25-5484

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

COREY BLAINE COGGINS, Petitioner

Vs.

DODGE STATE PRISON WARDEN, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE

ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

COREY BLAINE COGGINS
#1127482
DODGE STATE PRISON
2971 OLD BETHEL ROAD
CHESTER, GEORGIA 31012

QUESTIONS PRESENTED

1. Did Coggins' Public Defender's (Weber) entering into a joint defense agreement with Coggins' co-defendant's (Tabor) lawyer without Coggins' knowledge or consent constitute ineffective assistance of counsel in that this had the effect of leaving Coggins without any defense when the District Attorney dismissed Tabor in the middle of the trial, in that Coggins' Public Defender had made no preparation for trial and had subpoenaed no witnesses? In 2018, Coggins discovered for the first time following his trial in 2006 that his court-appointed Public Defender (Weber) had, without his knowledge or consent, entered into a joint defense agreement with his co-defendant's (Tabor) lawyer. (Dkt. 14-3, pp.1-34). The evidence implicating Tabor was available to Weber prior to trial and showed that there was physical evidence in 2001 tying Tabor to the stabbing (blood), that Tabor had a motive (self-defense) in that the victim (Smith) had attacked him, and that Tabor had made admissions in 2001 to a deputy (Deputy Dennis Mack) at the scene and to Tabor's then-girlfriend (Whitney Varna) that he had stabbed Smith in self-defense?

2. Did the District Attorney, without disclosing to the trial court the admissions made by Tabor to Deputy Mack in 2001 and without disclosing to the trial court the content of Osborne's and Roberson's letters, mislead the trial court and in turn, the jury, in violation of this Court's holdings in Napue v. Illinois, 358

U.S. 919 (1958) and Glossip v. Oklahoma, 604 U.S. ___, 145 S.Ct. 612 (2024), by moving to dismiss the charges against Tabor, which in essence had the effect of the District Attorney's telling the jury that Coggins stabbed Smith?

3. In light of the fact that the late filing of Coggins' Federal habeas case was caused by his *pro bono* lawyer's assuming that the days during which his previous Petition for Certiorari before this Court was pending did not count, is Coggins' late filing of his Federal habeas claim entitled to equitable tolling under Holland v. Florida, 560 U.S. 631 (2010); Christian v. Roper, 574 U.S. 373 (2015), in that Coggins is actually innocent or does this Court's decision in Lawrence v. Florida, 549 U.S. 327 (2007) foreclose the right of this Court to grant the relief sought?

4. Is Coggins actually innocent of the murder charge for which he was convicted when the jailhouse snitch (Osborne), who was previously represented by Coggins' Appellate Counsel (Johnson), admitted to Johnson and to others that he had never even met Coggins' co-defendant, Barry Tabor, that co-defendants were never housed together, and that his court testimony and letters were pure fabrication?

5. Should the State have disclosed the implied deal it had with Osborne under Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. U.S., 405 U.S. 150 (1972), which deal resulted in a reduced sentence for Osborne?

LIST OF PARTIES

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

The Petitioner is COREY BLAINE COGGINS (hereinafter "Coggins"), who is currently confined in Dodge State Prison in Chester, Georgia and has been in custody since June, 2005.

The Honorable Carl C. Brown, Jr. (now retired), the judge in Coggins' 2006 criminal trial and the judge who sentenced Timothy Osborne in the case of State vs. Timothy Wayne Osborne in August of 2006.

Scott Connell, Esq., co-counsel for Barry Tabor.

The Honorable Daniel J. Craig, who was the District Attorney in Coggins' 2006 criminal case and in the prosecution of Timothy Wayne Osborne in the Osborne case.

Peter Johnson, Esq., court-appointed appellate counsel for Coggins and also counsel for Timothy Wayne Osborne.

The Honorable Howard C. Kaufold, Jr., Judge, Superior Court of Dodge County, Georgia, who heard the State habeas case.

John B. Long, Esq., Tucker Long, P.C., *pro bono* attorney who began representing Coggins in his Application for Writ of *Habeas Corpus* and who

represented Coggins at the evidentiary hearing held in Dodge County on December 4, 2018.

Ashley Smith Robinson, f/k/a Ashley Smith, widow of Mack Smith, whose interaction with Brian Nichols is portrayed in a movie entitled "Captive" and in a book entitled "Unlikely Angel: The Untold Story of the Atlanta Hostage Hero

The late Mack Smith, victim and husband of Ashley Smith Robinson, f/k/a Ashley Smith.

Barry Tabor, Co-Defendant in Coggins' 2006 criminal trial.

Murray Tatum, Warden of the Dodge State Prison, holds the body of Coggins.

Andrew J. Tisdale, Esq., co-counsel for Barry Tabor in Coggins' 2006 criminal trial.

The late David D. Weber, Esq., court-appointed trial defense attorney for Coggins in Coggins' 2006 criminal trial.

Rule 2.9.6 requiring a Corporate Disclosure is not applicable to this case in that there is no non-governmental corporation involved in this case.

RELATED CASES

To the knowledge of the Petitioner there are no related cases.

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Orders and Opinions Below

On March 23, 2006, Coggins was convicted in Columbia County, Georgia of the 2001 stabbing of Smith.

Coggins' Motion for New Trial was belatedly filed by Coggins' Public Defender David Weber on April 23, 2006 (Dkt. 14-1, pp.1-36, p.2), and the Order denying that motion was not entered until January 31, 2012. (Dkt. 14-1, pp.1-36, p.2).

The court then appointed Appellate Counsel Johnson and then entered an Order allowing an out of time appeal on March 30, 2012.

The conviction was affirmed by the Georgia Supreme Court on October 21, 2013. Coggins v. State, 293 Ga. 864, 750 S.E.2d 331 (2013).

This Court denied Coggins' Petition for Certiorari from that conviction on May 19, 2014. Coggins v. U.S., 572 U.S. 1119 (2014).

A Petition for Habeas Corpus was timely filed pro se by Coggins on July 11, 2014, in the Superior Court of Macon County, Georgia. That case was then transferred to the Hancock County Superior Court by Order entered on October 20, 2014, and subsequently transferred to the Dodge County Superior Court by Order entered on April 17, 2017. A hearing on Coggins' July 11, 2014, Petition was set for November 7, 2017, and then continued until March 26, 2018. An Amended and

Recast Petition was filed on April 23, 2018 (Dkt. 14-4) and amended again on May 30, 2018 (Dkt. 14-5). The March 26, 2018, hearing had been continued at the request of the State, and the case was finally heard on December 4, 2018. On August 19, 2019, the Dodge County Superior Court denied Coggins' Petition. (Dkt. 14-1, pp.1-37).

As required by O.C.G.A. § 9-14-52(b), an Application for a Certificate of Probable Cause was timely filed with the Georgia Supreme Court on September 13, 2019 known as Case Number S20H0188. The Dodge County Superior Court did not promptly send the record to the Supreme Court of Georgia as required by O.C.G.A. §5-6-43. Nearly two years after the timely filing of Coggins' Application, the Supreme Court formally requested that the record be sent to it. In a letter dated July 28, 2021, the Clerk of the Supreme Court of Georgia asked the Clerk of the Superior Court of Dodge County to send the record on the Coggins case and other cases that were more than two years old to the Clerk of the Supreme Court. The Georgia Supreme Court denied Coggins' Petition to Appeal the denial of the *Habeas* Petition on January 10, 2023, and denied Coggins' Motion for Reconsideration in its February 7, 2023, Order in Case No. S20HO188.

Coggins filed a Petition for Certiorari and Motion to Proceed in Forma Pauperis on May 8, 2023, in Case Number 22-7877. This Court denied Coggins' petition on October 2, 2023.

Coggins filed a Petition for Habeas relief in the United States District Court for the Southern District of Georgia on April 5, 2025. That petition was denied on December 4, 2024 with the District Court holding that Coggins was not entitled to equitable tolling. 2024 WL 4982830 (Dec. 4. 2024). His appeal from that order was denied by the Eleventh Circuit Court of Appeals on June 13, 2025, in Case No. 24-14159. There the court held that the evidence did not support the gateway exception to filing a tardy petition for relief based upon the fact that Coggins is actually innocent of the crime for which he was convicted. This petition is being filed within ninety (90) days of that order as authorized by Rule 13 of the rules of this Court.

Jurisdictional Statement

On June 13, 2025, the Eleventh Circuit affirmed the United States District Court's Order holding that Coggins was not entitled to equitable tolling under Holland v. Florida, 560 U.S. 631 (2010). The Eleventh Circuit rejected the argument that the one-year statute of limitations did not prevent the filing of this petition under Schulp v. Beto, 513 U.S. 298 (1995) and McQuiggin v. Perkins, 569 U.S. 383 (2013). The Eleventh Circuit and the District Court failed to review all of the facts in this case, which facts support Coggins' contention that he is actually innocent of the crime for which he was convicted and that his conviction was the result of the failure of the State to provide adequate representation both at trial and on appeal, as

well as the failure of the State to reveal the deal that it had made with a jailhouse informant as required by Brady and Giglio. This Petition for Certiorari is being filed within ninety (90) days of the decision of the Eleventh Circuit as required by Rule 13 of the Rules of this Court.

This Court has jurisdiction over this Petition under 28 U.S.C. § 2254 and 28 U.S.C. §2244(c). This Petition does not raise issues as to the constitutionality of an Act of Congress, but does raise issues of the denial of adequate representation under the Sixth and Fourteenth Amendments to the United States Constitution.

Constitutional Provisions, Statutes and Federal Rules Involved

1. **Sixth Amendment to the United States Constitution**:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

2. **Fourteenth Amendment to the United States Constitution**:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. **Fifth Amendment to the United States Constitution**

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Statement of the Case

In 2006, Coggins was convicted of a murder that occurred on August 12, 2001. (Dkt. 14-7, p.943).[1] The victim, Mack Smith (hereinafter "Smith") was a friend of Coggins. Following a party on that date, Coggins, Smith and others went to the apartment of Chris Jarrard and Barry Tabor. Smith wanted to go to the apartment in order to confront Tabor and Jarrard about Jarrad's allegations that Smith was a "narc". In a the fight that was primarily between Smith, Jarrard and Tabor, Smith was stabbed. Two individuals were later arrested, Tabor and Alberto Lopez, and at that time they were both charged with manslaughter, a crime defined by O.C.G.A. § 16-5-2 which has a maximum penalty of 20 years in prison. (Dkt. 14-4, pp.116-135). The case against Tabor and Lopez was dismissed on September 25, 2001, even though Tabor at that time had made an admission to Columbia County Sheriff's Deputy Dennis Mack and to his then-girlfriend, Whitney Varna, that he had in fact hurt or stabbed the victim, Smith, in self-defense. (Dkt. 14-4, pp.116-135; *see also*, Affidavit of Chief Public Defender Katherin Mason, Dkt. 14-2; Affidavit of Deputy Dennis Mack, 05/11/18, Dkt. 14-4, p.1-5). (*See also*, Deputy Mack's statement contained in the Public Defender's file, Ex. C, Dkt. 14-2, p.5). Nothing changed

[1] Record citations are made to the records filed in the United States District Court for the Southern District of Georgia. Docket References (Dkt.) refer to the docket entries in the United States District Court for the Southern District of Georgia and can be reviewed on Pacer in the case of Coggins v. Thomas, CV124-042.

between 2001 and 2006 until Smith's widow became a national heroine of sorts. (Case No. 17HC0443, Dkt. 13, Ex. A). There was no additional evidence produced between the dismissal of the case in August of 2001 and the indictment in June of 2006 to show that the incident between Smith, Jarrard and Tabor could have resulted in a manslaughter charge, not a murder charge. Murder in Georgia requires malice and intent under O.C.G.A. § 16-5-1; manslaughter does not; Everitt v. State, 277 Ga. 457, 588 S.E.2d 671 (2003); Shafer v. State, 193 Ga. 748, 20 S.E. 34 (1942).

On March 11, 2005, an Atlanta, Georgia trial judge, his court reporter, a deputy and a Federal agent were murdered by Brian Nichols. (*See*, "Man Flees Killing Judge and Two Others at Atlanta Court", New York Times, March 11, 2005). Ashley Smith, the widow of Mack Smith, stepped into the national spotlight when she convinced Brian Nichols to surrender. As a result, the 2001 stabbing case of Ashley Smith's husband was reopened. In June of 2005, Tabor was rearrested and charged with murder, as was Coggins, who had previously not been charged with any crime as a result of the fight in 2001.

Tabor hired paid counsel, and Coggins was appointed Public Defender (David Weber), who according to the Public Defender's Office file met with Coggins on two (2) occasions prior to trial on July 7, 2005, and December 27, 2005. (Dkt. 14-2, pp.1-396 at p.3, para. 5, and p.7). Public Defender Weber himself stated that he was a poor timekeeper and had stopped on his way home to see Coggins. (Dkt. 14-

3, p.1, Response 2). Jail records, if they had been available when requested, would have verified exactly how many times Coggins and Weber met before trial. (Dkt. 14-3, p.1).

Unknown to Coggins at the time of trial in 2006, Coggins' Public Defender had entered into a joint defense agreement with Tabor's paid counsel. (17HC0443, Weber Resp., Dkt. 14-3, pp.1-34, p.2). The fact that Public Defender Weber had entered into a joint defense agreement with Tabor's paid counsel and the fact that he had prepared no defense for Coggins' trial was not made known to Coggins until May of 2018 when a volunteer pro bono attorney, with the assistance of the Chief Public Defender (Katherine Mason), was able to obtain evidence from Coggins' file held in the Public Defender's Office (Dkt. 14-2) and was able to obtain a Deposition by Written Interrogatory from Weber (Dkt. 14-3, pp.1-34, Answer to Interrogatory 4). There is no notation in the Public Defender's file about any joint defense agreement. (Dkt. 14-2, pp.1-96). It remains a mystery why Public Defender Weber would enter into such an agreement without Coggins' knowledge or consent, especially in light of the facts contained in Coggins' file and available to Public Defender Weber at that time, i.e., Smith had attacked Tabor; Tabor had Smith's blood on his clothing; and Tabor had admitted he stabbed Smith in self-defense to both his girlfriend and a deputy. (Dkt. 14-2, p.4, para. 9; pp.16-17). For reasons still unknown to this day, in the middle of trial, the District Attorney dismissed

Tabor, the person who had previously made incriminating admissions to Deputy Mack and to his girlfriend, Whitney Varna. (Dkt. 14-7 at pp.752-756). Tabor's dismissal left Coggins as the sole defendant. The District Attorney dismissed Tabor without informing the trial judge that Tabor had admitted the stabbing to Deputy Mack on the night of the incident or, that if the letters written by the jailhouse snitches were true, the jailhouse snitches implicated Tabor, Jarrard and Coggins! (Dkt. 14-7, pp. 752-756).

Prior to trial, during his trial, and at his Habeas hearing, Coggins has steadfastly denied that he stabbed Smith. (Doc. 14-2, pp.1-96). Coggins was interviewed on August 18, 2001, and stated he never saw anyone stab Smith. (Dt. 14-2, p.32). Coggins stated in 2001 that he helped Smith's wife get Smith into the truck after Smith was hurt and made the same statement again when interviewed in March of 2005. (Dkt. 14-2, pp.33-37). At trial, Coggins testified that he did not stab Smith. (Dkt. 14-7, p.884, lns.2-5). At the Habeas Hearing, he testified that he did not stab Smith. (Dkt. 14-7, p.58, lns.16-21).

On August 19, 2019, the State Habeas Court held that Public Defender Weber's entering into a joint defense agreement without Coggins' consent and his not calling Deputy Mack as a witness was a "strategic decision" (Habeas Order, p.44; Dkt. 14-1, pp.1-37), even though the State Habeas Court had testimony before it that Coggins testified that he did not stab Smith. (Dkt. 14-7, p.58). Coggins never

consented to any Joint Defense Agreement. (Dkt. 14-7, p.63, lns11-12). The reason given by the District Attorney for the dismissal at that time was the testimony of a jailhouse inmate who had written letters saying that both Tabor and Coggins were involved in the stabbing even though at the time the District Attorney did not discuss the content of the letters with the trial judge. (T-Tr. State Ex. 39, Dkt. 14-7, pp. 752-756; *see,* State's Ex. 22, Dkt. 14-7, p. 971; State's Ex. 23, Dkt. 14-7, pp. 972-976; State's Ex. 39, Dkt. 14-7, pp. 988-990). These letters were not introduced until after the charges had been dismissed against Tabor. In a high-profile case such as this, the effect of dismissing Tabor without ever informing the trial judge of the admission made by Tabor to Deputy Mack was in essence an indication by District Attorney to the jury that Coggins was the one who stabbed Smith!

Coggins denied both at trial and again at his State Habeas hearing that he did not stab Smith. (Dkt.14-7, pp.863-897, p.884, lns.2-5). Coggins denied making any statement to anyone that he stabbed Smith. (Dkt. 14-7, pp.884-886; *see also*, Coggins' testimony at State Habeas hearing on December 4, 2018, Dkt. 14-7, pp. 51-76).

Public Defender Weber, in relying on Tabor's lawyers to defend Coggins, prepared no defense whatsoever for Coggins and subpoenaed not one witness to testify on Coggins' behalf during trial. Because of the undisclosed joint defense agreement, Coggins' Public Defender could not in the middle of trial point to Tabor

as being the one who had stabbed Smith. There is no notation in the Public Defender's file about any joint defense agreement. (Dkt. 14-2, pp.1-96). Public Defender Weber had not interviewed any witnesses and had done nothing to prepare for trial. (Dkt. 14-2, pp.1-96, p. 3, para. 7). Deputy Mack, who had taken Tabor's statement on the night of the stabbing, was never called or even interviewed by Coggins' Public Defender. Public Defender Weber never informed the jury, nor the trial judge of this evidence. (Dkt. 14-2, p.15). Public Defender Weber never showed Coggins the statement made by Deputy Mack before trial. (Doc. 14-7, p.60, lns. 20-25). Public Defender Weber's file did not show that Deputy Mack was ever interviewed by Weber, even though it contained Deputy Mack's written report. (Dkt. 14-2, pp.1-96 at pp.3-4, para. 8). Public Defender Weber later acknowledged that he should have moved for a mistrial when Tabor was dismissed and that he should have focused on Tabor as being the one who stabbed Smith. (Dkt. 14-3, pp.1-34 at p.2, Response No. 7). The State Habeas Judge (the only judge who has addressed this issue) held that entering into such a joint defense agreement without Coggins' consent was acceptable trial strategy under Strickland v. Washington, 466 U.S. 668 (1984). This is one of the issues that Petitioner requests that this Court address. (Dkt. 14-1, pp.1-36 at pp.13-14). The State Habeas court overlooked the fact that there had been absolutely no preparation by Coggins' Public Defender, justified his actions in not calling any witnesses, and considered his entering into a

joint defense agreement without his client's consent as "reasonable trial strategy." (Dkt. 14-1, pp. 1-36).

Tabor was dismissed even though there was physical evidence (blood), motive, and witness testimony that Smith had attacked Tabor and other people.

The only evidence tying Coggins, who was Smith's friend, to the stabbing were supposed admissions to friends in 2001 that "we stabbed someone" and the testimony of two jailhouse snitches, one of whom (Osborne) received a reduced sentence to a pending armed robbery charge. (*See*, Osborne sentencing at Dkt. 14-6, pp.1-10; Dkt.14-15, pp.8-38). Osborne admitted to Coggins' Appellate Counsel, Peter Johnson (who had represented Osborne when he received a reduced sentence to an armed robbery case approximately five months after Coggins' conviction) that his testimony at Coggins' trial was pure fabrication.

Osborne was subpoenaed to testify at Coggins' Motion for New Trial hearing, but when advised by Johnson about the penalty for perjury, Osborne took the Fifth. (Dkt. 14-18, pp.1-21, p.16; *see also*, Testimony of John McCormick at the second Motion for New Trial Hearing (Dkt. 14-19, p.1-21) in which he stated that Osborne had admitted to him that his letters and testimony were false.).

Following his conviction in 2006, Coggins wrote to Public Defender Weber asking that he raise on appeal the issue of ineffective assistance of counsel. (Dkt. 14-2, pp.2-96 at p.88). That was never done. Coggins then received court-appointed

Appellate Counsel, Peter Johnson. Ironically, Johnson had in fact represented one of jailhouse snitches (Osborne) when Osborne received the benefit of his testimony during Coggins' trial. During Coggins' Motion for New Trial proceeding, Johnson received admissions from Osborne that he had fabricated the entire so-called confession by Coggins. Johnson, while acting as Coggins' Appellate Counsel, advised Osborne of the fact that if he testified about his perjured testimony at Coggins' trial, he would then be subject to receiving a life sentence under O.C.G.A. § 16-10-70(b). As a result, Osborne pled the Fifth Amendment. (Dkt. 14-7, p.191). Appellate Counsel Johnson never informed Coggins that he had represented Osborne. (Dkt. 14-7, p.28, lns. 12-17). The reason Osborne took the Fifth Amendment was based on the advice that Appellate Counsel Johnson, who was then representing Coggins, gave Osborne that if he admitted to perjury in Coggins' trial, Osborne could face a life sentence himself. (Dkt. 14-7, pp.29-31).

During the second Motion for New Trial hearing, Appellate Counsel Johnson admitted to the Court that Osborne had admitted to him that he had lied and had another witness, John McCormick, confirm that Osborne admitted to this lie. (Dkt. 14-7, pp.197-217, pp.200-206, pp.205-210). When Osborne was later found, he gave an affidavit confirming the fact that he had never even met Tabor, since co-defendants such as Coggins and Tabor, were never kept in the same jail pod. (Dkt 14-6, pp.1-54). Appellate Counsel Johnson confirmed that policy at Coggins' State

Habeas hearing. (Dkt 14-7, p.21, ln.22-p. 22, ln. 4). The State Habeas Court dismissed this fact by holding that when jail records were requested, the late requests were the fault of Coggins, who was at that time represented by Appellate Counsel Johnson. (Dkt. 14-1, pp.1-37 at pp.6-7).

After Coggins' Motion for New Trial was denied, an out of time appeal was filed. Even then, ineffective assistance of counsel was not raised on appeal, as had been requested by Coggins. Appellate Counsel Johnson never gave Coggins a copy of the brief that he filed with the Supreme Court of Georgia. Regrettably, Appellate Counsel Johnson made certain in judicio admissions in that brief that were not correct but were adopted by the Supreme Court. (Dkt. 14-7, p.34, lns.14-17; Dkt. 14-7, pp. 106-129).

Coggins' conviction was affirmed by the Georgia Supreme Court on October 21, 2013. Coggins v. State, 293 Ga. 864 (2013). Coggins then filed a pro se Petition for Certiorari that was denied on May 19, 2014. Coggins pro se filed a state Petition for Writ of Habeas Corpus on July 1, 2014, which petition was not heard until December 4, 2018, and was denied on August 19, 2019. (Dkt. 14-1, pp. 1-37).

In 2018, Coggins first received volunteer pro bono legal assistance in bringing his State Habeas petition. It was at that time Coggins first learned that Public Defender Weber had entered into a joint defense agreement with Tabor's attorneys, had not interviewed any witnesses in preparation for trial, and in essence had relied

solely upon Tabor's counsel for Coggins' defense. In 2018, the Public Defender's entire file was produced and reviewed by Coggins' pro bono counsel, including the statement Tabor had made to Deputy Mack on the night of the fight between Tabor and Smith, as well as physical evidence tying Smith's blood to Tabor's clothing. In addition, Coggins' file contained the statement relating to Tabor's telling his then-girlfriend, Whitney Varna, that he had stabbed Smith in self-defense. (Dkt. 14-2, pp.1-95, pp.80-87; Dkt. 14-3, p.17).

Coggins' pro bono attorney then located Osborne, who was in confinement in McDuffie County, Georgia. Coggins' pro bono attorney interviewed Osborne, who admitted that his testimony at Coggins' trial could easily have been exposed, since it is the Columbia County Jail's policy that co-defendants such as Tabor and Coggins are kept in separate jail pods. Osborne in fact admitted that he had never even met Tabor! (Dkt. 14-6, pp.1-54 at p.2, para. 7). Efforts to verify that Tabor, Coggins and Osborne were never housed in the same jail pod were unsuccessful based upon the retention policy of the jail.

Both Public Defender Weber and Appellate Counsel Johnson have admitted that they provided ineffective assistance of counsel, both at trial and on appeal. (*See,* Habeas testimony of Johnson, Dkt. 14-7, pp.15-72). Appellate Counsel Johnson admitted that it is the policy of the Columbia County Sheriff's Department to keep co-defendants separated. (Dkt. 14-7, pp.21-22). Public Defender Weber presented

no evidence at trial that Coggins and Tabor were ever housed together. (Dkt. 14-7, pp.23-24). Appellate Counsel Johnson admitted that a Brady-Giglio error should have been raised by him on appeal. (Dkt. 14-7, pp.27-28). Appellate Counsel Johnson admitted that he breached his duty of loyalty to Coggins when he advised Osborne of the effect of an admission to perjury. (Dkt. 14-7, pp.30-31). Furthermore, in 2010, an unknown person contacted the District Attorney's Office and stated that they had convicted the wrong person, but nothing was done to confirm that statement. (Dkt. 14-7, pp.34-35). There is no question that there was at least an implied agreement with Osborne that was never disclosed to Coggins and that Osborne did in fact receive a substantial benefit – a clear violation of Brady. (Dkt. 14-3, pp.1-34). There is no question that Public Defender Weber did not prepare for trial and that by entering into an undisclosed joint defense agreement without Coggins' consent his hands were tied so that he could not then take the position at trial that Tabor had in fact stabbed Smith. (Dkt. 14-2, pp.1-96).

As stated above, Appellate Counsel Johnson testified at the State Habeas hearing on December 4, 2018. (Dkt. 14-7, pp.15-39). He admitted that he should not have advised Osborne to take the Fifth, that he was ineffective and that a Brady-Giglio violation should have been made on appeal.

Reasons for Granting the Writ

1) In denying Coggins' claim of actual innocence, which would have enabled the Court to overlook the late filing of the petition, the Eleventh Circuit Judge held that the recanted witness testimony and portions of the Public Defender's file do not support the argument that "no reasonable jury would have convicted him." The Eleventh Circuit failed to take into consideration the following:

a) That not preparing for trial should never be permitted under Strickland v. Washington, 466 U.S. 668 (1984) and never be justified as "reasonable trial strategy. Lafler v. Cooper, 566 U.S. 156 (2012); Harrington v. Kichter, 562 U.S. 86 (2011); Kimmelman v. Morrison, 477 U.S. 365 (1986).

If a jury had heard the testimony of Deputy Mack and Whitney Varna, had known that Coggins and Tabor were never held in the same jail pod, and that there was no way that the story concocted by Osborne could be true, it could not reasonably have convicted Coggins. If the actions of Coggins' Public Defender, who was admittedly unprepared, are classified as reasonable trial strategy, then the Sixth and Fourteenth Amendments are meaningless.

b) That Coggins' court-appointed Public Defender had no right to enter into a joint defense agreement with Tabor's paid attorney based on the facts that were then known, and had Coggins' Public Defender prepared a defense for Coggins, subpoenaed witnesses, and simply reviewed the information contain in the

Public Defender's file, he would have been able to show that Tabor, not Coggins, stabbed Smith. Furthermore, under Federal Criminal Procedure, when defendants are represented by the same counsel or there is such a joint defense agreement the Federal Courts are required to make sure that no conflict is likely to arise. F.R.C.P. 44(c). Every defendant has the right to counsel unhindered by any conflict of interest. Holloway v. Arkansas, 435 U.S. 475 (1978); Cuyler v. Sullivan, 446 U.S. 335 (1980); *see also*, Sullivan v. Cuyler, 723 F.2d 1077 (3rd Cir. 1983). The proper procedure used here should have been the procedure used by the District Court in United States v. Stepney, 246 F.Supp.2d (N.D. Cal. 2003). A defendant has the right to control his or her trial strategy and retains the right to decide whether an attorney is wrong. *See,* 74 Baylor Law Review, p.285-286.

In this case, this undisclosed joint defense agreement caused a conflict of interest under Strickland v. Washington, 446 U.S. 335 (1980) at 342. To hold that such is reasonable trial strategy is to render Strickland v. Washington, *supra*, meaningless.

There appears to be a dispute among the circuits as to what rights and powers remain with a defendant in making decisions regarding his or her defense under this Court's holding in McCoy v. Louisiana, 584 U.S. 414 (2018). *Compare* U.S. v. Gary, 954 F.3d 194 (4th Cir. 2020) and Kellog-Roff, 19 F.4th 21 (1st Cir. 2021). The initial question before this Court is: Can defense counsel, without the consent of the

defendant, enter into a joint defense agreement with a co-defendant's attorney without the expressed consent and understanding of his client? Based upon the facts here, this is exactly what was done in Coggins' case, and this should be in violation of Coggins' 6th Amendment right to effective representation under Strickland v. Washington, *supra.*

The State Habeas Court held that the decision to enter into a joint defense agreement without Coggins' expressed consent was reasonable trial strategy and this Court should reject that reasoning based upon the facts in this case.

Entering into a joint defense agreement without Coggins' expressed consent caused Public Defender Weber to be wholly unprepared when the State dismissed Tabor. The joint defense agreement left Coggins' Public Defender/Trial Lawyer in a position such that no witnesses were subpoenaed and it was impossible to take the position in the middle of trial that Tabor in fact stabbed Smith. Public Defender Weber's failure to prepare a defense, left Coggins with no defense. Baty v. Balkcom, 661 F.2d 391 (5th Cir. 1981); Wiggins v. Smith, 539 U.S. 510 (2003). Not preparing for any type of trial is never reasonable trial strategy as the record in this case demonstrates. (Dkt. 1-96, at pp.3-4, para 7-8).

In this case, the Sheriff's Department investigated the case in August of 2001, determined that Tabor was involved in the stabbing and charged him at that time with voluntary manslaughter. The investigators determined that this was not a

murder case, but a manslaughter case and charged both Tabor and Lopez with manslaughter. The State at that time had evidence that Smith had gone to Tabor and Jarrard's home and had instigated a fight, and that Tabor had defended himself. At that time, the investigators had blood evidence, the admission by Tabor to Deputy Mack and the admission to Varna. There was no new evidence available when Tabor and Coggins were both arrested in 2006, some 4.5 years after Smith started the fight with Jarrard and Tabor. This prosecution was driven by the news media following Smith's widow becoming somewhat of a heroine in the Brian Nichols surrender following the March 2005 murders in Atlanta. Coggins' presence at the fight between Tabor and Smith is not evidence of guilt.

Not having a prepared lawyer is akin to having no lawyer at all. Clarence E. Gideon's conviction in Florida, which led to the expansion of the right to counsel, was based on his merely being seen walking out of a bar with a bottle of wine and his pockets being filled with coins. Gideon v. Wainwright, 372 U.S. 335 (1963). Once Gideon was provided with an attorney to defend himself, he was acquitted. His acquittal was primarily the result of his court-appointed lawyer being prepared for trial and able to show that the States' witness had previously lied! In the case at hand, Public Defender Weber's failure to prepare was the equivalent of Coggins' having no lawyer at all. Allowing joint defense agreements such as the one in the case at hand results in one defendant essentially not having any lawyer at all,

particularly when there was no preparation at all by counsel as the Public Defender's file in this case demonstrates.

In the case at hand there was ample evidence available before trial and when the case was on appeal to support the fact that Coggins did not stab Smith.

2. This Court should remand this case to the District Court for full reconsideration of the ineffective assistance of both trial and appellate counsel in light of the fact that by entering into a joint defense agreement without Coggins' expressed consent his trial counsel was ineffective.

If this Court holds that it is ineffective assistance of counsel to enter into a joint defense agreement without a defendant's consent based upon the facts of this case, this Court should excuse the procedural default and remand this case to the District Court. Trevino v. Correctional Institutions Division, 569 U.S. 413, 133 S.Ct. 1911, 185 L.Ed.2d 1044 (2013). If this Court would consider all the evidence that was available it would conclude that there is no physical evidence connecting Coggins' to Smith's stabbing and the alleged admission to friends in 2001 which was disputed is insufficient to hold Coggins' responsible for Smith's death. O.C.G.A. §24-8-823. Furthermore, the stabbing of Smith was at most a manslaughter case, not a murder case.

3. Coggins' Petition for Habeas relief should have been permitted under the actual innocence exception permitted by Schulp v. Delo, 523 U.S. 298 (1995); McQuiggin v. Perkins, 569 U.S. 383 2013); Maples v. Thomas, 565 U.S. 266 (2012).

The late filing of this Federal habeas case was caused by Coggins' volunteer pro bono attorney thinking that the time while this case was previously before this Court did not count toward the one-year statute. Most of the delays between the time of Coggins' conviction in 2006 have been caused by the State Judicial System and the delays in the State system handling his request for post-conviction relief, not by Coggins. An innocent person should not lose his freedom based on the errors that have occurred here.

In analyzing the evidence that the Federal Courts below relied upon in holding that the actual innocence exception is not available and the Supreme Court of Georgia's ruling at 293 Ga. 864 (2013) affirming the conviction reveals two categories of evidence: (1) Alleged admissions that Coggins made to his friends in 2001; and (2) the jailhouse confessions allegedly made by both Coggins and Tabor to Osborne.

If Coggins' Public Defender/Trial Attorney had in fact read all of the statements taken by the Sheriff's Office in 2001 and again in 2005 and had done anything to prepare for trial, he would have presented evidence to show that there were disputes as to what, if anything, Coggins said to his friends following the fight

and stabbing. Unfortunately, Coggins' Public Defender agreed to tie Coggins' to Tabor's defense – essentially, Coggins had no attorney at all. The error concerning Coggins' alleged admissions was compounded by the in judicio admissions of Coggins' Appellate Counsel in his brief, which admissions were inconsistent with the actual investigation in 2001 and 2005. (*See*, Appellate Counsel's brief at Ex. P-5 at the state Habeas hearing on December 4, 2018. Dkt. 14-7, p.242-267). Appellate Counsel Johnson at the time he filed this brief had already been informed by the jailhouse snitch, Osborne, that he had fabricated the story that he and Michael Robinson wrote in letters introduced by the prosecution as State's Exs. 22, 23 and 39 in the Trial Transcript. (Dkt. 14-7, p.971-976; 988-986; *see also*, Robinson testimony, Dkt. 14-7, pp.760-778; Osborne testimony, Dkt. 14-7, pp. 778-795). In his letter to the newspaper dated October 14, 2005, States Ex. 22, Robinson related to an alleged admission that "Chris Jarrard and Michael Smith and Cory Coggins stabbed him". (Dkt 14-7, p. 971). In a letter titled "Confessions from Inside" dated October 14, 2005, State's Ex. 23, p.4, Osborne wrote "Coggins isn't aware that Tabor told me he did the stabbing, nor is Tabor aware that Coggins told me that he done." (Dkt. 14-7, pp. 972-976). State's Ex. 39 is another letter from Osborne indicating that he was told by Corey Coggins and his co-defendant and his co-defendant (Tabor) grabbed Smith while Coggins stabbed him. (Dkt. 14-7, pp.983-986).

Why didn't the District Attorney, knowing the content of these letters, not inform the trial court of what Osborne wrote when he dismissed the case against Tabor? Why didn't the District Attorney tell the trial court about Tabor's admission to Deputy Mack on the night of the stabbing when he moved to dismiss the charges against Tabor? (Dkt. 14-7, pp.752-756). Even though Public Defender Weber was wholly unprepared for trial and inextricably relying upon Tabor's defense, he did not object to Tabor's dismissal, thus leaving him with no witnesses to call and no evidence to present. (Dkt. 14-7, pp.752-756).

What the District Attorney told the Court as the reason for dismissing the charges against Tabor is not consistent with the letters that the District Attorney relied upon to support Coggins' conviction. A prosecutor cannot use the criminal justice system in a way that protects one co-defendant over another. Why didn't the District Attorney inform the Court of the content of all three of the letters, as well as Tabor's statement to Deputy Mack? Deputy Mack's report was written on the night of the stabbing, August 18, 2001, and he wrote:

> "After making contact with Barry Tabor he made an utterance to me that he was responsible for hurting Mack Smith. He stated, "He put him into the cement" and that he acted in self-defense when Mack entered Barry's residence swinging a baseball bat. End of statement."

(*See*, Affidavit of Dep. Dennis Mack dated 5/14/2018, Dkt. 14-2, p.15).

Prosecutors are required to be completely candid with the court and if they act in a manner that harms a defendant, this Court should set aside the conviction. Schulp v. Beto, 513 U.S. 298 (1995); McQuiggin v. Perkins, 569 U.S. 383 (2013); Maples v. Thomas, 565 U.S. 266 (2012). The State has never addressed this issue at any time and the question remains: "Were the actions of the prosecutor designed to protect one defendant, Tabor, at the expense of the other, Coggins, or was this such a high profile case because of Ashley's Smith involvement with Brian Nichols that someone had to be convicted?"

Coggins has received a life sentence and spent the past 21 years in jail for a crime that he did not commit, even though this case at most was a manslaughter case with a maximum sentence of 20 years.

3. The jury should have been informed of the deal that the State had made with Osborne.

In this case, there is no disputing the fact that the only reason Osborne testified against Coggins and recruited Robinson to also write a letter and testify against Coggins was so that Osborne could receive the benefit of that testimony. This is obvious from the content of those letters. Osborne was facing a life sentence for armed robbery based upon his previous record. At Osborne's sentencing, the District Attorney who tried Coggins was contacted and confirmed the deal with Osborne. There is also no question, but that Osborne lied, since he and Tabor were never

housed together. The State Habeas Court elected to believe Osborne and rejected the evidence that showed that he falsified his testimony by finding without evidence that there were cracks in the Columbia County Jail (which there were not) and for which there is no credible evidence to that fact. Here, there was a Brady issue which was admittedly ignored by Appellate Counsel Johnson, who admitted to that this issue should have been raised on appeal.

The reliance on so-called jailhouse confessions or the testimony of snitches has been addressed in a number of publications that have pointed out how such testimony is unreliable and has been one of the principal causes of wrongful convictions in the United States. Since 1974, at least 212 individuals who have been convicted in part due to jailhouse confessions have been later found to have been wrongfully convicted. *See*, Cullerton, Jennifer, *Snitches Cause Stitches: The Need for Legislative Reform in Jailhouse Informant Testimony Laws,* 48 J. Legis. 337 (2021); Covey, Russell D., *Abolishing Jailhouse Snitch Testimony*, 49 Wake Forest L. Rev. 1375 (2014); Consalo, Marc, *Guarding against informants in wrongful conviction cases. "The trust of the innocent is the liar's most useful tool."*, 23 U.N.H. L. Rev. 19 (2025); Joy, Peter A., *Brady and Jailhouse Informants: Responding to Injustice,* 57 Case W. Rsrv. L. Rev. 619 (2007); Natapoff, Alexandra, *Beyond Unreliable: How Snitches Contribute to Wrongful Convictions*, 37 Golden Gate U. L. Rev. (2006).

The State Habeas Court below rejected the argument that Osborne and Robinson committed perjury and held that Coggins' due process clause failed. Coggins later requested information from the Columbia County jail which would have established two facts:

(1) That Osborne was never in the same jail pod with both Coggins and Tabor, which would support the fact that what Osborne said in his letters was false; and

(2) That Coggins' court-appointed lawyer did nothing to prepare for trial.

The State Habeas Court held that the delay in requesting the jail records was due to Coggins' failure to timely request them earlier, overlooking the fact that Coggins' Appellate Counsel, Johnson, could have requested the records and the fact that Appellate Counsel Johnson himself confirmed the policy that co-defendants are housed separately. These jail records were not requested until August 24, 2018, and the Columbia County Sheriff's Department responded on September 4, 2018, that it did not maintain those records after 10 years. (Dkt. 14-12, pp.1-2; Dkt. 30 and 32).

The State Habeas Court rejected the Brady-Giglio argument believing Osborne when it was established that he had admitted to Coggins' Court-appointed Appellate Counsel and to others that he lied. It is undisputed from reading the

transcript at Osborne's sentencing that there was at least an implied deal with the District Attorney and that Osborne benefitted from that deal. (Dkt. 14-16, p.1-10).

Conclusion

The delay in filing the Federal Habeas case was caused by Coggins' volunteer pro bono lawyer miscalculating the time for filing under the assumption that the time that this case was previously before this Court did not count towards the 1-year statute for filing Coggins' Federal Habeas case. This Court should not foreclose Coggins' seeking habeas relief since he is actually innocent and his conviction would not have occurred if his Constitutional rights under the Sixth and Fourteenth Amendments had not been violated. Based upon the facts in this case, which show that Coggins is innocent, this Court should find that Coggins is innocent and that he has a gateway to Habeas relief.

This 22ND day of August, 2025.

Respectfully submitted,

Coggins

COREY BLAINE COGGINS
Pro Se