APPENDIX

"Appendix"

EXHIBIT A

"Exhibit A"

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

July 22, 2024

Jonathan Godwin
Cross City CI - Inmate Legal Mail
568 NE 255TH
PO BOX 1500
CROSS CITY, FL 32628

Appeal Number: 24-10971-D
Case Style: Jonathan Godwin v. Secretary, Department of Corrections, et al
District Court Docket No: 8:16-cv-02253-SDM-SPF

The enclosed copy of this Court's order denying the application for a Certificate of Appealability is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Any pending motions are now rendered moot in light of the attached order.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-10971

JONATHAN GODWIN,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
FLORIDA ATTORNEY GENERAL,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:16-cv-02253-SDM-SPF

ORDER:

Jonathan Godwin's motion for a certificate of appealability is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). His motion for leave to proceed *in forma pauperis* on appeal is DENIED AS MOOT.

/s/ Robert J. Luck

UNITED STATES CIRCUIT JUDGE

EXHIBIT B

"Exhibit B"

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JONATHAN GODWIN,

Applicant,

v. CASE NO. 8:16-cv-2253-SDM-SPF

SECRETARY, Department of Corrections,

Respondent.
_______________________________________/

ORDER

An earlier, lengthy order (Doc. 24) denies Godwin's application under 28 U.S.C. § 2254 for the writ of habeas corpus. Both the district court and the circuit court declined to issue a certificate of appealability (Docs. 24 and 30), and the Supreme Court denied Godwin's application for the writ of *certiorari*. (Doc. 34) Pending is Godwin's motion — his third post-judgment motion — under Rule 60(b), Federal Rules of Civil Procedure, for relief from both the judgment (Doc. 46) and the earlier order (Doc. 44) that denies his second post-judgment motion.

In his first issue Godwin complains that the earlier order (Doc. 44) that denied his last post-judgment motion failed to address his entitlement to a certificate of appealability ("COA"). Godwin should have raised the omission before he appealed, and the appellate court apparently found the omission insignificant when that court denied a COA. (Doc. 45) In his second issue Godwin re-argues the substance of the

arguments in both of the earlier post-conviction motions. (Docs. 31 and 41) Godwin's disagreement with the earlier determinations is not a basis for relief under Rule 60. Godwin must cease filing post-conviction motions in this action.

Godwin's motion (Doc. 46) is **DENIED**.

ORDERED in Tampa, Florida, on March 4, 2024.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

EXHIBIT C

"Exhibit C"

C

PROVIDED TO
CROSS CITY C.I. ON
AUG 03 2016
FOR MAILING

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District:
Name (under which you were convicted): **JONATHAN GODWIN**	Docket or Case No.:
Place of Confinement: **Cross City Correctional Institution** **568 N.E. 255th Street** **Cross City, Florida 32628**	Prisoner No.: **M07545**
Petitioner: Jonathan Godwin v.	Respondent: **JULIE JONES**
The Attorney General of the State of Florida: **PAMELA JO BONDI**	

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
   (b) Criminal docket or case number (if you know):
2. (a) Date of the judgment of conviction (if you know):
   (b) Date of sentencing: January 4, 2007
3. Length of sentence: Life
4. In this case, were you convicted on more than one count or of more than one crime?

   Yes √ No ☐

5. Identify all crimes of which you were convicted and sentenced in this case: Robbery w/firearm, False Imprisonment w/firearm
6. (a) What was your plea? (Check one)

   (1) Not guilty √ (3) Nolo contendere (no contest) ☐

   (2) Guilty ☐ (4) Insanity plea ☐

   (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury √ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No √

8. Did you appeal from the judgment of conviction?

Yes √ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Second District Court of Appeal, Lakeland, FL.
(b) Docket or case number (if you know): 2D07-394
(c) Result: Affirmed
(d) Date of result (if you know): December 17, 2008
(e) Citation to the case (if you know): Godwin v. State, 996 So. 2d 221 (Fla. 2nd DCA 2008)
(f) Grounds raised: 1
(g) Did you seek further review by a higher state court? Yes ☐ No √

If yes, answer the following:

(1) Name of court: N/A
(2) Docket or case number (if you know): N/A
(3) Result: N/A
(4) Date of result (if you know): N/A
(5) Citation to the case (if you know): N/A
(6) Grounds raised: N/A

(h) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No √

If yes, answer the following: N/A

(1) Docket or case number (if you know): N/A
(2) Result: N/A
(3) Date of result (if you know): N/A
(4) Citation to the case (if you know): N/A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes √ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a)(1) Name of court: Thirteenth Judicial Circuit Court, Hillsborough County, FL
(2) Docket or case number (if you know): 06-CF-13197
(3) Date of filing (if you know): August 25, 2010
(5) Grounds raised: Six

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes √ No ☐

(7) Result: Summary denied
(8) Date of result (if you know): ~~October 7, 2009~~. April 26, 2013.

(b) If you filed any second petition, application, or motion, give the same information:
(1) Name of court: Second District Court of Appeals
(2) Docket or case number (if you know): 2D09-2236
(3) Date of filing (if you know): May 15, 2009
(4) Nature of the proceeding: Habeas Corpus
(5) Grounds raised: Eight
(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No √

(7) Result: Denied
(8) Date of result (if you know): October 7, 2009.

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: Second District Court of Appeals
(2) Docket or case number (if you know): 2D10-301
(3) Date of filing (if you know): January 22, 2010
(4) Nature of the proceeding: All Writs Jurisdiction
(5) Grounds raised: N/A
(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No √
(7) Result: Denied
(8) Date of result (if you know): February 9, 2010

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes √ No ☐

(2) Second petition: Yes √ No ☐

(3) Third petition: Yes √ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: PETITIONER'S FOURTH AND FOURTEENTH U.S.C.A RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURE UNDER TERRY V. OHIO, 392 U.S. 1 (1967), WAS VIOLATED BY EVIDENCE OBTAINED AS A RESULT OF A STOP OF PETITIONER'S VEHICLE, WHERE THE INFORMATION RELIED UPON BY THE STOPPING OFFICER WAS NOT SUFFICIENT TO JUSTIFY THE STOP, AND/OR WHERE THE STOPPING OFFICER'S TESTIMONY REGARDING WHAT HE KNEW AND WHEN HE KNEW IT WAS PROVEN TO BE FALSE AND/OR MISLEADING.

(a) Supporting Facts: Petitioner, pro se, filed a pretrial motion to suppress evidence obtain as a result of an unlawful stop of his vehicle. He asserted as grounds thereof that the officer did not have an objective well-founded articulate suspicion to believe that Petitioner had and/or was about to commit a crime. Furthermore, that the search of his vehicle went beyond the scope for weapons as authorized by Terry, supra. Consequently, any evidence obtain therefrom was "fruit of a poisonous tree" and should be suppress.

On October 20, 2006, a hearing was held on the motion. Officer David Trick, testified that he stopped the Petitioner's vehicle because it was similar to the Bolo. He stated that the Bolo given by Gary Felice was for a "large gray Oldsmobile with two black males, shirt descriptions and heading eastbound on Broadway." Officer Felice, testified similar to Officer

Trick's Bolo description except for the shirt detail.[1] Allegedly after hearing Officer' Felice's Bolo, Officer Trick stopped Petitioner's vehicle three to five minutes later. Petitioner was driving a gray Cadillac. (see Ex. A pg. 30-32) Officer Trick stated that he "hadn't identified them as suspects" upon the stop, but the vehicle was similar to the Bolo. (see Ex. A pg. 38) Furthermore, he stated that Officer Mark Vasquez issued the victim's name(Katrina Winkler) before the stop and seizure of an incriminating bank statement.[2] (see Ex. A pg. 40) However, Officer Vasquez, testified that he did not issue Katrina Winkler's name until he was asked. (see Ex. A pg. 64).

The trial court made factual findings and denied the motion on October 31, 2006. To gain creditability with the trial court. Petitioner conceded the stop based on the officers testimony in a strategic move to strengthen his argument that the search exceeded the bounds of Terry, supra. (see Ex. H)

On November 30, 2006, the State amended the discovery. An audio tape containing the Bolo transmissions was disclosed to the defense. Contrary to the officers testimony, the tape made clear that the color of the vehicle was "blue or dark blue", and that the clothing description wasn't broadcast until after the stop. (see Ex. E pg. 320-322).[3] Officer Felice confirmed this conclusion at trial. (see Ex. E pg. 327-328). However, Petitioner wasn't allowed to impeach Officer Trick at trial with the Bolo tape. (see Ex. E pg. 380-381) And even though Petitioner renewed the motion to suppress at trial, the trial court's findings and ruling remained unchanged.[4] Despite Petitioner's best efforts, he did not receive a Full and Fair determination. See also Ground five, infra.

(b) If you did not exhaust your state remedies on Ground One, explain why: N/A

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes √ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

---

[1] Officer Gary Felice, was the first officer on the scene, supposedly while the robbery was still in progress. Upon obtaining and issuing the Bolo, he pursed the robbers eastbound on Broadway, but saw nothing and returned to the business. (see Ex. A pg. 24-26)

[2] Officer Trick, stated that Petitioner consented to a search of his vehicle.

[3] Petitioner contest the transcription word "large", as the tape did not state "large blue or dark blue", but only "blue or dark blue".

[4] Petitioner – through counsel – reasserted that Officer Trick did not have a well-founded articulate suspicion to support the stop. (see Ex. A1 pg. 6)

EXHIBIT D

"Exhibit D"

D

Doc. 7

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JONATHAN GODWIN,
Petitioner,

v. 8:16-cv-2253-T-23MAP

SECRETARY, DEP'T OF CORRECTIONS, ET AL.
Respondent.
______________________________/

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW the Secretary, Florida Department of Corrections, by and through the undersigned counsel, filing this response to the 28 U.S.C. § 2254 petition. The petition should be denied.

Before this Court is a petition for writ of habeas corpus filed by a Florida prisoner, challenging his conviction. The Department states that Petitioner is not being illegally restrained and is not entitled to relief. To Respondent's knowledge, no District Court Judge or Magistrate assigned this case was involved in Petitioner's state court proceedings.

Procedural Background

Jury Trial: On Dec. 20, 2006, Defendant was found guilty of False Imprisonment with a Firearm (count one) and Robbery with a Firearm, Actual Possession (count two) after a jury trial. Ex.10. On Jan. 4, 2007, he was sentenced to 15 years on count one and Life without parole on count two. Ex.11.

Direct Appeal: Defendant appealed. Ex.1,5. The appeal was

affirmed PCA and the Mandate was issued Dec. 12, 2008. Ex.1,4.

PAIAAC: Defendant also filed a Petition Alleging Ineffective Assistance of Appellate Counsel (PAIAAC) on May 14, 2009, which was denied on Dec. 8, 2009. Ex.20,21,24.

All Writs: Defendant also filed a Petition for all writs on Jan. 19 2010, which was denied on April 15, 2010. Ex.27,28,31.

Second PAIAAC: Defendant filed a second Petition alleging ineffective Appellate counsel on April 26, 2010, which was denied on July 20, 2010. Ex.32-34.

Postconviction: Defendant filed a postconviction motion on Aug. 25, 2010, and a supplemental motion on Dec. 5, 2011. Ex.44,45. The court issued an order granting an evidentiary hearing, and Denying some of Defendant's claims, in part. Ex.46. An evidentiary hearing was held on Sept. 27, 2012, and the transcript is included. Ex.47:V2:R187,253-77.

On April 26, 2013, the Court issued a final Order Denying Defendant's 3.850 Claims. Ex.48.

Postconviction Appeal: Defendant appealed to both the DCA and the Florida Supreme court. Ex. 35,51. In the DCA, Defendant filed an Initial Brief, the State filed an Answer, and the Defendant filed a Reply. Ex. 36-38. On Dec. 12, 2014 the court issued a PCA, but on March 13, 2015, the court issued an authored opinion. Ex. 41. See Godwin v. State, 160 So. 3d 497 (Fla. 2d DCA 2015), rev. granted, 182 So. 3d 632 (Fla. 2015),

and review dismissed as improvidently granted, 192 So. 3d 471 (Fla. 2016). The Mandate was issued April 22, 2015.

Defendant filed a notice of Discretionary jurisdiction to the Florida Supreme Court, which was accepted. Ex35,51. Jurisdictional Briefs were filed, Ex. 52, and Defendant filed an initial Brief. Ex.53. The State filed an Answer Brief and Defendant filed a Reply, and oral argument was conducted. Ex. 54,55,51. The court ultimately found that jurisdiction should not have been granted, and dismissed the proceeding on June 9, 2016. Ex. 51,56. The mandate was issued June 9, 2016

Timeliness of Federal Petition

The instant Petition was filed Aug. 17, 2016 and appears **timely**. The time appears to have been tolled by the lengthy proceedings discussed above.[1] The State will assume, without conceding, that the motion is timely and proceed to the merits.

RESPONSE

Before discussing the claims, the State notes three central principles of AEDPA: the application of federal law, exhaustion of state remedies, and deference to lower court findings.

Federal Question: 28 U.S.C. section 2254(a) explicitly requires a federal court to entertain an application for writ of

[1] It appears approximately five months passed between his direct appeal being affirmed and his first PAIAAC; another 1.3 months passed until he filed his all writs motion; another 10 days passed until he filed his second PAIAAC; after that, one month passed until he filed his 3.850, which remained pending until June 2016. After that, 2.3 months passed before he filed the instant habeas, for a total of approximately ten months of untolled time.

habeas corpus only when the petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." Federal courts may intervene in the state judicial process only to correct wrongs of a constitutional dimension. Wainwright v. Goode, 464 U.S. 78, 83 (1983); Engle v. Isaac, 457 U.S. 1141 (1982). Even when a petition raising state law issues is "couched in terms of equal protection and due process," this limitation on federal habeas corpus review is of equal force. Willeford v. Estelle, 538 F.2d 1194 (5th Cir. 1976).

Exhaustion of State Remedies: Before bringing a habeas action in federal court, a petitioner must exhaust all state remedies available for challenging his conviction. 28 U.S.C. § 2254(b),(c). The petitioner must "fairly present[]" every issue raised to the state's highest court, either on direct appeal or on collateral review. Picard v. Connor, 404 U.S. 270 (1971). To exhaust a claim, "state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." O'Sullivan v. Boerckel, 526 U.S. 838 (1999).

A petitioner may be procedurally defaulted from raising claims in federal habeas if he was procedurally defaulted in state court. Coleman v. Thompson, 501 U.S. 722, 729-30 (1991).

> Federal courts are barred from reaching the merits of a state prisoner's federal habeas claim where the petitioner has failed to

> comply with an independent and adequate state procedural rule. When a state court correctly applies a procedural default principle of state law, federal courts must abide by the state court decision but only if the state rule is regularly followed[.]

Siebert v. Allen, 455 F.3d 1269, 1271 (11th Cir. 2006).

There are two limited exceptions to the procedural default doctrine. First, a petitioner must show both "cause" for the default and actual "prejudice" from the claimed error. House v. Bell, 547 U.S. 518, 536-37 (2006). The "cause" excusing the procedural default must result from some objective factor external to the petitioner that prevented him from raising the claim and which cannot be fairly attributable to his own conduct. Murray v. Carrier, 477 U.S. 478 (1986). To establish "prejudice," a petitioner must show that there is a reasonable probability the result of the proceeding would have been different. Henderson v. Campbell, 353 F.3d 880 (11th Cir. 2003).

The second exception is only utilized under extraordinary circumstances. A petitioner may assert a fundamental miscarriage of justice resulted in a constitutional violation because he is actually innocent. Carrier, 477 U.S. at 495-96. This concerns a petitioner's "actual" innocence rather than "legal" innocence. Johnson v. Alabama, 256 F.3d 1156, 1171 (2001). A petitioner must "show that it is more likely than not that no reasonable juror would have convicted him." Schlup v. Delo, 513 U.S. 298,

327 (1995). Also, "'[t]o be credible,' a claim of actual innocence must be based on [new] reliable evidence." Id. at 324.

Deferential Review: Federal courts must afford a high level of deference to state court decisions. Ferguson v. Culliver, 527 F.3d 1144, 1146 (11th Cir. 2008). AEDPA modified federal habeas court's role in reviewing state prisoner applications in order to prevent retrials and to ensure state-court convictions are properly enforced. Bell v. Cone, 535 U.S. 685, 693 (2002).

Section 2254(d) forbids federal courts from granting habeas relief for claims that previously were "adjudicated on the merits" in state court, unless the petition can establish the adjudication "resulted in a decision contrary to, or involved an unreasonable application of, clearly established" Supreme Court law, or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(1),(2). When a federal claim has been presented to a State court and the State court has denied relief, it may be presumed the state court adjudicated the claim on the merits. Harrington v. Richter, 131 S.Ct. 770, 784-85 (2011). Where the State court does explain its reasoning, that decision receives AEDPA deference even if the State court fails to cite Supreme Court precedent. Early v. Packer, 537 U.S. 3, 8 (2002).

Federal review is limited to the record that was before the

State court that adjudicated the claim. Section 2254(d)(1) refers, in the past tense, to a State-court adjudication that resulted in a decision contrary to, or involved an unreasonable application of, established law. The record under review is limited to the record in existence at that time. Cullen v. Pinholster, 131 S.Ct. 1388 (2011). The federal court presumes state court findings of fact correct, unless petitioner rebuts them by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

Ineffective Assistance Claims:

Under AEDPA review of ineffective assistance claims, a petitioner must meet the two-part standard for counsel's performance established by Strickland v. Washington, 466 U.S. 668 (1984). The burden is on Appellant to demonstrate that counsel's performance fell below an objective standard of reasonableness. Id. at 686-88. To establish an ineffective assistance claim, a defendant must demonstrate 1) deficient performance by counsel and 2) prejudice to the defense. Id.

In Harrington v. Richter, 131 S.Ct. 770 (2011), the Supreme Court explained a petitioner's burden on ineffective assistance:

> To establish deficient performance, a person challenging a conviction must show that "counsel's representation fell below an objective standard of reasonableness." A court considering a claim of ineffective assistance must apply a "strong presumption" that counsel's representation was within the "wide range" of reasonable professional assistance. The challenger's burden is to

> show "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment."
>
> With respect to prejudice, a challenger must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." It is not enough "to show that the errors had some conceivable effect on the outcome." Rather, counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable."

GROUND 1: Defendant claims a violation of his Fourth Amendment right based on a Terry stop which he claims was not supported by sufficient facts. He claims the officer was "proven to be false and/or misleading." Defendant claims he filed a *pro se* motion to suppress alleging lack of reasonable suspicion to stop his car, which matched the BOLO after the robbery.

Exhaustion: Defendant notes that a hearing was held on the suppression motion. Defendant raised this issue on direct appeal. In his initial brief, Defendant challenged the stop of the vehicle as being based on insufficient facts. Ex.3. As such, the State will assume the issue was exhausted.

Merits: First, this ground is foreclosed by Stone v. Powell, 428 U.S. 465 (1976) (holding that, where the state had provided opportunity for full litigation of Fourth Amendment claim, state prisoner could not be granted habeas relief on

grounds that evidence was obtained through unconstitutional seizure; in habeas context, contribution of exclusionary rule, if any, to effectuation of Fourth Amendment was minimal as compared to substantial societal costs of applying rule).

As such, even if a search is invalid, the Supreme Court has held in Powell that the exclusionary rule cannot be invoked in collateral habeas review to exclude evidence. Id.

Second, even on the merits, this issue was fully litigated on direct appeal and the court affirmed PCA. Ex.4. In its Answer Brief, the State explained that the stop was valid because Officer Trick received a BOLO just moments before the stop, and stopped the car quickly after the Robbery. Ex.2. The State noted the record did not support Defendant's claim that the prosecutor elicited false testimony. Id. The State also noted that the "fellow officer rule" put Officer Trick on notice of the information known by his fellow officers, who were contemporaneously interviewing the victim at the scene and learning all the details and descriptions of the crime from her.

The State noted that Defendant and his accomplice matched the general description of the suspects; the car in which he was traveling matched the same general description of the BOLO; the direction in which he was traveling was consistent with an escape from the crime; and this was an area with little or no other traffic when the stop was made, and it was the only car

around. Ex.2:p.10. See State v. Joseph, 593 So.2d 594 (Fla. 3d DCA 1992) (a description provided in a police BOLO coupled with proximity in time and location furnish reasonable grounds for an officer to stop).

This court should agree. Giving significant deference as required, the facts reasonably supported a stop of the vehicle. When a federal claim has been presented to a State court and the State court has denied relief, it may be presumed the state court adjudicated the claim on the merits. Harrington v. Richter, 131 S.Ct. 770, 784 (2011).

This court should deny the claim based on deferential review. Giving required deference, Defendant cannot show the State ruling was based on an unreasonable determination of facts or an unreasonable application of clearly established federal law. The state court's findings are correct, a presumption Defendant does not overcome by clear and convincing evidence.

GROUND 1, subground (1): Here, Defendant claims counsel was ineffective for failing to supplement the record with the trial court's findings and rulings on the motion to suppress.

Exhaustion: Defendant admits he did not raise this issue on direct, but claims he raised it in case 2D09-2236. In his petition alleging ineffective assistance of appellate counsel (PAIAAC), Defendant alleged counsel failed to have the record supplemented and corrected. Ex.21. Defendant also raised this

CERTIFICATE OF SERVICE

I HEREBY certify that on Nov. 4, 2016, I electronically filed the foregoing with the Clerk of Court: Middle District, Tampa Division, and I certify that the foregoing document was sent by U.S. mail to: Jonathan Godwin, DC#M07545, Cross City Correctional Inst., 568 NE 255th St., Cross City, FL 32628.

Respectfully submitted and certified,
PAMELA JO BONDI,
ATTORNEY GENERAL

s/Peter Koclanes
PETER KOCLANES, Fla. Bar #26325
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Concourse Center 4
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COUNSEL FOR RESPONDENT

EXHIBIT E

"Exhibit E"

Doc. 13

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JONATHAN GODWIN **CASE NO.**: 8:16-CV-02253-SDM-MAP
Petitioner,

v.

SECRETARY, DEPT. OF CORRECTIONS, ET Al.,
Respondent.
_____________________________/

PROVIDED TO CROSS CITY CI
ON 11-30-16 FOR MAILING
nB

REPLY TO PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, Petitioner, Jonathan Godwin, Pro se, filing this Reply to the 28 U.S.C. § 2254 petition filed in the above styled cause. The petition should be granted.

Before this Honorable Court is a petition for writ of habeas corpus filed by Petitioner, challenging the judgment entered in the State of Florida. The Petitioner states that he is being illegally restrained against his will in violation of the laws, treaties and constitution of the United States as articulated by the U.S. Supreme Court, and is entitled to relief. In support thereof;

TIMELINESS OF FEDERAL PETITION

The instant petition was docketed on August 8, 2016 and is timely. The Respondent tacitly agreed. Response at 3.

GOVERNING LEGAL PRINCIPLES

Petitioner, with the following additions, fully adopts the three central principles of the Anti-Terrorism and Effective Death Penalty Act of 1996 (hereinafter as "AEDPA") as stated by Respondent. Response at 3-8. In furtherance thereof;

Federal Question: Although federal habeas corpus relief does not lie for errors of State Law, federal habeas review is limited, at most to determining whether the State court's finding was so arbitrary or capricious as to constitute an independent due process or Eighth Amendment violation. See Lewis v. Jeffers, 497 U.S. 764 (1990).

Exhaustion of State Remedies: In addition to the two limited exceptions to the procedural default doctrine (response at 4-5), under Harris v. Reed, 489 U.S. 255, 263-65 (1989), only an explicit invocation of a state procedural bar blocks federal consideration of an issue. Where the State court's procedural bar is intertwined with its merits analysis of a claim, the state court's decision does not rest on an independent and adequate state law ground. Id. At 266, 109 S. Ct. 1038.

Deferential Review: When a federal claim has been presented to a state court and the court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in absence of any indication or state-law procedural principles to the contrary. Harrington v. Richter, 131 S. Ct. at 784-85

(2011) (emphasis added) State-law procedural principles in Florida provide that a per curiam affirmance has no precedential value and is not an adjudication on the merit. Dept. of Legal Affairs v. Dist. Court of Appeal, 5th Dist., 434 So. 2d 310, 311 (Fla. 1983)[1] see also Topps v. State, 865 So. 2d 1253, 1258 (Fla. 2004) (henceforth in this state, unelaborated denials in extraordinary writ cases shall not be deemed decisions on the merits... [this holding did] not require the lower tribunals to issue an opinion in every writ case... the court need only include in its order a simple phrase such as "with prejudice" or "on the merits" to indicate that the merits of the case have been considered and determined and that the denial is on the merits). Id. (ellipsis added) (quotation marks in original)

GROUND 1: Petitioner's Fourth and Fourteenth U.S.C.A. right against unreasonable search and seizure under Terry v. Ohio, 392 U.S. 1 (1967), was violated by evidence obtained as a result of a stop of Petitioner's vehicle, where the information relied upon by the stopping officer was not sufficient to justify the

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[1] The second part answered by the Eleventh Circuit in Wilson v. Warden, Georgia Diagnostic Prison, 26 Fla. L. Weekly Fed. C667, 668 (11th Cir. 2016) (en banc) (we explain why a federal court is not required to "look through" a summary decision of a state appellate court that is an adjudication on the merits to the reasoning in the lower court), would be inapplicable to a per curiam affirmance by a Florida appellate court, as that decision would not be on the merits. Thus, the "look through" approach would apply. Sweet v. Sec. DOC, 467 F. 3d 1311, 1317 (11th Cir. 2006) (quoting Y1st v. Nunnemaker, 501 U.S. 797, 803, 111 L. Ed. 2d 706 (1991))

stop, and/or where the stopping officer's testimony regarding what he knew and when he knew it was proven to be false and/or misleading.

Exhaustion: Respondent tacitly agreed that this claim has been exhausted. Response at 8.

Merits: Contrary to Respondent's assertion, the Stone v. Powell, 428 U.S. 465 (1975) bar should not preclude this court from reaching the merits of this claim. As demonstrated below, the essential facts surrounding the stop of Petitioner's vehicle were still in dispute on direct appeal – and still are. Hence, no full and fair hearing was afforded Petitioner in the State courts concerning his Fourth Amendment claims, i.e., that there was no objective well-founded articulate suspicion to support the stop, and any consent given was not freely and voluntarily given. Tukes v. Dugger, 911 F. 2d at 514 (for purposes of the Stone v. Powell bar, where the trial court failed to make clear findings on essential issues, such as a summary affirmance is insufficient to deny ... consideration of the merits of his constitutional claim on federal habeas corpus review).

In reaching the merits of this issue, Petitioner fully adopts and incorporates the facts and arguments presented to the Second District Court of Appeals. Response: App. 3 In furtherance thereof, it must be noted that Respondent in its Answer Brief before the State appellate court, discounted "any Brady or Giglio claims upon the record presented for review". Response: App. 2 at p. 8, 17. The

appellate court issued a summary affirmance. Godwin v. State, 996 So. 2d 221 (Fla. 2nd DCA 2008) Indeed, after an Evidentiary Hearing to Petitioner's 3.850 motion, the postconviction court found that Petitioner, at least, satisfied the first two prongs of Brady v. Maryland, 373 U.S. 83 (1963). Response: App. 48 at p. 163. Nevertheless, no further inquiry, and more importantly, no credibility determination has been made after the discovery of false testimony. Tukes, supra at 514 ("The state trial court also failed to make a factual finding as to whether Parmenter's deposition or trial testimony should be believed").

Therefore, no state court determination on the merits of Petitioner's claim with an undisputed record to date has been conducted. Thus, no deference should be accorded the state court's decision.

GROUND ONE SUB-GROUND ONE: Petitioner's Sixth and Fourteenth U.S.C.A. right to the effective assistance of appellate counsel under Evitts v. Lucey, 469 U.S. 387 (1985), was denied by counsel's failure to supplement the record with the trial court's findings and rulings on the motion to suppress.

Deferential Review: Petitioner raised this issue via a petition alleging ineffective assistance of appellate counsel (hereinafter as "PAIAAC") Response at 10-11. Such petition is an extraordinary writ. Rutherford v. Moore, 774 So. 2d 637, 643 (Fla. 2000). According to state law procedures, the unelaborated denial was

EXHIBIT F

"Exhibit F"

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JONATHAN GODWIN,

Applicant,

v. CASE NO. 8:16-cv-2253-T-23SPF

SECRETARY, Department of Corrections,

Respondent.
_______________________________/

ORDER

Godwin applies under 28 U.S.C. § 2254 for the writ of habeas corpus (Doc. 1) and challenges his convictions both for robbery with a firearm and for false imprisonment with a firearm, for which Godwin is imprisoned for life. Numerous exhibits ("Respondent's Exhibit __") support the response. (Doc. 7) The respondent admits the application's timeliness (Response at 3, Doc. 7) but argues that some grounds are unexhausted or procedurally defaulted.

I. BACKGROUND[1]

On July 5, 2006, at 2:15 am Godwin and another man entered the "Pleasure Time" lingerie modeling establishment and, while threatening with a firearm, demanded money from the three women inside the business. One of the women

[1] This summary of the facts derives from the state's and Godwin's briefs on direct appeal. (Respondent's Exhibits 2 and 3)

attempted to flee but was captured. Godwin struck one woman in the face with the firearm. When the women were unable to produce a key for the safe, one victim offered her purse, which Godwin took and fled in a car.

The women called the police and provided a description of both the robbers and the car. A few minutes later an officer stopped a car that matched the description, and the two occupants matched the description of the assailants. During a brief search of the car the officer found papers that displayed the name of one of the victims, which name was provided in a radio transmission. Two of the victims were transported to the cite of the traffic stop and positively identified Godwin and the other occupant as the two assailants. About a week later the police searched the car, which was secured in an impound lot, and beneath the rear seat an officer found a firearm that matched the victims' description of the firearm used in the robbery.

Despite the trial court's repeated attempts to dissuade him, Godwin persisted in proceeding *pro se*. Nevertheless, the trial court appointed stand-by counsel.[2] Godwin moved under the Fourth Amendment to suppress evidence obtained from the traffic stop. After an evidentiary hearing, the trial court denied the motion to suppress.[3] Although having earlier advised the trial court that the state would not offer a plea bargain (the prosecutor represented that Godwin had prior convictions for attempted first degree murder, robbery with a firearm, and burglary), the state

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[2] Both the trial court and the parties identified stand-by counsel as "ghost" or "shadow" counsel.

[3] The denial of the motion to suppress is the subject of ground one in this action.

offered before *voir dire* to resolve all charges for the mandatory minimum sentence of ten years' imprisonment. The trial judge stated that he would both agree to that sentence and grant credit for time served, but Godwin rejected the offer despite knowing that he could receive life imprisonment. (Respondent's Exhibits 7 at 85 and 11 at 26–28) Immediately after accepting the verdict and excusing the jury, the trial judge (1) noted that Godwin had "absolutely terrorized" the three women, (2) commented that "I don't have a doubt in my mind that you did it — I don't have the first doubt — not after what I heard here," and (3) sentenced Godwin to life imprisonment because "you should not be out on the streets I don't think ever again, and I mean that." (Respondent's Exhibit 19 at 674–76) However, after realizing that he had not again reviewed with Godwin his right to counsel at sentencing, the trial judge appointed counsel to represent Godwin at a re-sentencing, which occurred a few days later. At the re-sentencing the trial judge recalled (1) that a victim experienced "absolute fear" of Godwin "when she broke down in tears" while testifying under Godwin's examination and (2) that Godwin "beat that woman about the head and about the face with a firearm[, which] could have caused permanent damage to her." (Respondent's Exhibit 11 at 242–43) The judge again sentenced Godwin to life imprisonment. (Id. at 209 and 243)

II. STANDARD OF REVIEW

The Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA") governs this proceeding. *Wilcox v. Florida Dep't of Corr.*, 158 F.3d 1209, 1210 (11th Cir. 1998), *cert. denied*, 531 U.S. 840 (2000). Section 2254(d), which creates a highly

deferential standard for federal court review of a state court adjudication, states in pertinent part:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim —
>
> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> >
> > (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

Williams v. Taylor, 529 U.S. 362, 412–13 (2000), explains this deferential standard:

> In sum, § 2254(d)(1) places a new constraint on the power of a federal habeas court to grant a state prisoner's application for a writ of habeas corpus with respect to claims adjudicated on the merits in state court. Under § 2254(d)(1), the writ may issue only if one of the following two conditions is satisfied — the state court adjudication resulted in a decision that (1) "was contrary to . . . clearly established Federal Law, as determined by the Supreme Court of the United States" or (2) "involved an unreasonable application of . . . clearly established Federal law, as determined by the Supreme Court of the United States." Under the "contrary to" clause, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by this Court on a question of law or if the state court decides a case differently than this Court has on a set of materially indistinguishable facts. Under the "unreasonable application" clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts of the prisoner's case.

"The focus . . . is on whether the state court's application of clearly established federal law is objectively unreasonable, . . . an unreasonable application is different

from an incorrect one." *Bell v. Cone*, 535 U.S. 685, 693 (2002). "As a condition for obtaining habeas corpus from a federal court, a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011). *See White v. Woodall*, 572 U.S. 415, 427 (2014) ("The critical point is that relief is available under § 2254(d)(1)'s unreasonable-application clause if, and only if, it is so obvious that a clearly established rule applies to a given set of facts that there could be no 'fairminded disagreement' on the question . . . .") (citing *Richter*); *Woods v. Donald*, 575 U.S. 312, 316 (2015) ("And an 'unreasonable application of' those holdings must be objectively unreasonable, not merely wrong; even clear error will not suffice.") (citing *Woodall*, 572 U.S. at 419). *Accord Brown v. Head*, 272 F.3d 1308, 1313 (11th Cir. 2001) ("It is the objective reasonableness, not the correctness *per se*, of the state court decision that we are to decide."). The phrase "clearly established Federal law" encompasses only the holdings of the United States Supreme Court "as of the time of the relevant state-court decision." *Williams v. Taylor*, 529 U.S. at 412.

The purpose of federal review is not to re-try the state case. "The [AEDPA] modified a federal habeas court's role in reviewing state prisoner applications in order to prevent federal habeas 'retrials' and to ensure that state-court convictions are given effect to the extent possible under law." *Bell v. Cone*, 535 U.S. at 694. A federal court must afford due deference to a state court's decision. "AEDPA

prevents defendants — and federal courts — from using federal habeas corpus review as a vehicle to second-guess the reasonable decisions of state courts." *Renico v. Lett*, 559 U.S. 766, 779 (2010). *See also Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) ("This is a 'difficult to meet,' . . . and 'highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt' . . . .") (citations omitted).

When the last state court to decide a federal claim explains its decision in a reasoned opinion, a federal habeas court reviews the specific reasons as stated in the opinion and defers to those reasons if they are reasonable. *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018) ("[A] federal habeas court simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable."). When the relevant state-court decision is not accompanied with reasons for the decision, the federal court "should 'look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale [and] presume that the unexplained decision adopted the same reasoning." *Wilson*, 138 S. Ct. at 1192. The State may contest "the presumption by showing that the unexplained affirmance relied or most likely did rely on different grounds than the lower state court's decision . . . ." *Wilson*, 138 S. Ct. at 1192.

In a *per curiam* decision without a written opinion the state appellate court on direct appeal affirmed Godwin's convictions and sentence. (Respondent's Exhibit 4) Similarly, in another *per curiam* decision without a written opinion the state appellate court both denied Godwin's petitions alleging the ineffective assistance of appellate

counsel (Respondent's Exhibits 24, 29 and 33) and affirmed the denial of Godwin's Rule 3.850 motion for post-conviction relief. (Respondent's Exhibit 40)[4] The state appellate court's *per curiam* affirmances warrant deference under Section 2254(d)(1) because "the summary nature of a state court's decision does not lessen the deference that it is due." *Wright v. Moore*, 278 F.3d 1245, 1254, *reh'g and reh'g en banc denied*, 278 F.3d 1245 (11th Cir. 2002), *cert. denied sub nom Wright v. Crosby*, 538 U.S. 906 (2003). *See also Richter*, 562 U.S. at 100 ("When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary."), and *Bishop v. Warden*, 726 F. 3d 1243, 1255–56 (11th Cir. 2013) (describing the difference between an "opinion" or "analysis" and a "decision" or "ruling" and explaining that deference is accorded the state court's "decision" or "ruling" even absent an "opinion" or "analysis").

As *Pinholster* explains, 563 U.S. at 181–82, review of the state court decision is limited to the state court record:

> We now hold that review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits. Section 2254(d)(1) refers, in the past tense, to a state-court adjudication that "resulted in" a decision that was contrary to, or "involved" an unreasonable application of, established law. This backward-looking language requires an examination of the state-court decision at the time it was made. It follows that the record under review is limited to the record in existence at that same time, i.e., the record before the state court.

[4] The appellate court subsequently issued a written opinion (Respondent's Exhibit 41) to explain its reasoning for the claim that is the basis for ground six, sub-ground one in this action.

Godwin bears the burden of overcoming by clear and convincing evidence a state court's fact determination. "[A] determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1). This presumption of correctness applies to a finding of fact but not to a mixed determination of law and fact. *Parker v. Head*, 244 F.3d 831, 836 (11th Cir.), *cert. denied*, 534 U.S. 1046 (2001). The state court's rejection of Godwin's post-conviction claims warrants deference in this federal action. (Orders Denying Motion for Post-Conviction Relief, Respondent's Exhibits 46, 48, and 50) Godwin's federal application presents the same grounds of ineffective assistance of counsel that he presented to the state courts.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Godwin claims ineffective assistance of counsel, a difficult claim to sustain. "[T]he cases in which habeas petitioners can properly prevail on the ground of ineffective assistance of counsel are few and far between." *Waters v. Thomas*, 46 F.3d 1506, 1511 (11th Cir. 1995) (*en banc*) (quoting *Rogers v. Zant*, 13 F.3d 384, 386 (11th Cir. 1994)). *Strickland v. Washington*, 466 U.S. 668 (1984), governs an ineffective assistance of counsel claim, as *Sims v. Singletary*, 155 F.3d 1297, 1305 (11th Cir. 1998), explains:

> The law regarding ineffective assistance of counsel claims is well settled and well documented. In *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), the Supreme Court set forth a two-part test for analyzing ineffective assistance of counsel claims. According to *Strickland*,

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Strickland, 466 U.S. at 687, 104 S. Ct. 2052.

An applicant must prove both deficient performance and consequent prejudice. *See Strickland*, 466 U.S. at 697 ("There is no reason for a court deciding an ineffective assistance claim . . . to address both components of the inquiry if the defendant makes an insufficient showing on one."); *Sims*, 155 F.3d at 1305 ("When applying *Strickland*, we are free to dispose of ineffectiveness claims on either of its two grounds."). "[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland*, 466 U.S. at 690. "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." 466 U.S. at 690. *Strickland* requires that "in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." 466 U.S. at 690.

Godwin must demonstrate that counsel's alleged error prejudiced the defense because "[a]n error by counsel, even if professionally unreasonable, does not warrant

setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." 466 U.S. at 691. To meet this burden, Godwin must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." 466 U.S. at 694.

Under Section 2254(d) Godwin must prove that the state court's decision "(1) [was] contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States or (2) [was] based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." Sustaining a claim of ineffective assistance of counsel is very difficult because "[t]he standards created by *Strickland* and § 2254(d) are both 'highly deferential,' and when the two apply in tandem, review is 'doubly' so." *Richter*, 562 U.S. at 105. *See also Pinholster*, 563 U.S. 202 (An applicant must overcome this "'doubly deferential' standard of *Strickland* and the AEDPA."); *Nance v. Warden, Ga. Diag. Prison*, 922 F.3d 1298, 1303 (11th Cir. 2019) ("Given the double deference due, it is a 'rare case in which an ineffective assistance of counsel claim that was denied on the merits in state court is found to merit relief in a federal habeas proceeding.'") (quoting *Johnson v. Sec'y, Dep't of Corr.*, 643 F.3d 907, 911 (11th Cir. 2011)), *cert. denied*, 140 S. Ct. 2520 (2020); and *Pooler v. Sec'y, Dep't of Corr.*, 702 F.3d 1252, 1270 (11th Cir. 2012) ("Because we must view Pooler's ineffective counsel claim — which is governed by the deferential *Strickland* test —

through the lens of AEDPA deference, the resulting standard of review is "doubly deferential."), *cert. denied*, 571 U.S. 874 (2013).

The state court summarily denied some of Godwin's claims of ineffective assistance of counsel (both before the state responded to the claims and after a response) and denied other claims after conducting an evidentiary hearing. In each instance the post-conviction court correctly recognized that *Strickland* governs a claim of ineffective assistance of counsel. (Respondent's Exhibits 46 at 137, 48 at 161, and 50 at 364) Consequently, Godwin cannot meet the "contrary to" test in Section 2254(d)(1). Godwin instead must show that the state court unreasonably applied *Strickland* or unreasonably determined the facts. In determining "reasonableness," a federal application for the writ of habeas corpus authorizes determining only "whether the state habeas court was objectively reasonable in its *Strickland* inquiry," not independently assessing whether counsel's actions were reasonable. *Putnam v. Head*, 268 F.3d 1223, 1244, n.17 (11th Cir. 2001), *cert. denied*, 537 U.S. 870 (2002). The presumption of correctness and the highly deferential standard of review requires that the analysis of each claim begin with the state court's analysis.

Ground One:

Godwin challenges the admissibility of incriminating evidence discovered following the stop of the car he was driving. Godwin asserts his claim as follows:

> Petitioner's Fourth and Fourteenth U.S.C.A. right against unreasonable search and seizure under Terry v. Ohio, 392 U.S. 1 (1967), was violated by evidence obtained as a result of a stop

> of Petitioner's vehicle, where the information relied upon by the stopping officer was not sufficient to justify the stop, and/or where the stopping officer's testimony regarding what he knew and when he knew it was proven to be false and/or misleading.

Although as phrased above Godwin's ground might contest the lawfulness of the initial stop, Godwin conceded during the hearing on the motion to suppress that the officer had probable cause to stop his car. (Godwin's Exhibit H, Doc. 1-15 at 2–3) Godwin stipulates in his application that he conceded the lawfulness of the stop. "Petitioner conceded the stop based on the officers' testimony in a strategic move to strengthen his argument that the search exceeded the bounds of Terry." (Doc. 1 at 5) Consequently, in ground one Godwin challenges only the scope of the search, not the lawfulness of the stop.

Godwin's challenge is limited to the trial court's pre-trial denial of his motion to suppress the fruits of a search. Godwin cannot pursue a Fourth Amendment claim in a federal court if he had an opportunity for a full and fair review in the state court. "[W]e conclude that where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial." *Stone v. Powell*, 428 U.S. 465, 494 (1976). For the preclusion under *Stone* to apply, the state court

must issue findings of fact, as *Hern v. Florida*, 326 F. App'x 519, 522 (11th Cir. 2009),[5] explains:

> A state does not afford a defendant a full and fair opportunity to litigate the validity of a search under the Fourth Amendment when the state courts fail to make essential findings of fact. In *Tukes v. Dugger*, we addressed whether *Stone* foreclosed review of the validity of a search when the defendant presented his argument but the state courts failed to make findings of fact to resolve that argument. 911 F.2d 508, 513–14 (11th Cir. 1990). We concluded that the state courts had failed to afford the defendant a full and fair opportunity to litigate the validity of the search when they did not make findings of fact about whether the defendant had invoked his right to counsel or was in custody when he consented to the search of his home. We stated, "The trial court's failure to make explicit findings on matters essential to the fourth amendment issue, combined with the fact that the state appellate court issued only a summary affirmance, precludes a conclusion in this case that the state provided the meaningful appellate review necessary to erect a *Stone v. Powell* bar to our review of the claim." *Id.* at 514.

Godwin attached to his application a portion of the transcript of the pre-trial motion to suppress during which the trial court issued the following findings of fact (Godwin's Exhibit A, Doc. 1-15 at 12–13):

> I'll make the following findings: That there was a robbery, that the women stopped law enforcement, immediate BOLO went out. The BOLO gave a description of a vehicle that's a General Motors type vehicle, 4-door. It was called an Oldsmobile; it turned out to be a General Motors Cadillac. There was probable cause to stop, as stated by Mr. Jonathan Godwin. At the stop, Officer Trick found that the driver was sweating profusely. He searched the vehicle. A plastic bag, garbage type bag was seen. A second BOLO went out with the name Katrina Winkler. It went out and the articles found in the bag had the name of the Katrina Winkler. There was a cursory search for a weapon. The people were removed from the

[5] "Unpublished opinions are not considered binding precedent, but they may be cited as persuasive authority." 11th Cir. Rule 36-2.

> vehicle. They were handcuffed, placed in the back of law enforcement's vehicles, separate ones. I find that there was sufficient ground to search, that it was a valid legal search.

Although he proceeded *pro se* during both pre-trial and trial proceedings, Godwin was represented by counsel on direct appeal, and the sole issue raised in the initial brief challenged the trial court's denial of the motion to suppress. (Respondent's Exhibit 3) The applicability of a bar from federal review under *Stone* is addressed in conjunction with his claim of ineffective assistance of appellate counsel, which is discussed next.

Sub-Ground One:

As a separate component of ground one, Godwin alleges that appellate counsel rendered ineffective assistance by not ensuring that the record on appeal was complete, specifically, appellate "counsel[ ] fail[ed] to supplement the record with the trial court's findings and rulings on the motion to suppress." (Doc. 1 at 6) Godwin exhausted this claim in his first petition alleging that he was denied the effective assistance of counsel on appeal. (Respondent's Exhibit 21, Claim 2)

Strickland governs a claim of ineffective assistance of appellate counsel for an attorney's representation in a state appellate court. *Overstreet v. Warden*, 811 F.3d 1283, 1287 (11th Cir. 2016). "The standards applicable to [a defendant]'s claims of ineffectiveness against trial counsel apply equally to the charges leveled against his appellate lawyer." *Johnson v. Alabama*, 256 F.3d 1156, 1187 (11th Cir. 2001), *cert. denied*, 535 U.S. 926 (2002).

Strickland, 466 U.S. at 690, explains that "strategic choices . . . are virtually unchallengeable." *Accord Nance v. Warden, Ga. Diag. Prison*, 922 F.3d 1298, 1303 (11th Cir. 2019) ("[I]t is rarer still for merit to be found in a claim that challenges a strategic decision of counsel."), *cert. denied*, 140 S. Ct. 2520 (2020). Godwin admits that his appellate attorney's decision not to supplement the appellate record was a strategic or tactical decision (1) by representing that counsel "was aware that the record on appeal omitted the trial court's factual findings and rulings to the motion to suppress" and (2) by acknowledging that "[a]ppellate counsel's letter to Petitioner shows that his failure to supplement the record with the trial court's findings were tactical." (Doc. 13 at 6) In a letter sent to Godwin with a copy of the initial brief, appellate counsel explains his reasoning for not supplementing the record as Godwin had requested (Godwin's Exhibit B, Doc. 1-6 at 2–3) (italics original):

> Some thoughts on your case and this appeal[:]
>
> There is only one issue that matters in your entire case: the failure to suppress evidence as result of an unlawful stop. Based on the testimony which *you* solicited from the witnesses, everything else is harmless error.
>
> - If the stop is unlawful — all evidence is suppressed, including the identifications by the victims at the scene of the stop, and this case would have never gone to trial. The State cannot argue such to be harmless error.
>
> - If the stop is good, all the evidence comes in: the yellow bag and contents and the identifications at the scene. Considering that through your own questions, you actually introduced sufficient evidence to convict yourself, the State can show any other error to be harmless.

Thus, the stop is critical. However, you may have given away this issue also:

- In your motion to suppress the evidence, you argued that the search of your person was illegal under *Terry*. While that may be good law, nothing was found during the search of *your person*, and even in your motion, you indicate you gave the officers permission to search your car. Additionally, both cops at the scene testify you gave permission to search the car.

- At the beginning of the suppression hearing, you *conceded* the issue: "The BOLO gave him probable cause to stop my vehicle." (I. T.166) (enclosed)

- The BOLO incorrectly indicated you were in a dark or black car, but during closing argument, you managed to effectively "testify" that it *may have looked blue* depending on lighting. (VI. T .640) (enclosed)

Your concession that the stop was legal (I. T .166), means that the search incident to the stop was legal for two reasons: First, you admit in your motion that you gave permission for the search and two cops say you gave permission; Second, the police would have been able to search the car subsequent to the show-up ID by the victims. Either way, if the stop is legal, the search becomes harmless. Having said that, your concession may end up being the basis for a *per curium affirmance*. Nonetheless, the bad stop argument is the only thing that can win you a new trial.

Another problem: I had to make a tactical decision regarding the record on this appeal. Basically, it is clear that the trial court ruled against you because the evidence came in. However, after you conceded the issue (above, I.T.87), the trial court continued the motions hearing until another day — thankfully without ruling. My decision was to *not request the rest of the hearing*. Quite honestly, you did so much damage to your case with your early arguments and in-artful cross-examination, that I felt it in your best interest not to put more of your argument regarding (or conceding) the *unlawful stop* before the DCA.

The above explains that counsel's foregoing supplementing the appellate record was both a strategic or tactical decision and not an unreasonable decision.

Moreover, appellate counsel was limited by Godwin's persistence in proceeding *pro se* and the resultant harmful errors by Godwin, as counsel expressed in his letter to Godwin. *See Chandler v. United States*, 427 F.3d 1305, 1318 (11th Cir.2000) (*en banc*) ("[E]vidence of a petitioner's statements and acts in dealing with counsel is highly relevant to ineffective assistance claims."), *cert denied*, 531 U.S. 1204 (2001). The *per curiam* denial of Godwin's claim of ineffective assistance of appellate counsel was not an unreasonable application of *Strickland*, and appellate counsel was not ineffective even under a *de novo* review, to which Godwin asserts entitlement.

* * * *

Under *Stone*, 428 U.S. at 494 (italics added), a state must provide "an *opportunity* for full and fair litigation of a Fourth Amendment claim." Godwin was afforded a hearing on his motion to suppress, at which the trial court issued findings of fact and at which Godwin was afforded the benefit of counsel on his direct appeal, during which his counsel both challenged the denial of Godwin's motion to suppress and strategically chose not to supplement the appellate record. "If a state provides the processes whereby a defendant can obtain full and fair litigation of a fourth amendment claim, *Stone v. Powell* bars federal habeas corpus consideration of that claim whether or not the defendant employs those processes." *Caver v. Alabama*, 577 F.2d 1188, 1192 (5th Cir. 1978).[6] *See also Lawhorn v. Allen*, 519 F.3d 1272 (11th

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[6] Unless later superseded by Eleventh Circuit precedent, a Fifth Circuit decision issued before October 1, 1981, binds this court. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (*en banc*).

Cir. 2008) ("[F]ull and fair consideration in the context of the Fourth Amendment includes at least one evidentiary hearing in a trial court and the availability of meaningful appellate review when there are facts in dispute . . . .") (internal quotations omitted), *cert. denied*, 562 U.S. 907 (2010). Godwin had an opportunity for a full and fair review in the state courts as required under *Stone* and, even if the state court erred in its decision, the *Stone* bar still applies. *Williams v. Brown*, 609 F.2d 216, 220 (5th Cir. 1980) (The *Stone* bar "still applies despite a state court error in deciding the merits of a defendant's [F]ourth [A]mendment claim."). Consequently, the Fourth Amendment claim is barred from federal review.

Ground Three:

Godwin alleges that the state violated his due process rights, as discussed in *Giglio v. United States*, 405 U.S. 150 (1972), by "intentionally solicit[ing] and/or fail[ing] to correct false and/or misleading evidence presented to the jury . . . ." (Doc. 1 at 11) Godwin bases his claim on the testimony by one of the victims, Katrina Winkler. The state post-conviction court denied this claim as follows (Respondent's Exhibit 46 at 139–40) (record citations omitted) (brackets and ellipsis original):

> Defendant alleges that his Fourteenth Amendment Right to Due Process under *Giglio v. United States*, 405 U.S. 150 (1972), was violated. He bases this claim on three specific occurrences. First, Defendant claims that the State knowingly allowed State witness Katrina Winkler to provide false testimony that Defendant was the shorter of two men who robbed her. Defendant argues that the State knew this testimony was false or misleading because the criminal report affidavits show that Defendant is five feet, eight inches tall, while his co-defendant is five feet, five inches tall. Second,

> Defendant argues that the criminal report affidavits show that the co-defendant attacked State witness Katrina Winkler; and not Defendant, contrary to her testimony. Finally, Defendant argues that[,] because Katrina Winkler was unable to identify him in a photo line-up, her later in-court testimony is misleading or false.
>
> To establish a *Giglio* claim that the state intentionally deceived or misled the defendant and the trier of fact by allowing false testimony, it must be shown that: (1) the testimony given was false; (2) the prosecutor knew the testimony was false; and (3) the false testimony was material. *Johnston v. State*, 70 So. 3d 472 (Fla. 2011). In its response, the State argues that the mere fact that a witness may have made conflicting statements does not necessarily mean that her trial testimony was false. The State goes on to note that the trial court addressed Defendant's complaint as to the inconsistency with the evidence of Defendant's height: "It's not perjured testimony . . . [t]hey may think that you are the tall guy. That the short guy did it and the short guy had the gun and you didn't have a gun so you could be a principal to be guilty of robbery with no firearm." The State also notes that the prior statements were available for use during cross-examination, and that Defendant did raise these matters at that time. The State argues that Defendant has not shown that (1) the testimony given was false beyond being inconsistent with some prior statements or (2) that the prosecutor knew that the testimony was false. The State moves to have this claim denied. The Court agrees with the State's argument.

Instead of proving falsity, Godwin shows only that the witness's testimony was inconsistent. Moreover, Godwin fails to show that the testimony was material. Under *Giglio*, 405 U.S. at 154, false testimony is material "if 'the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury.'" (quoting *Napue v. Illinois*, 360 U.S. 264, 271 (1959) (ellipsis original)). "In other words, if there is a reasonable doubt about the effect of the false testimony on the jury verdict, then it may be that there is a reasonable likelihood that the false testimony could have affected the verdict." *Occhicone v. Crosby*, 455 F.3d 1306, 1309

(11th Cir. 2006), *cert. denied*, 549 U.S. 1122 (2007). The allegedly false testimony had no "reasonable likelihood" of affecting the verdict: the stop and search of Godwin's car was lawful; victim-Winkler's papers were found inside of Godwin's car; and two of the victims positively identified Godwin as one of the robbers when the victims were driven to where Godwin's car was stopped. Godwin fails to meet his burden of proving that the state court unreasonably applied *Giglio*.

Godwin also alleges (1) that the prosecutor violated *Giglio* by not disclosing the BOLO recording until after the suppression hearing and (2) that the prosecutor failed to correct the false testimony of Officer Trick about the description of the vehicle as described in the BOLO. First, because the BOLO recording was released to Godwin before trial, the information in the BOLO was available to cross-examine Officer Trick regarding his inconsistent testimony from the suppression hearing. Second, Officer Trick's inconsistent testimony about the description of the vehicle in the BOLO was not — as discussed immediately above — "material."[7]

Lastly, Godwin alleges that two police officers gave conflicting testimony about the procedures used for collecting, preserving, and releasing evidence, in other words, a chain of custody. Godwin contends that one of the officers testified falsely. First, the admissibility of evidence is a matter of state law generally not subject to

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[7] Godwin asserts this same issue as a claim under *Brady v. United States*, 373 U.S. 83 (1963), and *Agurs v. United States*, 427 U.S. 97 (1976), which claim is discussed next as ground three, sub-ground one.

federal review, as *McCullough v. Singletary*, 967 F.2d 530, 535–36 (11th Cir. 1992), *cert. denied*, 507 U.S. 975 (1993), explains:

> A federal habeas petition may be entertained only on the ground that a petitioner is in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2254(a). A state's interpretation of its own laws or rules provides no basis for federal habeas corpus relief, since no question of a constitutional nature is involved. *Bronstein v. Wainwright*, 646 F.2d 1048, 1050 (5th Cir. 1981). State courts are the ultimate expositors of their own state's laws, and federal courts entertaining petitions for writs of habeas corpus are bound by the construction placed on a state's criminal statutes by the courts of the state except in extreme cases. *Mendiola v. Estelle*, 635 F.2d 487, 489 (5th Cir. 1981).

Second, the prosecutor did not fail to disclose evidence, and the two officers were subject to cross-examination about the conflicting description of the procedures for collecting and preserving evidence. And third, the inconsistent testimony about the procedures was not — as discussed above — "material." Godwin is entitled to no relief under ground three.

Ground Three, Sub-Ground One:

Godwin alleges that the state violated his due process rights, as delineated in *Brady v. United States*, 373 U.S. 83 (1963), and *Agurs v. United States*, 427 U.S. 97 (1976), by not disclosing, before the suppression hearing, "favorable impeaching evidence regarding the BOLO." (Doc. 1 at 15) Godwin bases his claim on Officer Trick's testimony about the description of the car, which description was inconsistent with the description provided in the recording of the BOLO.[8] The post-conviction

[8] As discussed in the immediately preceding footnote, Godwin also raised this issue as a *Giglio* violation.

court both found this claim procedurally barred and denied this claim on the merits as follows (Respondent's Exhibit 46 at 162–63) (record citations omitted) (brackets and ellipsis original):

> Defendant alleges that his Fourteenth Amendment right to due process under *Brady v. Maryland*, 373 U.S. 83 (1963) was violated by the State's failure to disclose favorable impeaching evidence regarding a BOLO (be on the lookout alert). Defendant alleges that Officer David Trick testified at a pretrial hearing that he received a BOLO from Officer Gary Felice for a large gray Oldsmobile, driven by two black males and including a clothing description. However, after the pretrial hearing, the State turned over a copy of the BOLO, which included the following description: "A large, dark blue Oldsmobile, a blue Oldsmobile, traveling eastbound on Broadway Boulevard and Orient." Defendant complains that the State failed to provide the BOLO before the pretrial hearing, where Defendant could have used it as favorable impeaching evidence.
>
> On September 21, 2006, Defendant filed a motion to suppress a bank statement and papers on the grounds that "defendant was unlawfully stopped and detained as a result of which the evidence was discovered. In other words, Defendant was stopped without any reasonable suspicion of (1) having committed a criminal offense; (2) committing a criminal offense; or (3) being about to commit a criminal offense." A hearing was held on October 20, 2006, and the Motion was denied on October 31, 2006. Defendant complains that he was not given a copy of the BOLO recording until after the hearing but prior to trial. Defendant alleges that there is a reasonable probability, that had the evidence been disclosed to Defendant in a timely manner, the result of the hearing would have been different.
>
> At the outset, this issue is procedurally barred since it should have been raised on direct appeal. In fact, it appears that a very similar issue was raised on direct appeal. *Green v. State*, 975 So. 2d 1090, 1105 (Fla. 2008); *Robinson v. State*, 707 So. 2d 688, 693 (Fla. 1998); *Rose v. State*, 675 So. 2d 567, 569 n. 1 (Fla. 1996).

As the state court suggested, Godwin, in fact, argued that — based on Officer Trick's testimony and the BOLO — his rights under *Giglio* and *Brady* were violated

by the trial court's denial of his motion to suppress. (Respondent's Exhibit 4 at 38–49) Consequently, the issue was procedurally barred from review in the state post-conviction proceeding. Nevertheless, Godwin fares no better under a *Brady* due process analysis in post-conviction review than he fared under a Fourth Amendment search and seizure analysis on direct review. The post-conviction court rejected the *Brady* claim on the merits as follows (Respondent's Exhibit 46 at 163–64) (record citations omitted) (footnote 4 omitted):

> As to the merits, *Brady* requires the State to disclose material information within its possession or control that is favorable to the defense. *Hunter v. State*, 29 So. 3d 256 (Fla. 2008). To establish a *Brady* violation, a defendant must demonstrate that "(1) the State possessed evidence favorable to the accused because it was either exculpatory or impeaching; (2) the State willfully or inadvertently suppressed the evidence; and (3) the defendant was prejudiced." *Allen v. State*, 854 So. 2d 1255, 1259 (Fla. 2003) (citing *Stickler v. Greene*, 521 U.S. 263, 281–82 (1999)). Evidence is prejudicial under *Brady* if there is a reasonable probability that had the evidence been disclosed, the result of the proceeding would have been different. *Jones v. State*, 998 So. 2d 573 (Fla. 2008). Thus, the proper inquiry is whether the outcome of the motion to suppress would have been different had Defendant been able to use the BOLO to impeach the officers' testimony regarding the color of the vehicle as provided in the BOLO.
>
> In applying the *Brady* test to the facts, the Court finds that there is no reasonable probability that had the BOLO been disclosed prior to the hearing on the motion to suppress, the outcome of the motion to suppress would have been different.[5] The motion to suppress would have been denied even if Defendant was able to use the BOLO to impeach Detective Trick's testimony or any other witness regarding the color of the vehicle as provided in the BOLO.
>
> > [5] The Court notes that Defendant received a cassette tape of the BOLO prior to trial. At no time after receiving the cassette tape and before the commencement of trial did Defendant file

> any type of motion alleging a *Brady* violation. Further, the recording of the BOLO was admitted as evidence at trial. Defendant, who represented himself at trial, used the recording of the BOLO to point out inconsistencies between the BOLO and testimony elicited at trial, most notably Officer David Trick's testimony.

As discussed earlier in the introductory facts, the robbery occurred at 2:15 am and Godwin's car was stopped a few minutes later. The post-conviction court's order recites Officer Trick's testimony about his location when he heard the BOLO, his observing a car matching that description, his stopping that car, and the driver consenting to a search of the car. (Respondent's Exhibit 48 at 164–66) Godwin focuses on Officer Trick's testimony that the BOLO described the car as a "large gray color vehicle," however the BOLO actually described the vehicle's color as "dark blue." The post-conviction court's order continued as follows (Respondent's Exhibit 48 at 166) (record citations omitted):

> At the motion to suppress hearing, Officer Felice testified that when he transmitted the BOLO over the radio, he indicated that it was either blue or gray in color, and that the victim believed the car was an Oldsmobile. The BOLO was admitted as evidence by Defendant at trial and was played for the jury.
>
> A police officer may stop a vehicle and request identification from its occupants when the officer has founded or reasonable suspicion that the occupants of the vehicle have committed, are committing, or are about to commit a crime. *Hunter v. State*, 660 So. 2d 244, 249 (Fla. 1995). A "founded suspicion" is a suspicion which has some factual foundation in the circumstances observed by the officer, when those circumstances are interpreted in the light of the officer's knowledge. *Id.* Several factors are relevant in assessing the legitimacy of a vehicle stop pursuant to a BOLO: "(1) length of time and distance from the offense; (2) route of flight; (3) specificity of the description of the vehicle and its occupants; and (4) the source of the BOLO information." *Id.*; *State v. Wise*, 603 So. 2d 61, 63 (Fla. 2d DCA

> 1992). Other information which is relevant to determine the validity of the stop includes the time of day, the absence of other persons or vehicles in the vicinity of the sighting, any other suspicious conduct, and other activity consistent with guilt. *Rodriquez v. State*, 948 So. 2d 912, 914 (Fla. 4th DCA 2007). The BOLO in this case was admitted as evidence by Defendant at trial and was played for the jury. The BOLO was issued for a "large, dark blue Oldsmobile, eastbound on Broadway." The suspects were described as two black males wearing white t-shirts.

The post-conviction court's well-reasoned order both individually addresses each of the four factors identified above in *Hunter* and concludes with the following analysis (Respondent's Exhibit 48 at 168–69):

> The totality of the circumstances appear sufficient to support the stop of Defendant: he was close to the location, in both time and distance, where the BOLO indicated the suspects had fled, he was traveling the same direction, on the same road as indicated in the BOLO, he was apprehended within 7 minutes of the BOLO which was issued almost immediately after the suspects fled the crime scene, and the BOLO was based on the description provided to law enforcement by the victim at the crime scene. Further, the description of the suspects, two black males, fit the occupants of Defendant's vehicle. While the description of the vehicle differed in both make and model, the vehicle which was apprehended was a similar make and similar color. Further, the Court notes that Defendant was pulled over sometime after 2:00 a.m., and was arrested at 2:30 a.m., a time where there is generally less vehicles on the roadway. As such, the trial court was correct in denying Defendant's motion to suppress. Deputy Trick had the requisite reasonable suspicion to stop Defendant.
>
> The Court finds that even if Defendant was able to impeach Officer Trick regarding the description of the vehicle as provided for in the BOLO, the trial court would have still denied Defendant's motion to suppress. The length of time from the report of the BOLO, the distance and location where Defendant was stopped, the route of flight, the source of the BOLO, the suspect's description as provided for [in] the BOLO, the time of the incident, and the similarities between Defendant's vehicle and the description provided for in the

> BOLO all support the stop. As such, Defendant cannot demonstrate prejudice as required by *Brady*.

The post-conviction court denied the *Brady* claim because Godwin failed to show prejudice, that is, he failed to show that he would have succeeded at the suppression hearing if the state had disclosed the audio of the BOLO before the suppression hearing. The final conclusion warrants repeating: "The length of time from the report of the BOLO, the distance and location where Defendant was stopped, the route of flight, the source of the BOLO, the suspect's description as provided for [in] the BOLO, the time of the incident, and the similarities between Defendant's vehicle and the description provided for in the BOLO all support the stop."[9] Although in his reply (Doc. 13 at 19–23) Godwin disagrees with the post-conviction court's application of facts to the four factors for determining reasonable suspicion for stopping his car, Godwin shows neither that the state court unreasonably determined the facts nor that the state court unreasonably applied *Brady*. Godwin is entitled to no relief under ground three, sub-ground one.

Grounds Four and Two:

Godwin alleges that his Fifth Amendment freedom from double jeopardy was violated when the trial court granted a judgment of acquittal on the charge of kidnapping but allowed the prosecution to proceed with the lesser included charge of false imprisonment (ground four). Also, Godwin alleges that he was denied his right

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[9] Also, as discussed earlier under ground one, sub-ground one, appellate counsel reminded Godwin that "during closing argument, you managed to effectively 'testify' that it *may have looked blue* depending on lighting." (italics original)

EXHIBIT G

G

"Exhibit G"

PROVIDED TO
CROSS CITY C.I. ON
DEC 07 2023
FOR MAILING

**UNITED STATES DISTRICT COURT MIDDLE DISTRICT
OF FLORIDA, TAMPA DIVISION**

JONATHAN GODWIN,
Petitioner,

v. **Case No.:**8:16-CV-2253-SDM-SPF

**SECRETARY, DEPARTMENT
OF CORRECTIONS, ET. AL.,**
Respondent,
_____________________________/

PROVIDED TO
CROSS CITY C.I. ON
DEC 21 2023
FOR MAILING

MOTION FOR RELIEF FROM JUDGMENT

COMES NOW, the Petitioner, Jonathan Godwin, *pro se,* pursuant to Fed. R. Civ. P. 60 (b)(1) and (4), seeking relief from the judgment entered in the above-styled cause on October 23, 2020, denying his Habeas Petition per 28 U.S.C. § 2254, and the order entered December 20, 2022, denying his Rule 59 (e) Motion, and avers:

PROCEDURAL HISTORY

On or about August 8, 2016, Godwin timely petitioned for a writ of habeas corpus per 28 U.S.C. § 2254. (Doc. 1) Upon an order to show cause, Respondent filed an answer, (doc. 7), and Petitioner replied thereto. (Doc. 13) On October 23, 2020, this court entered a final judgment against Godwin. (Doc. 24) A certificate of appealability was denied by both this Court and the Eleventh Circuit Court of

Appeals. Thereafter, Godwin simultaneously filed a motion for relief from judgment per Fed. R. Civ. P. 60 (b), (Doc. 31), and petitioned the supreme court for a writ of certiorari. The writ was denied. (Doc. 34)

On August 16, 2022, this Court entered an order denying Godwin's motion for relief from judgment. (Doc. 40) Godwin timely filed a Rule 59 (e) motion to alter or amend the judgment, and a notice of Appeal. (Doc. 41 and 42) On December 20, 2022, Godwin's rule 59 (e) motion was denied. (Doc. 44) [1]

JURISDICTION

The Supreme Court has held that a federal district court may hear a Rule 60 (b) motion without leave from the appellate court. See Standard Oil Co. of California v. United states, 429 U.S. 17, 97 S. Ct. 31, 50 L. Ed. 2d 21 (1976)(appellate court's mandate does not bar trial court from disturbing judgment entered in accordance with mandate) This Court's jurisdiction is based on the nature of the Rule 60 (b) arguments, and not their validity. See Zakeirwski v.

[1] This Honorable Court may take judicial notice of its own records in habeas proceedings. See McBride v. Sharpe, 25 F. 3d 962, 969 (11th Cir. 1994); See also Fed. R. Evid. 201

McDonough, 490 F. 3d 1264, 1267 (11th Cir. 2007); See also Kemp v. United states, 2022 U.S. LEXIS 2835 at 17 (2022).

TIMELINESS

Claims under Rule 60 (b)(1) must be filed within one year of the entry of the judgment or order being challenged. See Fed. R. Civ. P. 60 (c)(1); see also Transit Cas. Co. v. Sec. Trust Co., 441 F. 2d 788, 790-91 (5th Cir. 1971) (noting that the one-year limitations period begins to run from the date on which the order or judgment was entered) As such, Godwin's challenge to the order entered on December 20, 2022, denying his rule 59 (e) motion to alter or amend is timely.

Furthermore, the Eleventh Circuit Court of Appeals has approved of the principle that virtually any amount of time is a "reasonable time" for making a Rule 60 (b)(4) claim. See Hertz Corp. v. Alamo Rent-A-Car, Inc., 16 f. 3d 1126, 1130 (11th Cir. 1994) As such, Godwin's challenge to the judgment entered on October 23, 2020, denying his 28 U.S.C. § 2254 habeas petition is timely. [2]

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[2] The Court previously dismissed Godwin's asserted entitlement for relief under Rule 60 (b)(4), concluding that it lacked subject matter jurisdiction. See Doc. 40 at 1-2.

CLAIM ONE

THE COURT COMMITTED A MISTAKE OF LAW UNDER RULE 60 (B)(1), WHERE IT FAILED TO MAKE A DETERMINATION WITH RESPECT TO A CERTIFICATE OF APPEALABILITY AS REQUIRED BY RULE 11 WHEN IT DENIED GODWIN'S RULE 59 (E) MOTION TO ALTER OR AMEND JUDGMENT.

THE FACTS

After denying Godwin's post-judgment motion pursuant to Fed. R. Civ. P. 60 (b), the Court denied Godwin's timely Rule 59(e) motion. (See Exhibit A attached). However, the court made no determination concerning a certificate of appealability with respect to Godwin's Rule 59 (e) motion. (Id.) But See Knight v. Sec'y, Fla. Dep't of corr., 2020 U.S. App. LEXIS 26520 (11th Cir. 2020)("Because the district court made no ruling with respect to a COA regarding Knight's rule 59(e) motion, this case is hereby remanded so that the district court may consider whether a COA is appropriate as to the rule 59 (e) motion."); Perez v. Sec'y, Fla. Dep't of Corr., 711 F. 3d 1263, 1264 (11th Cir. 2013)("Because the denial of a rule 59 (e) motion constitutes a 'final order' in a State habeas proceeding, we conclude that a COA is required before this appeal may proceed."); See also Fed. R. Civ. P. 11. Therefore, the Court has committed a mistake of Law.

CLAIM TWO

GODWIN'S DUE PROCESS RIGHT TO FAIR NOTICE AND AN OPPORTUNITY TO BE HEARD WAS VIOLATED WHEN THE COURT SUA SPONTE WAIVED HIS TERRY STOP CLAIM ASSERTED IN HIS 28 U.S.C. § 2254 HABEAS PETITION.

THE FACTS

In Ground One of his § 2254 complaint, Godwin alleged, inter alia, that his Fourth and Fourteenth Amendment Rights against an unreasonable search and seizure as articulated by Terry v. Ohio, 392 U.S. 1 (1967) were violated. (Doc. 1, at 4-5) The basis for his challenge was that "the information relied upon by the stopping officer was not sufficient to justify the stop, and/or where the stopping officer's testimony regarding what he knew and when he knew it was proven to be false and/or misleading." (Id.)

Respondent argued that Godwin's claim(s) were either foreclosed by Stone v. Powell, 428 U.S. 465 (1976) or that the stop was valid. (Doc. 7, at 8-10)

In his Reply, Godwin asserted that "no Full and Fair hearing was afforded [him] in the state courts concerning his Fourth Amendment claims, i.e., that there was no objective well-founded articulate suspicion to support the stop, and any consent given was

not freely and voluntarily given." (citing Tukes v. Dugger, 911 F. 2d at 514) (doc. 13, at 4)

Nevertheless, this Court concluded:

> "Although as phrased above Godwin's ground might contest the lawfulness of the initial stop, Godwin conceded during the hearing on the motion to suppress that the officer had probable cause to stop his car. . . Godwin stipulates in his application that he conceded the stop based on the Officer's testimony in a strategic move to strengthen his argument that the search exceeded the bounds of Terry . . . Consequently, in ground one Godwin challenges only the scope of the search, not the lawfulness of the stop."

Notwithstanding Godwin's allegations that "the State amended the discovery subsequent to the suppression hearing," and he "renewed his motion at trial" and "[through counsel] reasserted that Officer Trick did not have a well-founded articulate suspicion to support the stop" (Doc. 1, at 5), the Court limited Godwin's claim(s) "to the trial court's pretrial denial of [his] motion to suppress the fruits of a search." (Ibid.)[3]

Here, Godwin was not given fair notice and an opportunity to address said waiver. He was prejudiced when his unlawful stop claim was deemed waived due to a pretrial concession, and the record

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[3] The Court acknowledged that Godwin's Brady claim intertwined with the Fourth Amendment claim. (Doc. 24, at 23)

shows that neither party argued waiver. (Doc. 7, at 8 – 10; Doc. 13, at 3-5) Accordingly, due process (as defined as the right to be heard) in the context of a Rule 60 (b)(4) motion as set forth by the Supreme court in Espinosa, 559 U.S. 260, 271 (2010), has not been satisfied. See Spaulding v. United States, 710 Fed. Appx. 430, 2018 U.S. App. LEXIS 2533 (11th Cir. 2018)("The Supreme Court instructed in Day v. McDonough, 547 U.S. 198, 126 S. Ct. 1675, 164 L. Ed. 2d 376 (2006), that 'a court must accord the parties fair notice and an opportunity to present their position' before disposing of a case on a ground not raised in their filings, id., at 210. Because the District Court denied Spaulding's post conviction motion without giving her an opportunity to respond to the effect of her waiver, we vacate and remand for the District Court to proceed in accordance with the rules Governing Section 2255 proceedings.")[4]

In sum, had Godwin been given fair notice an opportunity to address said waiver, he would have asserted that the waiver applied only to the officers' suppression hearing testimony. That the waiver did not extend to the new evidence disclosed by the prosecution subsequent to the pre-trial suppression hearing, i.e., the audio

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[4] "Unpublished opinions are not considered binding precedent, but they may be cited as persuasive authority." 11th Cir. Rule 36-2.

recording of the BOLO, And the officers' testimony presented at trial. In other words, the waiver was not absolute, And in fact, was receded from by Godwin at trial.[5]

[5]Florida law permits a trial court to revisit a ruling for a motion to suppress where new relevant evidence emerge at or before trial. See E.g. State v. Ellis, 491 So.2d 1296 (Fla. 3rd DCA 1986) (Reversing trial court order denying State's motion to reopen suppression hearing).

RELIEF SOUGHT

WHEREFORE, based on the foregoing facts and authorities, Godwin respectfully request that the court grant all relief that he may be entitled to, including but not limited to:

A. Vacate the judgment entered on October 23, 2020, denying his habeas petition; and/or

B. Vacate the order entered on December 20, 2022, denying his Rule 59 (B) motion; and/or

C. Reopen the habeas proceedings; and/or

D. Reopen the Rule 59 (e) proceedings; and/or

E. Grant any further relief deemed just and proper in accordance with the law.

Respectfully Submitted,

____

Mr. Jonathan Godwin, *pro se*
DC# M07545
Cross City Correctional Institution
568 N.E. 255th Street
Cross City, Florida 32628

DECLARATION/CERTIFICATE OF SERVICE

HAVING READ the foregoing motion, I affirm under penalties of perjury pursuant to 28 U.S.C. § 1746, all stated is true and correct; and certify that a true and correct copy has been handed to officials at Cross City C.I. for mailing by prepaid U.S. Postage to:

United States District Court, Middle District of Florida, Office of the Clerk, United States Courthouse, Tampa, Florida, 33602; and Sonya Hobert Roebuck, AAG, Concourse Center 4, 3507 E. Frontage Road., Suite 200, Tampa, Florida 33607-7013 on this _____ day of December, 2023.

/s/___________________________
Mr. Jonathan Godwin, *pro se*

EXHIBIT H

"Exhibit H"

PROVIDED TO
CROSS CITY C.I. ON
APR 29 2024
FOR MAILING

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

JONATHAN GODWIN
Appellant,
v.

Case No.: 24-10971-D

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS Et Al.,
Appellee,
_________________________________/

RENEWED APPLICATION FOR CERTIFICATE OF APPEALABILITY

MR.JONATHAN GODWIN, pro se
D.C.# M07545
Cross City C.I.
568 N.E. 255th Street
Cross City, Fl. 32628

JONATHAN GODWIN,
Appellant,
v. **CASE No:**. 24-10971-D

SECRETARY, DEPARTMENT OF CORRECTIONS ET AL.,
Appellee.
_____________________________/

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and Eleventh Circuit Rule 26.1-1, the pro se Appellant, JONATHAN GODWIN, States the following individuals or entities have an interest in the outcome of this case:

ALTENBERD	STATE DISTRICT COURT JUDGE
ANDREWS, WARREN	STATE ATTORNEY
BEHNKER, DEBRA	STATE CIRCUIT COURT JUDGE
BOCK, DIANE K.	ASSISTANT ATTORNEY GENERAL
DIMMING II, HOWARD	PUBLIC DEFENDER
DIX, RAYMOND	SPECIAL ASSISTANT PUBLIC DEFENDER
FLYNN, SEAN P.	MAGISTRATE JUDGE
FOSTER, JR., ROBERT	STATE CIRCUIT COURT JUDGE
GODWIN JONATHAN	APPELLANT
HOLT, JULIANNE	PUBLIC DEFENDER
KELLY	STATE DISTRICT COURT JUDGE
HORBELT, SONYA ROEBUCK	ASSISTANT ATTORNEY GENERAL
LEWIS, MARK	ASSISTANT STATE ATTORNEY
MERRDAY, STEVEN	UNITED STATES DISTRICT JUDGE
MOODY, ASHLEY	ATTORNEY GENERAL
SANTIAGO, JORGE	PRIVATE ATTORNEY
SAWDY, RYAN	ASSISTANT STATE ATTORNEY
SIBERMAN	STATE DISTRICT COURT JUDGE

SINARDI, NICK	PRIVATE ATTORNEY
SPRADLEY, JENNIFER	ASSISTANT PUBLIC DEFENDER
TAYLOR, WESLEY	ALLEGED CODEFENDANT
WALLACE	STATE DISTRICT COURT JUDGE
WARD, SAMANTHA	STATE CIRCUIT COURT JUDGE
WINKLER, KATRINA	ALLEGED VICTIM

Appellant has no knowledge of any publicly held corporation owning 10% or more of any parties stock.

I. INTRODUCTION AND MEMORANDUM OF LAW

It is necessary for the Appellant to establish a substantial showing of the denial of a constitutional right in order to issue the requested certificate. The standard of review for granting a "Certificate of Appealability" is set forth in Barefoot v. Estelle, 463 U.S. 880, 103 S.Ct. 3383, 77 L.Ed. 2d 1090 (1983) which states in pertinent part:

> A certificate must issue if the Appeal presents a 'question of some substance' i.e., At least one issue (1) that is debatable among jurists of reason'; (2) 'that a court could resolve in a different manner'; (3) 'that is not squarely foreclosed by Statute, Rule, or authorative court decision, or...[that is not] lacking any factual basis in the record.'

The Supreme Court admonished the lower courts that they not deny applications solely because they have already denied the petition on the merits.

> [O]bviously, the Petitioner need not show that he should prevail on the merits. He has already failed in that endeavor.

Id., at 463 U.S. at 893 n.4 quoting Gordon v. Willis, 516 F. Supp. 911, 913 (N.D. GA. 1980). Rather, a certificate must issue if the appeal presents a "question of some substance" i.e., at least a ground that meets one of the three (3) criteria set forth above.

More recently the United States Supreme Court clarified the requisite standard for the granting of certificates in Miller-El v. Cockrell, 537 U.S., 322, 123 S.Ct. 1029, 1040, 154 L.Ed. 2d 931 (2003) stating:

> [W]e 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 jurists of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail. As we stated in Slack, "[W]here a district court has rejected the constitutional claims on the merits, the showing required to satisfy §2253 is straight forward; the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the

constitutional claims debatable or wrong." 529 U.S. at 484, 120 S.Ct. 1595.[1]

The Appellant contends that the required standard is met so the issue presented is adequate to warrant further proceedings, Miller-El, 537 U.S., 322, As follows:

[1] The Court further stated that: "the issue becomes somewhat more complicated where, the district court dismisses the petition based on procedural grounds. We hold as follows: When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable the district court was correct in its procedural ruling.'" Id.

COMES NOW, the Appellant, JONATHAN GODWIN, pro se, and respectfully renews his application for a Certificate of Appealability pursuant to Fed. R. App. P. 22(b) and Title 28 U.S.C. §2253.

This Honorable Court has jurisdiction to issue a Certificate of Appealability and to order him insolvent for costs associated with this appeal as set forth below:

II. CERTIFICATE OF APPEALABILITY

The Appellant has shown, in his Rule 60(b)(4) motion for relief from judgment below, and will further show herein "a substantial showing of the denial of a Constitutional Right" providing a valid basis for the granting of the requested Certificate of Appealability, 28 U.S.C. §2253(c)(2).

PROCEDURAL HISTORY

On or about August 8, 2016, Appellant timely petitioned for a writ of habeas corpus per 28 U.S.C. §2254. (DOC.1) Upon an order to show cause, Appellee filed an Answer, (DOC.7) and Appellant replied thereto. (DOC.13) On October 23, 2020, the district court entered a final judgment against Appellant. (DOC.24) A certificate of appealability was denied by both the district court and this Court. Id.[2] Thereafter, Appellant simultaneously filed a motion for relief from judgment per Fed. R. Civ. P.60(b), (DOC.31), and petitioned the United States Supreme Court for a Writ of Certiorari. The Writ was denied (DOC.34)

On August 16, 2022, the district court entered an order denying Appellant's motion for relief from judgment. (DOC.40) Appellant timely filed a Rule 59(e) motion to

[2] This Honorable Court may take judicial notice of its own records in habeas proceedings. See McBride v. Sharpe, 25 F.3d 962, 969 (11th Cir. 1994).

alter or amend the judgment, and a notice of Appeal. (DOCS. 41 and 42) On December 20, 2022, the district court denied Appellant's Rule 59(e) motion. (DOC. 44) On January 9, 2023, this Court construed Appellant's notice of appeal as a certificate of appealability, and denied the same. (USCA DOC. 9) A timely motion for rehearing was also denied. (USCA DOC. 15)[3]

On December 7, 2023, Appellant filed his second motion for relief from judgment per Rule 60(b)(1) and (4). (DOC.46) On March 4, 2024, the district court denied Appellant's Rule 60 motion. (DOC.47) Appellant timely Rule 59(e) motion to alter or amend judgment was also denied but it appears that the district court partially granted the requested relief. (DOC. 51) This timely Appeal follows.

MATERIAL FACTS

In Ground One of his 28 U.S.C. §2254 habeas petition, Appellant alleged, inter alia, that his Fourth and Fourteenth Amendment Rights against an unreasonable search and seizure as articulated by Terry v. Ohio, 392 U.S. 1 (1968) were violated. (DOC.1, at pgs. 4-5) The basis for his challenge was that "the information relied upon by the stopping officer was not sufficient to justify the stop, and/or where the stopping officer's testimony regarding what he knew and when he knew it was proven to be false and/or misleading." Id.

Appellee argued that Appellant's claim(s) were either foreclosed by Stone v. Powell, 428 U.S. 465 (1976) or that the stop was valid. (DOC.7, at pgs. 8-10)

In his reply, Appellant asserted that "no full and fair hearing was afforded [him] in the state courts concerning his Fourth Amendment claims, i.e., that there was no

[3] Appellant has petitioned to the Supreme Court for a Writ of Certiorari. The status of that petition is unknown at this time.

objective well-founded articulate suspicion to support the stop, and any consent given was not freely and voluntarily given." (citing Tukes v. Dugger, 911 F.2d at 514) (DOC.13, At pg.4)

Nevertheless, the district court concluded:

> "Although as phrased above Godwin's ground might contest the lawfulness of the initial strop, Godwin conceded during the hearing on the motion to suppress that the officer had probable cause to stop his car... Godwin stipulates in his application that he conceded the stop based on the officer's testimony in a strategic move to strengthen his argument that the search exceeded the bounds of Terry... Consequently, in ground one Godwin challenges only the scope of the search, not the lawfulness of the stop." (DOC.24, at pg.12)

Notwithstanding Appellant's allegations that "the state amended the discovery subsequent to the suppression hearing", and he "renewed his motion at trial" and "[through counsel] reasserted that officer Trick did not have a well-founded articulate suspicion to support the stop," (DOC.1, at pg. 5), the district court limited Appellant's claim(s) "to the trial court's pretrial denial of [his] motion to suppress the fruits of a search." Ibid.[4]

These allegations were set forth in Appellant's Rule 60(b)(4), motion asserting a due process violation. (DOC. 46, at pgs. 5-8) Without reaching the merits, the district court concluded that Appellant's "disagreement with the earlier determinations is not a basis for relief under Rule 60". (DOC.47, at pg. 2) This Appeal follows.

QUESTION FOR C.O.A ISSUANCE

The Appellant presents the following question that merit further review by the granting of a Certificate of Appealability.

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[4] The district court acknowledged that Appellant's Brady v. Maryland, 373 U.S. 83 (1983), claim intertwined with the Fourth Amendment claim. (DOC.24, At pd. 23)

QUESTION

WHETHER REASONABLE JURISTS COULD FIND THE DISTRICT COURT'S PROCEDURAL RULING DENYING APPELLANT'S RULE 60(b)(4) MOTION FOR RELIEF FROM THE HABEAS JUDGMENT PER 28 U.S.C. §2254 DEBATABLE OR WRONG?

The District Court denied the instant Rule 60(b)(4) claim upon the determination that Appellant's "disagreement with the earlier determinations is not a basis for relief under Rule 60." (DOC. 47, At pg. 2) The following bases establish that the subject issue is debatable among jurists of reason so that the Certificate of Appealability should issue:

Rule 60 (b)(4) allows a court to VACATE a judgment if "the judgment is void." Fed. R. Civ. P. 60(b)(4). A judgment is void if it is "so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final." See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 270, 130 S.Ct. 1367, 167 L.Ed.2d 158 (2010). A judgment will not be deemed void "simply because it is or may have been erroneous." Id. (citation omitted). Rather, it "applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or a violation of due process that deprives a party of notice or the opportunity to be heard." Id. At 271. In other words, "[d]ue process requires notice 'reasonably calculated, under all circumstance, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Ibid. At 272. To determine whether a due process violation exists for purposes of rule 60 (b)(4), courts focus on whether the moving party had "reasonable notice of the action and an opportunity to respond." See Sec 8 Exch. Comm'n v. Lauer, 2015 U.S. Dist. LEXIS 187320, 2015 WL 11004892 at *4(S.D. FLA. Nov. 24, 2015) (citing Espiona, 599 U.S. At 272); See also Orner v.

Shalala, 30F.3d 1307, 1310 (10th Cir. 1994) (In the context of Rule 60(b)(4), courts look to whether the "fundamental procedural perquisites - particularly, adequate notice and opportunity to be heard- were fully satisfied .")

Here, the district court acted in a manner inconsistent with due process by sua sponte waiving Appellant's Terry stop claim without giving him notice and affording him an opportunity to present his objections thereto. (DOC. 24. At pg. 12) As shown herein, Appellee's answer invoked the Stone v. Powell, 428 U.S. 465 (1976), bar, and alternatively, argued that the stop was invalid. (DOC.7, At pg 8-10) See Rule 5(b), of Rules Governing Section 2254 Cases ("The answer must address the allegations in the petition.") In his Reply, Appellant argued that no full and fair opportunity was afforded him by the state courts, and that there was no objective well-founded articulate suspicion to support the stop. (DOC. 13 At pg. 4) However, the district court *sua sponte* enforced Appellant's pretrial waiver of his Terry stop claim, when the Appellee did not rely upon that waiver as a basis for opposing his §2254 habeas petition. Morevoer, the district court, instead of acting *sua* sponte, could have ordered amended responses from the parties concerning the pretrial waiver. See *Day,* intra, 547 U.S. at 207-08 (citing Fed.R.Civ.P. 8(c), 12(b), and 15(a)). As such, Appellant was not given fair notice nor an opportunity to be heard concerning his pretrial waiver of the Fourth Amendment claim. See Spaulding v. United States, 710 Fed. Appx. 430, 2018 U.S. App. LEXIS 2533 (11th Cir. 2018) ("The Supreme Court instructed in Day v. McDonough, 547 U.S. 198, 126 S.Ct. 1675, 164 L.Ed.2d 376 (2006). That 'a court must accord the parties fair notice and an opportunity to present their position' before disposing of a case on a ground not raised in their filings, id., at 210. Because the District Court denied

Spaulding's post conviction motion without giving her an opportunity to respond to the effect of her waiver, we vacate and remand for the District Court to proceed in accordance with the Rules Governing Section 2255 proceedings.");[5] See E.g. Omer, supra, ("under Fed. R. Civ. P. 60 (b)(4) the original judgment was void because it was entered in manner inconsistent with due process.")[6] thus, because Appellant's Rule 60 (b)(4) motion set forth a facially valid constitutional claim, "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right." See Slack, supra, At 484.

Furthermore, Appellant properly presented his due process claim under Rule 60 (b)(4), and the district court erred in finding that Appellant's "disagreement with the earlier determinations is not a basis for relief under Rule 60." (DOC.47, At pg. 2) See Espinosa, supra, at 271-272; See E.g. Omer, supra, ("This Court has indicated on a number of occassions that a judgment may be void for purposes of Rule 60(b)(4) if entered in a manner inconsistent with due process.")[7] Thus, "jurists of reason would find it debatable whether the district court was correct in it's procedural ruling." See. Slack, supra At 484. Therefore, Appellant is entitled to a C.O.A. Id.[8]

II. IN FORMA PAUPERIS

The Appellant also respectfully moves this Honorable Court to Order him insolvent for costs associated with this appeal pursuant to Fed. R. App. 24(a) and

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[5] "Unpublished opinions are not considered binding precedent, but they may be cited as persuasive authority." 11th Rule 36-2.

[6] The district court previously dismissed Appellant's asserted entitlement for relief under Rule 60 (b)(4), finding "no Argument to support his assertion that the judgment is void, and no basis for finding the judgment void is apparent from the record." (DOC. 40, at pg.1)

[7] 30 F. 3d At 1310.

[8] See generally United States v. Taylor, 295 Fed. Appx. 268, 269 (10th Cir 2006) ("Given that this [Rule 60(b)] motion was denied on procedural grounds, Mr. Taylor must make [a] showing concerning the underling constitutional claim and the procedural ruling.")

attaches hereto the required affidavit consistent with Fed. R. App. P. Form 4, see Exhibit A.

CONCLUSION

WHEREFORE, based on the foregoing, the Appellant respectfully request this Honorable Court to issue the Certificate of Appealability and order him insolvent for costs associated with this appeal.

Respectfully Submitted,

____

MR. JONATHAN GODWIN, pro se
Cross City C.I.
568 N.E. 255th Street
Cross City, Fl 32628

DECLARATION/CERTIFICATE OF SERVICE

HAVING READ the foregoing motion, I affirm under penalties of perjury pursuant to 28 U.S.C. §1746, all stated is true and correct; and certify that a true and correct copy has been handed to officials at Cross City C.I. for mailing by prepaid U.S. Postage to: United States Court of Appeals Eleventh Circuit, Office of the Clerk, 56 Forsyth Street N.W., Atlanta, GA. 30303 And; Sonya Roebuck Horbert, AAG, Concourse Center 4, 3507 E. Frontage Rd. Suite 200 Tampa, Fl. 33607-7013

on this ___ day of April, 2024

Respectfully Submitted,

____

MR. JONATHAN GODWIN, pro se
Cross City C.I.
568 N.E. 255th Street
Cross City, Fl 32628

EXHIBIT I

"Exhibit I"

PROVIDED TO
CROSS CITY C.I. ON
MAR 26 2024
FOR MAILING

PROVIDED TO
CROSS CITY C.I. ON
MAR 26 2024
FOR MAILING

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JONATHAN GODWIN,
Petitioner,

v. CASE No.: 8:16-CV-2253-SDM-SPF

SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS, ETAL.,
Respondent,
_________________________________/

MOTION TO ALTER OR AMEND JUDGMENT DENYING MOTION FOR RELIEF FROM JUDGMENT

COMES NOW, the Petitioner, JONATHAN GODWIN, pro se, pursuant to Fed. R. Civ. P. 59(e), respectfully requesting that the Court Alter or Amend it's order entered on March4, 2024 (DOC. 47) denying Petitioner's motion for relief from judgment per Rule 60(b)(1) and (b)(4), and avers:

1. The Court's Order does not determine whether Petitioner is (or not) entitled to a certificate of appealability (COA) pursuant to Rule 11(a), of Rules Governing Section 2254 Cases, and Rule 22(b), of Rules of Appellate Procedure. See E.g. Steiner v. Sec'y, Florida Dept of Corr., 2022 U.S. App. Lexis 20070 (11th Cir. 2022) ("this Court will not make the initial determination of whether to issue a COA, but rather, the district court must rule first.") (citing Edward v. United States, 114 F.3d 1083, (11th Cir. 1997)).

CONCLUSION

In sum, the Court's failure to determine whether a COA should issue and set forth the issue certified for Appeal (if any), pursuant to 28 U.S.C. §2253, (or not) stating the reasons therefore pursuant to Fed. R. App. P.22(b), has resulted in a manifest error of law and/or fact. Thus, entitling Petitioner to relief.

WHEREFORE, Petitioner respectfully request that the Court grant the instant motion, and amend its order to include a certificate of Appealability determination according to the applicable Rules setforth herein, and/or grant any further relief in accordance with the law.

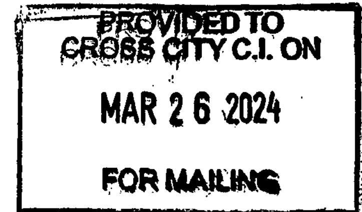
DECLARATION/ CERTIFICATE OF SERVICE

HAVING READ the foregoing document, I affirm under penalties of perjury pursuant to 28 U.S.C. §1746; 18 U.S.C. §1621, all stated is true and correct; and certify that a true and correct copy has been handed to officials at Cross City C.I. for forwarding by prepaid U.S. Postage to: United States District Court, Middle District of Florida, Office of the Clerk, United States Courthouse, Tampa, FL. 33602; and Sonya Roebuck Horbelt, AAG, Concourse Center 4, 3507 E. Frontage Rd., Suite 200, Tampa, Fl, 33607-7013 on this ______ day of March, 2024

Respectfully Submitted

/s/________________________

Mr. Jonathan Godwin, pro se
Cross City C.I.
568 N.E. 255th Street
Cross City, FL. 32628



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JONATHAN GODWIN,
Petitioner,

v. **CASE No.:** 8:16-CV-2253-SDM-SPF

SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS, ETAL.,
Respondent,
_______________________________________/

NOTICE OF APPEAL

NOTICE IS GIVEN that Petitioner, Jonathan Godwin, pro se, appeals to the Eleventh Circuit Court of appeals, the order of this court rendered on March 4, 2024. (DOC.47) The nature of the order appealed is a final order pursuant to 28 U.S.C. §1291, denying Petitioner's Rule 60(b)(1) and (b)(4), motion for relief from judgment.

Respectfully Submitted

/s/________________________
Mr. Jonathan Godwin, pro se
Cross City C.I.
568 N.E. 255th Street
Cross City, FL. 32628

DECLARATION/ CERTIFICATE OF SERVICE

HAVING READ the foregoing document, I affirm under penalties of perjury pursuant to 28 U.S.C. §1746; 18 U.S.C. §1621, all stated is true and correct; and certify that a true and correct copy has been handed to officials at Cross City C.I. for forwarding by prepaid U.S. Postage to: United States District Court, Middle District of Florida, Office of the Clerk, United States Courthouse, Tampa, FL. 33602; and Sonya Roebuck Horbelt, AAG, Concourse Center 4, 3507 E. Frontage Rd., Suite 200, Tampa, Fl, 33607-7013 on this ______ day of March, 2024

Respectfully Submitted

/s/________________________

Mr. Jonathan Godwin, pro se
Cross City C.I.
568 N.E. 255th Street
Cross City, FL. 32628

EXHIBIT J

J

"Exhibit J"

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JONATHAN GODWIN,

Applicant,

v. CASE NO. 8:16-cv-2253-SDM-SPF

SECRETARY, Department of Corrections,

Respondent.
_______________________________/

ORDER

An earlier, lengthy order (Doc. 24) denies Godwin's application under 28 U.S.C. § 2254 for the writ of habeas corpus. Both the district court and the circuit court declined to issue a certificate of appealability (Docs. 24 and 30), and the Supreme Court denied Godwin's application for the writ of *certiorari*. (Doc. 34) A later order (Doc. 47) denies Godwin's motion — his third post-judgment motion — under Rule 60(b), Federal Rules of Civil Procedure.

Godwin again complains that the district court did not address his entitlement to a certificate of appealability ("COA") when denying the earlier Rule 60(b) motion. Godwin is entitled to a COA from neither the third nor this fourth post-judgment motion. (Docs. 46 and 48) The district court again cautions Godwin that he must cease filing post-judgment motions in this action.

Godwin's motion under Rule 59(e) to alter or amend a judgment (Doc. 48) is **DENIED**. A certificate of appealability is **DENIED** to appeal either this order or the earlier order (Doc. 47). Leave to appeal *in forma pauperis* is **DENIED**.

ORDERED in Tampa, Florida, on April 3, 2024.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

EXHIBIT K

"Exhibit K"

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JONATHAN GODWIN,

Applicant,

v. CASE NO. 8:16-cv-2253-T-23MAP

SECRETARY, Department of Corrections,

Respondent.
_______________________________/

ORDER

Godwin moves for leave to proceed *in forma pauperis* (Doc. 2) and he applies for the writ of habeas corpus. The motion to proceed *in forma pauperis* is moot because Godwin subsequently paid the filing fee. The application warrants service on the respondent.

Accordingly, Godwin's motion for leave to proceed *in forma pauperis* (Doc. 2) is **DENIED** as moot. The clerk must send to both the respondent and the Attorney General of Florida a copy of this order and the application. (Doc. 1) On or before **MONDAY, SEPTEMBER 26, 2016**, the respondent must respond to the application and show cause why the court should not grant the application. If the respondent contends that the application is time-barred he should move to dismiss the application. The parties will have an opportunity to address individual grounds in the application if the district court determines that the application is timely. The

respondent must support his motion or response with a copy of the state court record, including circuit and district court orders, post-conviction motions, appellate briefs, and transcripts of all relevant pre-trial, trial, and post-conviction proceedings. The respondent must individually tab for identification all transcripts, briefs, and other documentary exhibits and provide a table of contents or index. The respondent must serve Godwin with a copy of each exhibit as required by *Rodriguez v. Fla. Dep't of Corr.*, 748 F.3d 1073, 1075 (11th Cir.), *cert. denied*, 135 S. Ct. 1170 (2015), which holds that "any exhibits or documents that are referenced in the answer and filed with the Court are part of the answer, whether the filings are made together or at different times, [and] service of these exhibits, like the answer itself, is procedurally required."

The response must state whether Godwin has exhausted his state remedies, including post-conviction remedies and appeals. If the respondent contends that Godwin has not exhausted his state remedies, the response must contain a detailed explanation of which state remedies are still available.

Before counsel has appeared for the respondent, Godwin must send to the respondent a copy of every pleading, motion, or other paper submitted for filing in this action. After counsel has appeared for the respondent, Godwin must send copies of documents directly to counsel for the respondent rather than to the respondent personally. Each document Godwin submits for filing must include a certificate stating the date that an accurate copy was mailed to the respondent or counsel for the respondent. The court will strike any document that fails to contain a proper

certificate of service. Godwin must advise the court of his current mailing address at all times, especially if Godwin is released from custody.

On or before **MONDAY, OCTOBER 31, 2016** (or within thirty days after the respondent complies with this order, whichever occurs later), Godwin should either oppose the motion to dismiss or reply to the response. If the respondent files a motion to dismiss, Godwin is cautioned that the granting of the motion will result in the dismissal of this action.* If Godwin fails either to oppose the motion to dismiss or to reply to the response the court may rule on either the motion or the application without further notice.

ORDERED in Tampa, Florida, on August 17, 2016.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

* *See Griffith v. Wainwright*, 772 F.2d 822 (11th Cir. 1985), and *Milburn v. United States*, 734 F.2d 762 (11th Cir. 1984).