crimes.

The evidence presented by the State at trial demonstrated that Mr. Woods was not the triggerman behind the shootings. Instead, the evidence at trial demonstrated that Mr. Woods' codefendant, Kerry Spencer, fired the fatal shots that day. At trial, the State's witnesses, including a police officer who survived the shooting, recounted how the officers arrived on the scene to arrest Mr. Woods on an outstanding warrant. A verbal altercation ensued and Officers Chisholm and Owen ultimately entered the house through the back door. Spencer opened fire inside the house with an SKS assault rifle, killing officers Chisholm and Owen. Officer Bennett was shot and killed in the front yard of the house. Both the medical examiner and a tool-marks expert for the State testified that the wounds sustained by the three deceased officers were consistent with wounds caused by bullets fired by a high-powered rifle, such as an SKS rifle. No witness testified to seeing Mr. Woods with the SKS in his hands that day.



Kerry Spencer's case was tried before Mr. Woods' case; he too was convicted of capital murder and sentenced to death. After the Spencer trial but before Mr. Woods' trial began, the State approached Mr. Woods with a plea offer to a non-capital charge in exchange for a 20- or 25-year sentence. Counsel communicated this offer to Mr. Woods, but Mr. Woods rejected the offer due to his belief that he could not be convicted of capital murder because he was not the actual triggerman behind the murders. This belief was based on trial counsel's failure to effectively and fully explain the theory of accomplice liability to Mr. Woods. Counsel advised Mr. Woods that they (counsel) did not believe he would be convicted of capital murder because they believed the State of Alabama could not prove that Mr. Woods was the triggerman.

As such, Mr. Woods proceeded to trial, was convicted and ultimately sentenced to death.

## **2. Proceedings Below**

On October 10, 2005, Mr. Woods was convicted of four counts of capital murder as charged in his indictment. The following day the jury recommended Mr. Woods be sentenced to death by a vote of 10-2. On December 9, 2005, the circuit court accepted that recommendation and sentenced Mr. Woods to death.

Mr. Woods appealed. The Alabama Court of Criminal Appeals affirmed his conviction on August 31, 2007, but remanded the matter for a new sentencing order. *Woods v. State*, 13 So. 3d 1 (Ala. Crim. App. 2007). The circuit court issued its amended sentencing order on September 24, 2007. On return to remand, the Court of

Criminal Appeals affirmed Mr. Woods's death sentence on December 21, 2007. *Woods*, 13 So. 3d at 40-43.

Appellate counsel completely abandoned Mr. Woods at this juncture. Counsel did not tell Mr. Woods about the December 21, 2007 ruling, nor did he file an application for rehearing, which was a prerequisite for asking the Alabama Supreme Court for review of Mr. Woods' case. *See* Rule 39, Ala. R. App. P. As such, the Court of Criminal Appeals issued a certificate of judgment for Mr. Woods' conviction and sentence on January 9, 2008.

Mr. Woods did not discover that he had been abandoned by this fact until months after his appeal had been defaulted. The Equal Justice Initiative took over Mr. Woods' appeal and submitted an emergency motion for an out-of-time appeal to the Alabama Supreme Court on April 29, 2008, after learning that Mr. Woods had been abandoned. On May 6, 2008, the Alabama Supreme Court issued a notice stating that "Petitioner's motion for out-of-time appeal would be considered when, and if, the Alabama Court of Criminal Appeals denied a motion to withdraw its certificate of judgment and to extend the time for filing an application for rehearing."

On May 9, 2008, Mr. Woods filed an emergency motion in the Court of Criminal Appeals to withdraw the certificate of judgment and permit filing of application for rehearing. The Court of Criminal Appeals denied the motion on October 14, 2008. Mr. Woods subsequently filed a renewed his emergency motion for an out-of-time appeal before the Alabama Supreme Court on October 28, 2008.

While his motion for an out-of-time emergency appeal were pending at the Alabama Supreme Court, Mr. Woods, through the Equal Justice Initiative, petitioned the Jefferson Circuit Court for post-conviction relief pursuant to Rule 32 of the Alabama Rules of Criminal Procedure on December 30, 2008. The circuit court would ultimately hold the Rule 32 proceedings in abeyance at Mr. Woods' request while his petitions to the Alabama Supreme Court and his petition for writ of certiorari to this Court were pending.

The Alabama Supreme Court denied Mr. Woods' request for an out-of-time appeal on August 24, 2009. Mr. Woods then petitioned this Court for a writ of certiorari on November 5, 2009. This Court denied Mr. Woods' certiorari petition on February 22, 2010, in *Woods v. Alabama*, 559 U.S. 942 (2010).

On March 9, 2010, after this Court denied Mr. Woods' petition for a writ of certiorari, the circuit court ordered the State of Alabama to answer Mr. Woods' Rule 32 petition, which it did on July 21, 2010. New counsel took over the representation of Mr. Woods, and the Equal Justice Initiative withdrew from the matter. Mr. Woods' new post-conviction counsel did not file an amendment to Mr. Woods' petition, nor did they file a response to either the State's response to his Rule 32 petition or the State's amended response to Mr. Woods' Rule 32 petition.

The circuit court summarily dismissed Mr. Woods' Rule 32 petition on December 1, 2010, without holding an evidentiary hearing. Mr. Woods filed a motion for reconsideration on December 30, 2010, which the circuit court denied on January 25, 2011. Mr. Woods appealed the denial of his Rule 32 petition to the Alabama Court of

Criminal Appeals, but the denial of his Rule 32 petition was affirmed on April 29, 2016. *See Woods v. State*, 21 So. 3d 1125 (Ala. Crim. App. 2016). Mr. Woods sought rehearing on that decision, but the court overruled that request on September 2, 2016. Mr. Woods then petitioned the Alabama Supreme Court for a writ of certiorari, but that court denied the writ on October 21, 2016. *Ex parte Woods*, 221 So. 3d 1125 (Ala. 2016). Mr. Woods did not seek certiorari review with this Court.

Mr. Woods filed a timely petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the Northern District of Alabama on October 27, 2016. New counsel for Mr. Wood was appointed on April 28, 2017. Among other claims, Mr. Woods argued that trial counsel was ineffective for failing to adequately advise Mr. Woods about the dangers of rejecting the State's plea offer. Specifically, Mr. Woods argued that trial counsel failed to explain to him that pursuant to the doctrine of accomplice liability, he could have been convicted of capital murder even if the State did not prove he was the triggerman. Mr. Woods argued that but-for counsel's failure to explain this to him, he would have pleaded guilty and would not have proceeded to trial under the four-count capital murder indictment. Finally, Mr. Woods argued that the district court should excuse his failure to present this claim in his state post-conviction proceedings pursuant to *Martinez v. Ryan*, 566 U.S. 1 (2012), and *Trevino v. Thaler*, 569 U.S. 413 (2013), on the grounds that post-conviction counsel was ineffective for failing to raise this claim in his Rule 32 petition.

The district court denied Mr. Woods' petition on July 18, 2018. With respect to the claim regarding trial counsel's failure to properly advise him about the guilty plea,

the district court found that Mr. Woods failed to plead a substantial claims. The court denied Mr. Woods a certificate of judgment (“COA”) that same day.

On January 22, 2019, Mr. Woods filed a timely request with the Eleventh Circuit for a COA on four separate grounds, only one of which is pertinent here. Mr. Woods argued that jurists of reason could debate whether *Martinez* excused his claim that trial counsel was ineffective during the plea-negotiation stages of his case. The Eleventh Circuit rejected all four requests.

With respect to Mr. Woods’ *Martinez* claim that trial counsel was ineffective during the plea-negotiation stages, the court disagreed with the district court’s conclusion that Mr. Woods had failed to demonstrate a substantial claim as required by *Martinez*. The court believed Mr. Woods **did** meet that burden, but it concluded that Mr. Woods wasn’t entitled to a COA because reasonable jurist would agree that he failed to plead facts tending to show that *post-conviction counsel* knew about the plea offer; therefore, Mr. Woods allegedly failed to plead facts tending to show that post-conviction counsel was ineffective as required by *Martinez*.

## REASONS FOR GRANTING THE PETITION

The Eleventh Circuit's denial of a COA disregarded this Court's instruction that a court of appeals should limit its examination at the COA stage to a threshold inquiry into the underlying merit of the claim and ask only if the district court's decision was debatable.

28 U.S.C. § 2253(c) requires a COA to be granted before a habeas petitioner may appeal from a final district court judgment denying relief. A COA should issue where the petitioner makes a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253 (c)(2). As this Court recently explained in *Buck v. Davis*, 137 S. Ct. 759 (2017), the COA inquiry "is not coextensive with a merits analysis" and, "[a]t the COA stage, the only question is whether the applicant has shown that 'jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.'" *Buck*, 137 S. Ct. at 773, quoting *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). "This threshold question should be decided without 'full consideration of the factual or legal bases adduced in support of the claims.'" *Id.*, quoting *Miller-El*, 537 U.S. at 336. Here, Mr. Woods clearly met that standard in showing that reasonable jurists could disagree with the district court's denial of his *Strickland v. Washington*, 466 U.S. 668 (1984) claim that trial counsel was ineffective during plea negotiations.

### **A. Mr. Woods' claim is substantial and warranted further consideration in the district court under *Martinez*.**

At the heart of Mr. Woods' habeas petition was that post-conviction counsel was ineffective for failing to argue that Mr. Woods' trial counsel did not render reasonably effective representation during plea negotiations. But-for trial counsel's failure to

properly advise Mr. Woods that he could be convicted of capital murder and sentenced to death even if the State of Alabama could not prove he was the triggerman behind the shootings, Mr. Woods would have accepted the State's plea offer.

A defendant is entitled to the effective representation of counsel during plea negotiations. *See Hill v. Lockhart*, 474 U.S. 52 (1985) (holding *Strickland* applies to claims of ineffective assistance arising from counsel's failures to fully advise a defendant about the ramifications of pleading guilty). In *Lafler v. Cooper*, 566 U.S. 156 (2012), this Court expanded the Sixth Amendment protections addressed in *Strickland* and *Hill* to situations where counsel's ineffectiveness during plea negotiations leads a defendant reject a plea offer and go to trial. 566 U.S. at 163. As in *Hill*, this Court observed that a movant must show a deficiency in counsel's performance during the plea negotiations and that because of this deficiency "the outcome of the plea process would have been different with competent advice." *Lafler*, 566 U.S. at 163. Mr. Woods met that burden here.

"When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 687–688. Counsel's performance fell below this critical level. To effectively advise Mr. Woods about whether he should exercise his right to go to trial or waive that right in exchange for an advantageous sentence, reasonably competent counsel was constitutionally required to fully inform Mr. Woods about how, under Alabama law, he could still be convicted of capital murder and sentenced to death even if the jury concluded he was

not the triggerman behind the shootings, but rather an accomplice to the shooting. *See e.g., Lewis v. State*, 456 So. 2d 413, 416–17 (Ala. Crim. App. 1984) (“[A] non-triggerman can be convicted of a capital offense if he was a knowing accomplice to the intentional killing itself.”); *Ex parte Raines*, 429 So. 2d 1111, 1112 (Ala. 1982) (“[T]he accomplice liability doctrine may be used to convict a non-triggerman accomplice, if, but only if, the defendant was an accomplice in the intentional killing as opposed to being an accomplice merely in the underlying felony”); *Arthur v. State*, 711 So. 2d 1031, 1057-58 (Ala. Crim. App. 1996) (citing *Lewis* and *Ritter* for same proposition). In Mr. Woods’ case, trial counsel failed to meet this burden. *See Lafler*, 566 U.S. at 163; *Strickland*, 466 U.S., at 687–688.

Prior to trial, Mr. Woods was offered a plea deal in which he could have pleaded guilty to a non-capital charge in exchange for a 20- or 25-year prison sentence. The State communicated that offer to Mr. Woods’ trial counsel and Mr. Woods after Kerry Spencer, Mr. Woods’ codefendant, was convicted and sentenced to death. Mr. Woods did not accept this plea deal because he thought – with counsel’s encouragement and based on the advice of counsel – that he would be acquitted of these charges because the evidence would prove that he was not the shooter that day. Again, counsel incorrectly advised Mr. Woods that the State of Alabama would have to prove he was the triggerman in order to convict him of capital murder.

Due to trial counsel’s failure to effectively advise him regarding the prevalent law, Mr. Woods did not realize that the State of Alabama could convict him and pursue a death sentence on a theory of accomplice liability or aiding and abetting. Instead, Mr.



Woods erroneously believed – based on counsel’s advice – that the State would be required to prove that Mr. Woods pulled the trigger, thereby directly causing the officers’ deaths. Mr. Woods believed that Spencer’s admissions that Spencer was the shooter would preclude the State from pursuing a capital murder conviction and a death sentence against Mr. Woods. He was wrong. Had he known he was wrong, he would have accepted the State’s plea offer.

Counsel failed to properly explain that Mr. Woods could be held responsible for Kerry Spencer’s actions if the State proved to the jury that Mr. Woods was an accomplice to Spencer’s shooting. Because of counsel’s failures, Mr. Woods’ rejected the State’s plea offer based upon legally incorrect and woefully deficient advice.

Trial counsel’s failure to inform correctly Mr. Woods that the State could hold him accountable for the murders through the doctrine of accomplice liability fell woefully short of the Sixth Amendment’s guarantee of constitutionally effective assistance of counsel. Under prevailing professional norms, constitutionally effective counsel would have informed a defendant that his culpability for a murder for a shooting death is not determined simply by proving he didn’t pull the trigger. *See Padilla v. Kentucky*, 559 U.S. 356, 366 (2010), quoting *Strickland*, 466 U.S. at 694 (“The first prong—constitutional deficiency—is necessarily linked to the practice and expectations of the legal community: ‘The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’”) Counsel failed to comply with this constitutional and professional norm.

Trial counsel failed to explain to Mr. Woods that he could be convicted of all four counts of capital murder and the one count of attempted murder even if the State could not prove that he was the triggerman. *See* § 13A-2-23, Ala. Code 1975 (“A person is legally accountable for the behavior of another constituting a criminal offense if, with the intent to promote or assist the commission of the offense: (1) He procures, induces or causes such other person to commit the offense; or (2) He aids or abets such other person in committing the offense”); *see also Pilley v. State*, 930 So. 2d 550, 565 (Ala. Crim. App. 2005) (“Aid and abet comprehend all assistance rendered by acts or words of encouragement or support or presence, actual or constructive, to render assistance should it become necessary.”) (internal citations omitted). Having sat through most, if not all, of Kerry Spencer’s trial, Mr. Woods’ trial counsel was aware of – or should have been aware of – the State’s evidence against Mr. Woods and its theory that Mr. Woods and Spencer acted in tandem to lure the officers into the apartment that day. Counsel either did not recognize that this evidence would be a legally sufficient showing that could lead to Mr. Woods’ conviction as an accomplice, or completely failed to objectively inform Mr. Woods of the risk of proceeding to trial on the State’s case.

Due to trial counsel’s failures, Mr. Woods did not know that he could be convicted of capital murder and sentenced to death if the State could convince the jury that he lured the officers into the house that day so that Spencer could shoot them. He was unaware that the State didn’t have to prove that he was the triggerman or that there was a spoken, demonstrable plan of his and Spencer’s to kill the officers. *See, e.g.,*

*Fuller v. State*, 198 So. 2d 625 (Ala. Ct. App. 1966) (“ This guilty participation [of an accomplice] need not be proved by positive testimony, and rarely is.”); *Buford v. State*, 891 So. 2d 423, 428 (Ala. Crim. App. 2004) (“Such facts as the defendant's presence in connection with his companionship, his conduct at, before, and after the commission of the act, are potent circumstances from which participation may be inferred.”) (internal citations omitted). Trial counsel compounded the problem by encouraging Mr. Woods to try the case because counsel believed they could prove Mr. Woods didn’t pull a trigger that day.

Had Mr. Woods received advice from constitutionally effective counsel and fully understood that the State of Alabama could convict him of capital murder under an accomplice liability theory without showing that he pulled a trigger that day, Mr. Woods would have accepted the State’s plea bargain. Trial counsel bore the burden of ensuring that Mr. Woods was knowingly and intelligently accepting or rejecting a plea deal. Had counsel properly explained how Mr. Woods could be convicted under an accomplice liability theory, how strong the case was against him as an accomplice, and how he would be eligible for parole if he accepted the State’s deal, Mr. Woods would have pleaded guilty. *See Strickland*, 466 U.S. at 694; *Lafler*, 566 U.S. at 163.

**B. Reasonable jurist could debate whether Mr. Woods had satisfied his burden under *Martinez* to present a claim worthy of further consideration.**

The Eleventh Circuit denied Mr. Woods’ COA denial based on its conclusion that Mr. Woods failed to make specific allegations in his habeas petition that state post-conviction counsel was ineffective for failing to raise this claim regarding the plea negotiations. Specifically, the court determined that reasonable jurists would agree

that debate Mr. Woods' failed to allege that post-conviction counsel even knew about the alleged plea offer, and, as such, Mr. Woods failed to demonstrate that post-conviction counsel was ineffective as required by *Martinez*. Nevertheless, this approach cannot be reconciled with *Martinez* or this Court's holdings regarding the grant of a COA.

In order for a district court to excuse the procedural default of a claim pursuant to *Martinez*, a petitioner must present a substantial claim of ineffective assistance of trial counsel under *Strickland* as well as an allegation that post-conviction counsel was ineffective under *Strickland*. See *Martinez*, 566 U.S. at 14. The allegation that post-conviction counsel performed in a constitutionally ineffective manner under *Strickland* is necessary to excuse procedural default under *Martinez*, but that allegation alone isn't sufficient for excusing default. To satisfy the *Martinez* exception, a petitioner must allege that post-conviction counsel was constitutionally ineffective under *Strickland* for failing to raise a substantial claim of the ineffective assistance of trial counsel that would likely entitle the petitioner to relief.

Mr. Woods met that burden in his habeas petition. The Eleventh Circuit itself recognized that Mr. Woods' claim demonstrated "some merit" when it disagreed with the district court's conclusion that this claim was meritless. That determination provides the key to unlocking the *Martinez* exception to procedural default: that a substantial claim of ineffective assistance of trial counsel exists but was not raised in the state initial-review collateral proceeding. Inherent within that determination is the realization that reasonable jurist could disagree as to whether post-conviction

counsel performed in a constitutionally ineffective manner by failing to allege this substantial claim in Mr. Woods' Rule 32 petition in state court. Because a reasonable disagreement exists as to whether post-conviction counsel was ineffective, Mr. Woods was entitled to COA to allow the Eleventh Circuit to further consider the issue.

In looking at this issue from a different angle, a district court could not ultimately grant Mr. Woods habeas relief unless it ruled in his favor that trial counsel was ineffective during plea negotiations. Unless Mr. Woods can prove that trial counsel was ineffective during plea negotiations, he cannot prove that post-conviction counsel was ineffective under *Strickland* as required by *Martinez* in failing to raise this claim regarding trial counsel – a necessary showing to excuse procedural default under *Martinez*.

Here, the Eleventh Circuit improperly enhanced the showing required by *Martinez*. Whether Mr. Woods demonstrated that post-conviction counsel knew about the plea deal is frankly irrelevant for *Martinez* purposes. What is relevant is that post-conviction counsel should have known about trial counsel's ineffective assistance regarding Mr. Woods' plea deal and raised the claim in Mr. Woods' Rule 32 petition had they effectively investigated Mr. Woods' potential post-conviction remedies. *See Martinez*, 566 U.S. at 11-12 (“Claims of ineffective assistance at trial often require investigative work and an understanding of trial strategy. When the issue cannot be raised on direct review, moreover, a prisoner asserting an ineffective-assistance-of-trial-counsel claim in an initial-review collateral proceeding cannot rely on a court opinion or the prior work of an attorney addressing that claim.”) Again, post-

conviction counsel's effectiveness cannot be assessed without first looking at the substantive claim of ineffective assistance of trial counsel that's being alleged in the *Martinez* claim. If trial counsel was, in fact, ineffective under *Strickland* during plea negotiations, post-conviction counsel was surely ineffective under *Strickland* for either failing to raise the claim or failing to properly investigate the Rule 32 petition. The Eleventh Circuit's reasoning functionally eliminates the potential for *Martinez* claims in circumstances where post-conviction counsel failed to properly investigate potential claims that would entitle a petitioner to relief.

As such, the necessary condition for the district court to consider this claim is the underlying merits of the claim that trial counsel was ineffective during plea negotiations at trial. As the Eleventh Circuit observed: Mr. Woods' claim has some merit. What no court has considered is whether the claim contains enough merit to warrant relief. If that claim is potentially meritorious, then so is his allegation that post-conviction counsel was ineffective under *Strickland* for failing to present the claim in Mr. Woods' Rule 32 petition.

The district court should have held a hearing to consider this claim on the merits. Likewise, the Eleventh Circuit should have granted a COA to allow full briefing on this issue. Accordingly, this Court should grant Mr. Woods' petition for a writ of certiorari, vacate the order of the Eleventh Circuit, and order that court to grant Mr. Woods a COA as to this issue.

## CONCLUSION

Based on the foregoing, this Court should grant Mr. Woods' petition for a writ of certiorari.

Done this 22nd day of May, 2019.

Respectfully submitted,

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