

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2025

NO.

MARCIN SOSNIAK, Petitioner

v.

JACOB BEASLEY, WARDEN, Respondent

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

PETITION FOR A WRIT OF CERTIORARI



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QUESTION PRESENTED

Whether Petitioner has received ineffective assistance of counsel where Petitioner's counsel allowed Petitioner who was facing the death penalty to accompany police to retrieve evidence without counsel's presence and allow Petitioner to be interviewed by police without counsel's presence.

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PARTIES TO THE PROCEEDING

- 1) Marcin Sosniak, Petitioner;
- 2) Gregory McLaughlin, Warden Macon State Prison;
- 3) Tarmarshe Smith, Warden Macon State Prison; and
- 3) Jacob Beasley, Warden Smith State Prison.

STATE AND FEDERAL TRIAL AND APPELLATE PROCEEDINGS

- 1) State v. Marcin Sosniak, Indictment No. 07CR-0484C, Forsyth Superior Court
 - a) Motion to Suppress Statements held on November 11-12, 2008 and denied on May 26, 2009;
 - b) Guilty Plea and Sentencing Hearing held on March 18, 2013.
- 2) Georgia Supreme Court pre-trial appeal of guilty plea statements, Docket No. S10A0335, denied on June 7, 2010. Sosniak v. State, 287 Ga. 279, 695 S.E.2d 604 (2010).
- 3) Marcin Sosniak v. Gregory McLaughlin, Warden, state habeas corpus, Macon County Superior Court, Case No. 2014-CV-078, denied on April 9, 2020.

- 4) Marcin Sosniak v. Gregory McLaughlin, Warden, Georgia Supreme Court Application for Certificate of Probable Cause, Case No. S20H1213, denied on October 19, 2020.
- 5) Sonsiak v. Tarmarshe Smith, Warden, United States District Court for the Northern District of Georgia, Gainesville Division, Case No. 2:20-cv-00264, Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 denied on April 11, 2023 and adopting the Magistrate's Report and Recommendation issue on February 13, 2023.
- 6) United States Court of Appeals for the Eleventh Circuit, Certificate of Appealability granted on November 22, 2023. Marcin Sosniak v. Macon SP Warden, Case No. 23-11667.
- 7) United States Court of Appeals for the Eleventh Circuit, direct appeal denied on July 3, 2025. Marcin Sosniak v. Macon SP Warden, Case No. 23-11667.

OPINIONS BELOW

- 1) The Eleventh Circuit's decision denying Petitioner's 28 U.S.C. § 2254 petition (Appendix "A") is not published;
- 2) The Eleventh Circuit's decision granting Petitioner's Certificate of Appealability is not published (Appendix "B");
- 3) The United States District Court for the Northern District of Georgia's decision denying Petitioner's 28 U.S.C. § 2254 petition and the Magistrate's Report and Recommendation adopted therein are not published (Appendix "C" and "D").

- 4) The Georgia Supreme Court's decision denying Petitioner's Application for Certificate of Probable Cause is not published. (Appendix "E");
- 5) The Macon County Superior Court order denying Petitioner's habeas corpus is not published (Appendix "F");
- 6) The Georgia Supreme Court's decision (Appendix "G") denying Petitioner's pre-trial appeal of the denial of his motion to exclude statements to officers is published at Sosniak v. State, 287 Ga 279, 695 S.E.2d 604 (2010).

STATEMENT OF JURISDICTION

Pursuant to 28 U.S.C. § 1254, this Court has jurisdiction to review the denial of Petitioner's 28 U.S.C. § 2254 judgment entered by the Circuit Court of Appeals entered on July 3, 2025.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree. 28 U.S.C. section 1254 (1).

28 U.S.C.A. § 2254 (d):

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.

TABLE OF APPENDICES

Appendix

“A”:	The Eleventh Circuit’s decision denying Petitioner’s 28 U.S.C. § 2254 petition
“B”:	The Eleventh Circuit’s decision granting Petitioner’s Certificate of Appealability
“C”:	The United States District Court for the Northern District of Georgia’s decision denying Petitioner’s 28 U.S.C. § 2254 petition
“D”:	The United States District Court for the Northern District of Georgia Magistrate’s Report and Recommendation
“E”:	The Georgia Supreme Court’s decision denying Petitioner’s Application for Certificate of Probable Cause
“F”:	The Macon County Superior Court order denying Petitioner’s habeas corpus is not published
“G”:	The Georgia Supreme Court’s decision (Appendix “G”) denying Petitioner’s pre-trial appeal of the denial of his motion to exclude statements

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Eleventh Circuit Court of Appeals entered on July 3, 2025.

STATEMENT OF THE CASE

The Petitioner-Appellant, Marcin Sosniak, is currently incarcerated at Smith State Prison, Glennville, Georgia. On September 10, 2007, Petitioner Sosniak was indicted, Ind. No. 07CR-0484, in the Forsyth County Superior Court along with Jason McGhee and Frank Ortegon, Jr. for murder (counts 1-4), felony murder (counts 5-8), aggravated assault (counts 9-12, 14, 16, 18, 19), aggravated battery (counts 13, 15, 17), and burglary (count 20). (Doc. 11-2, pp. 1-2). The State filed a notice to seek the death penalty. Id.

The interim appellate review of the case was denied, which primarily raised the admissibility of Sosniak's custodial statement. Sosniak v. State, 287 Ga. 279, 695 S.E.2d 604 (2010). Thereafter, Sosniak appealed the denial of his constitutional right to a speedy trial, which was also denied. Sosniak v. State, 292 Ga. 35, 734 S.E.2d 362 (2012).

On March 18, 2013, Sosniak pled guilty to counts 5-20. The trial court sentenced Sosniak to life without parole for the four felony murder counts and 20 years to serve for the four aggravated battery counts and one burglary count. Id. All sentences were run consecutive.

On March 27, 2014, Sosniak filed his state habeas corpus action pro se. (Doc. 11-1). The habeas was heard on April 2, 2018 and denied on April 9, 2020. (Doc. 11-2, p. 1). On October 19, 2020, Sosniak's Certificate of Probable Cause to appeal the denial of his Habeas Corpus was denied by the Georgia Supreme Court.

Petitioner filed his 28 U.S.C. § 2254 Application on November 9, 2020 (Doc. 1). On February 13, 2023, the Magistrate issued the Report and Recommendation to deny the § 2254 petition. Petitioner filed his Objections on February 27, 2023 including a provision requesting a Certificate of Appealability. On April 11, 2023, the District Court issued its Judgement adopting the Magistrate's Report and denying a certificate of appealability (Doc. 15). Sosniak filed a Notice of Appeal on May 11, 2023, which was granted by the Eleventh Circuit Court of Appeals on November November 22, 2023. The Eleventh Circuit denied the appeal on July 3, 2025.

STATEMENT OF THE FACTS

The Georgia Supreme Court found the following facts regarding the issue presently before this Court: Sosniak at 280-285

(1) Pre-Miranda statements.

The testimony at the Jackson-Denno hearing showed the following. After receiving a page at 10:45 p.m. on the date of the murders and reporting to the crime scene, Detective Moore went to the Criminal Investigations Division of the Sheriff's Office (CID), where he interviewed witnesses. At that time, he received

information that Sosniak was one of three males that had been at the crime scene about a half hour prior to the crimes. As a result, sometime in the early morning hours of March 20, four to five officers from the Forsyth County Sheriff's Office went to Sosniak's residence. When Sosniak's mother opened the door to the officers, they entered and told her that they were looking for Sosniak. Sosniak's mother went upstairs and awakened Sosniak, who came downstairs and conversed with the officers. Then Sosniak went outside, where he was handcuffed, placed in a patrol car, and taken to the CID. Sosniak waited in the foyer of the CID until he was approached by Detective Moore, who testified that Sosniak was not handcuffed at the time that they met. Detective Moore's testimony also established that Sosniak was handcuffed for transport to the CID pursuant to a departmental policy for officers' safety, that the handcuffs were removed upon Sosniak's arrival at the CID, that the CID did not have a holding cell or a booking area and was not locked for those wishing to exit, and that the interview room was not locked.

The two-hour interview was videotaped, and the videotape, played before the trial court, showed the following. Sosniak was not handcuffed or physically restrained in any way when he entered the interview room at 5:15 a.m. After obtaining basic information from him, Detective Moore told Sosniak that he was "not under arrest for anything" and that he just needed to talk to him "about some stuff tonight, that's all." Sosniak indicated that he was agreeable to that. Sosniak initially denied knowing that the crimes had taken place or being at the location of the crimes shortly before they occurred, and the first hour of the interview was spent addressing Sosniak's denial of that information. Detective Moore told Sosniak that he knew that Sosniak was not being completely truthful, and he encouraged Sosniak to tell the truth. However, Detective Moore was neither hostile nor accusatory toward him. At one point during the interview, Detective Moore asked Sosniak if he would be attending his college class "tomorrow," and Sosniak responded that he would be. Detective Moore's question would indicate to a reasonable person in Sosniak's position that he was not being "restrained to the degree associated with a formal arrest." Folsom, 285 Ga. at 12(1), 673 S.E.2d 210. Although Sosniak once stated, "I'm exhausted, I'm tired, all I want to do is just go home," he made no effort to get up and leave, and he immediately re-engaged Detective Moore by asking, "What is this all about, is what I would like to know?" While Detective Moore told Sosniak that he had "a lot

riding on this," he did nothing that would indicate to Sosniak that he was not free to leave, and he testified that, had Sosniak pursued leaving, the Sheriff's Office would have provided a ride for him.

(2) Post-Miranda statements. Almost an hour and a half into the interview, Sosniak acknowledged that he had been at the residence where the shootings occurred on the previous evening. Shortly afterward, he admitted hearing gunshots while there. Detective Moore testified that, once Sosniak made that admission, he was no longer free to leave. Our review of the videotape shows that, at the point when Sosniak admitted hearing gunshots, Detective Moore stopped the interview and read Sosniak the Miranda rights. When Detective Moore asked Sosniak if he understood his rights and if he and Sosniak were "still good to talk," Sosniak nodded affirmatively, effectively waiving his rights.

B. Statements of March 23, 2006.

On March 20, 2006, Sosniak signed a waiver of appointed counsel form and retained attorney John Stokes to represent him. On March 23, 2006, Detectives Moore and Cox met with Sosniak and Stokes for Sosniak's second interview. This interview began at 1:20 p.m., took place in the same interview room as the first interview, lasted approximately an hour, and was also videotaped. A review of the videotape shows that Detective Moore again read Sosniak his Miranda rights and that both Stokes and Sosniak indicated that Sosniak understood his rights.

At this interview, Sosniak provided a written statement that he had previously prepared in which he gave the same version of events that he relayed in this interview and in the March 20 interview. Sosniak has offered no grounds upon which to find this written statement inadmissible, and we conclude that the trial court did not err in ruling that it was admissible.

During this interview, Sosniak twice volunteered to show the detectives the location where the murder weapon was allegedly thrown into a lake. The detectives stepped out of the interview room, and Stokes and Sosniak discussed the case, apparently unaware that the video camera was still recording. The trial court properly found that Sosniak's statements here were protected by the attorney-client privilege and, thus, were inadmissible. See OCGA § 24-9-21(2) (excluding communications between attorney and client).

After the detectives returned, they were discussing riding arrangements to the lake when the following conversation transpired.

Mr. Stokes: I don't think I need to go.

Detective Cox: Okay. All right.

Mr. Stokes: I supposed [sic] you're going to have to get divers or something.

Detective Cox: We're working on that. We'll probably be out there in a little bit of time.

Detective Moore: Martin, are you okay with going with just us without Mr. Stokes present?

Mr. Sosniak: Yeah.

Detective Cox: Once we get done, we're going to bring you back here and just kind of go over some of the details, like specifically the note 1 and stuff like that, would you have any problems with us talking to him outside your presence?

Mr. Stokes: Do you have a contention?

Mr. Sosniak: (No audible response)

Mr. Stokes: I think we're on track as far as the (Inaudible)

Detective Moore: Martin has been cooperative. We appreciated it and it will be noted and passed on.

Mr. Stokes: Okay. Very good. And I'll be talking to him and talking to y'all, I guess.

Detective Cox: Okay. I'll tell you what I'll do is, as soon as we get done this afternoon I'll call you—

Mr. Stokes: Okay.

Detective Cox:—and just kind of let you know that we're done.

Mr. Stokes: Okay.

Detective Cox:—And some of the information that was passed on, that we have a good line of communication between the two of us.

Our review of the videotape shows that the trial court did not err in finding that, while Sosniak did not give an audible response to Stokes when Stokes asked him whether he had an objection to speaking with detectives outside of Stokes's presence, Sosniak shook his head negatively, indicating that he was agreeable to the detectives' questioning him without his attorney present upon their return to the CID.

Detective Cox testified at the Jackson-Denno hearing that he confirmed with Stokes outside the interview room that the detectives also intended to take Sosniak to the crime scene. However, Stokes testified that he did not know the detectives planned to go to the crime scene. "The trial court was entitled to weigh the credibility of witnesses testifying at the hearing, and to believe the more credible witness." Hardin, 269 Ga. at 4(2)(c), 494 S.E.2d 647. We are bound by the trial court's findings here, as they are not clearly erroneous. *Id.* Furthermore, our review of the record shows that Stokes's recollection of events during his testimony at the suppression hearing was inconsistent with the record on several points. For instance, he denied that any discussion regarding Sosniak's being further interviewed upon returning to the CID took place, but the videotape clearly contradicts that testimony.

Sosniak accompanied the detectives to the lake, where he pointed out the location where the murder weapon was thrown, and to the crime scene, where he reviewed the incident with the detectives. The detectives testified that, during the visits to the lake and the crime scene, no promises or threats were made to Sosniak and that Sosniak never indicated to them that he wished to cease speaking to them or that he wanted his lawyer present.

Upon returning to the CID, the detectives took Sosniak back to the same interview room where the interview had taken place that morning and continued their interview with him. This interview, which began at 4:07 p.m., was also videotaped. A review

of that tape and the transcript of the Jackson-Denno hearing shows that Detective Moore advised Sosniak at the beginning of this portion of the interview as follows:

When we first came in here ... [w]e re-read you your Miranda rights. And at that time Mr. Stokes said that you understood your rights. You said you understood your rights. And you've been working with us ever since.

This is the same day.... So, I just want to make sure that you still understand your rights. And that you don't have to talk to us if you don't want to.

After Sosniak responded that he just wanted to help himself, Detective Moore repeated that Sosniak did not have to talk to the detectives if he did not wish to do so, and then he asked: "And you still know that you have the right to an attorney and have [him] present if you wish and all that?" and "So, with that in mind [do] you still wish to continue to answer questions and talk [] with us about the situation?" Sosniak answered affirmatively to both questions.

REASONS FOR GRANTING THE WRIT

Whether Petitioner has received ineffective assistance of counsel where Petitioner's counsel allowed Petitioner who was facing the death penalty to accompany police to retrieve evidence without counsel's presence and allow Petitioner to be interviewed by police without counsel's presence.

Sosniak was first represented by attorney Stokes at the time Sosniak made custodial statements to the police. Stokes was deceased at the time of the state Habeas hearing. Haldi subsequently represented Sosniak through most of the case, including pre-trial motions, two appeals, and the guilty plea. Haldi

raised the issue in a motion to suppress prior to the guilty plea, which the trial court and the Georgia Supreme Court denied. The Georgia Supreme Court had directed Haldi to brief the issue, but Haldi did not.

Haldi had concern that Stokes left Sosniak with the police to be interrogated without his presence, which resulted in the disclosure of previously undisclosed incriminating evidence. Haldi testified:

I don't know that I ever think that that was a good idea. The other -- the other thing -- the other question that I had to get past with Mr. Stokes was the idea of Martin participating with the officers in a question and answer with him there without -- I don't think John had a firm grasp. I don't know that anybody had a firm grasp about what had happened when he began to the question -- the interview session with the sheriff's department. And I'm almost positive that he had not spoken with the district attorney as far as any potential benefit Mr. Sosniak might be extended if he decided to speak.

Stokes' decision was made while the death penalty was on the table due to this being a multiple murder, and the only person that can remove that issue is the District Attorney. Stokes did not speak to the DA prior to allowing Sosniak to speak. Haldi himself has never allowed a client to speak to the police in a homicide case, and he would not have done so in this case. Haldi testified his practice is to prohibit clients from talking unless they know what the defendant will say. He also would not want a client to speak to the police until he knows more about the case. Haldi could never imagine a situation in which he would allow his client to ride in a car with police and talk to the police without his presence. Sosniak's statements were some of the strongest

evidence against him. Co-defendant Ortegon was drunk or drugged and could not provide any testimony, and McGhee was the actual killer, so Sosniak was the only cooperating defendant.

Haldi did argue at the motion to exclude Sosniak's statements that Stokes was ineffective. Haldi could not recall why he did not raise the issue on appeal, but he acknowledged he does not do a lot of appeals, and he rarely pursues claims of ineffective assistance. Haldi did not have much "experience in briefing and arguing" ineffective assistance. Haldi does not like issues of ineffective assistance because he has been in similar situations to the attorneys he would be raising the claims against. Haldi did believe the issue needed to be raised "because, number one, if the statements came in, there wasn't much -- there wasn't much meat on the bone left for the defense, if Martin's statements came in." The second reason Haldi initially raised ineffective assistance was because allowing the police to interrogate Sosniak without counsel "struck me as a bit out there."

Sosniak also testified at the habeas hearing. Sosniak acknowledged that an end result of the habeas could be the State re-seeking the death penalty. Sosniak knew Stokes from Stokes handling his mother's divorce. Stokes and Sosniak's mother remained friends, and Sosniak had known him since Sosniak was a child. Sosniak found out after Stokes' representation that he was not a criminal defense attorney. Haldi informed Sosniak that his statements were the primary evidence against him. Haldi told Sosniak that he did not understand

why Stokes allowed Sosniak to speak to the police, and Haldi would not have allowed it. Sosniak was not aware that the Georgia Supreme Court had directed Haldi to brief the issue of ineffective assistance.

Sosniak testified he told Haldi he did not want to plead guilty. Sosniak did not want to plead to something he felt he did not do. Haldi told him it was either plead guilty or take a chance with the death penalty. McGhee was sentenced to life without parole, and Ortegon was sentenced to 40 years to serve 20. Sosniak wanted Haldi to raise any issue that would help suppress his statements. If his statements had been suppressed, he would have gone to trial.

The Georgia Supreme Court granted Sosniak's request for an interim appellate review and directed the Parties to address the admissibility of Sosniak's statements to police and any evidence obtained resulting from his statements. Sosniak at 279. The Georgia Supreme Court directed the Parties to address whether Sosniak received ineffective assistance of counsel regarding his March 23 statement. Id at 287. Haldi did not address the issue at all, and the Supreme Court deemed the issue abandoned. Id. Haldi also did not brief the issue of the admissibility of the victim impact evidence, so that was deemed abandoned as well. Id at 289.

When challenging ineffective assistance of counsel in the context of a guilty plea, a petitioner must meet the Strickland two-part test. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). A petitioner must show deficient performance by counsel and prejudice. Strickland v.

Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To show prejudice in the context of a guilty plea, a petitioner must show that there was "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill, 474 U.S. at 58–59, 106 S.Ct. 366.

This Court held in Lafler v. Cooper, 566 U.S. 156, 132 S.Ct. 1376, 182 L.E.2d 398 (2012) and Missouri v. Frye, 566 U.S. 134, 132 S.Ct. 1399, 182 L.E.2d 379 (2012), decided on the same date, that effective assistance of counsel applies to the plea bargaining stage and falls under the Strickland analysis. "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process." Lafler, 132 S.Ct. at 1384. This Court certainly has recognized that "the negotiation of a plea bargain constitutes a critical stage for ineffective-assistance purposes." Frye and Lafler.

The interim appeal only raised Sosniak's statements to police. Sosniak I (287 Ga. 279). Sosniak raised at his motion hearing that he received ineffective assistance of counsel. Sosniak I at 287. Sosniak's counsel abandoned the issue on appeal despite the Georgia Supreme Court directing the parties to address this specific issue on appeal. Id. During oral argument, Sosniak's counsel argued it was premature to address the issue because he could not show prejudice. Id. Counsel's reasoning is ridiculous is the reason to argue ineffective assistance of counsel would be to exclude the statement from trial. The prejudice is that the statement would be used against Sosniak.

The March 23 interview of Sosniak was transcribed at the motion hearing. The March 23 interview that continued after Sosniak took the police to the area where the gun had been disposed of in which Stokes was not present was also transcribed. It was at this part of the interview Sosniak made the admission that he went to Walmart with others to buy the gun used and paid for it, threatened to retaliate against the victims for beating up a co-defendant, planning to rob them, bought ammo for the incident, loaded one of the gun magazines, went back to the house armed, put on a mask, admitted the plan was his idea, fired the gun at the scene, went inside, and gave the gun to a co-defendant.

After Sosniak's Habeas was heard, the Georgia Supreme Court issued its decision in Budhani v. State, 306 Ga. 315, 830 S.E.2d 195 (2019). Budhani is important because it overruled the holding of Sosniak I regarding hope of benefit. In Sosniak I, Sosniak raised that in two of his statements, the detective offered him a hope of benefit. Sosniak I. The first hope of benefit was that Sosniak would not face any additional drug charges or selling drugs. Sosniak I at 286–287. The second hope of benefit occurred during a later interview in which the detective implied that if Sosniak cooperated, he would go free. Id at 288. In Budhani, at 327, the Georgia Supreme Court, relying on Foster v. State, 283 Ga. 484, 488, 660 S.E.2d 521 (2008), held that Sosniak I departed from the Foster holding. Budhani, at 328, went on to hold that the Sosniak I holding that the promise of no additional charges was a hope of benefit. Petitioner's issue is somewhat different, as he argues that he received ineffective assistance of

counsel because his first counsel allowed him make admissions to the police, and his plea counsel did not raise the issue in the interim appeal.

Ineffective assistance of counsel can be the basis for suppressing statements. It is well-settled federal law from this Court that Strickland holds that prejudice resulting from deficient representation from a defendant's counsel requires reversal of a conviction. To hold that a defendant who incriminates himself because of ineffective assistance of counsel has no recourse would be to obliterate a defendant's right to effective assistance of counsel and his right not to incriminate himself.

What is clear is that the evidence against Sosniak was largely based on his multiple statements to police. Several of these inculpatory statements were made at the behest of Sosniak's first counsel. Sosniak's second counsel believed first counsel was ineffective, but due to his belief in not raising ineffective assistance of counsel and his lack of experience with appeals, he chose to abandon Sosniak's strongest interim issue despite being directed to specifically address the issue on appeal. To add salt to the wound, the Georgia Supreme Court overruled the holding of Sosniak's interim appeal in a subsequent case. Disregarding the direction of the Georgia Supreme Court and failing to recognize the Supreme Court had the authority to exclude Sosniak's statements satisfies the first prong of Strickland that Sosniak received ineffective assistance of counsel on appeal.

The Eleventh Circuit's decision rested on the finding that Haldi was not ineffective because "no fair-minded jurists could disagree on the correctness of the state habeas court's determination that Sosniak wasn't prejudiced by Mr. Haldi's choice to abandon the issue relating to Mr. Stokes's ineffectiveness." This Court would first start with Stokes and answer what fair-minded jurist would not agree that Stokes allowing a client suspected in a quadruple murder should speak with the police un-counseled and allow him to go look for evidence? Simply put, what lawyer in his right mind would represent a client facing the death penalty in this manner. The answer is obviously no competent attorney. This leads to Haldi. If the answer to the Stokes' question is so obvious then it follows no competent attorney would abandon an issue after the state's highest court shows interest in it. According to Haldi, this was Sosniak's sole defense. Without his statements, the prosecution would be severely hampered resulting in a much better outcome. The Georgia Supreme Court invited Haldi to raise the issue, and he abandoned it to Sosniak's detriment. This means Haldi abandoned Sosniak's sole defense leaving Sosniak no choice but to plead guilty. The state court's decision was based on an unreasonable determination of the facts.

Finally, the question is whether Sosniak would not have pled guilty but for counsel's ineffectiveness. Sosniak himself testified that he was risking death by proceeding with his habeas corpus. Should he prevail, and the habeas granted, the State could seek the death penalty. As counsel testified, the main

issue in the case for Sosniak were his statements. As this Court held in Frye and Lafler, most cases are resolved through guilty pleas. As a result, it is of great importance and especially for fundamental fairness for a defendant to have effective assistance of counsel. Defendants are supposed to rely on their attorneys for advice on the strengths and weaknesses of the State's prosecution and the defense and certainly on sentencing issues. Based on this, a defendant then is supposed to make a knowing, voluntary, and intelligent decision on whether to plead guilty. When counsel deficiently performs this function, fundamental fairness is not met. Sosniak has shown by a preponderance of the evidence that he would not have pled guilty but for counsel's error satisfying the second prong of Strickland. Therefore, Sosniak is entitled to habeas corpus relief.

The Eleventh Circuit's finding that the state court's decision was not contrary to or involved an unreasonable application of, clearly established federal law as established by this Court or that the Georgia Supreme Court's decision was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings is error. 28 U.S.C. § 2254(d).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully Submitted,



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

PROOF OF SERVICE

Pursuant to Supreme Court Rule 29, undersigned counsel hereby certifies as proof of service that he has served a copy of the Motion for Leave to Proceed in Forma Pauperis, Petition for Writ of Certiorari, and Appendix to the only party required to be served, that being counsel for the Respondent, the Honorable Clint Malcolm, Senior Assistant Attorney General, State of Georgia, 40 Capitol Square, Atlanta, GA 30334, cmalcolm@law.ga.gov, (404) 458-3619, by first class U.S. mail, postage prepaid.

This 8th day of December, 2025.



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