

CASE NO. 25-6647

IN THE UNITED STATES SUPREME COURT

EMANUEL JOHNSON, SR.

*Petitioner,*

vs.

SECRETARY, FLORIDA DEPARTMENT OF  
CORRECTIONS, et al.,

*Respondents.*

---

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

---

RESPONDENT'S BRIEF IN OPPOSITION

JAMES UTHMEIER  
FLORIDA ATTORNEY GENERAL

SCOTT A. BROWNE  
Chief Assistant Attorney General  
Florida Bar No. 0802743

TIMOTHY A. FREELAND  
Special Counsel Assistant Attorney General  
Florida Bar No. 0539181

Office of the Attorney General  
3507 E. Frontage Road, Suite 200  
Tampa, Florida 33607-7013  
Telephone: (813) 287-7910  
capapp@myfloridalegal.com  
scott.browne@myfloridalegal.com  
timothy.freeland@myfloridalegal.com

COUNSEL FOR RESPONDENT

## **QUESTION PRESENTED FOR REVIEW**

[Capital Case]

Emanuel Johnson was convicted and sentenced to death for the murders of Iris White and Jackie McCahon. His application for Section 2254 relief was denied by the District Court, which also denied Johnson a Certificate of Appealability (COA).

The United States Court of Appeals for the Eleventh Circuit similarly denied Johnson's request for COA because Johnson failed to show that he was denied any constitutional right, an omission which plagues the instant Petition.

Johnson's request for certiorari review gives rise to the following question presented:

Whether the Eleventh Circuit properly denied COA where Petitioner failed to make a substantial showing that he was denied a constitutional right?

**TABLE OF CONTENTS**

QUESTION PRESENTED FOR REVIEW ..... ii

TABLE OF CONTENTS ..... iii

TABLE OF CITATIONS ..... iv

CITATION TO OPINION BELOW ..... iv

JURISDICTION ..... 1

CONSTITUTIONAL PROVISIONS INVOLVED ..... 1

STATEMENT OF THE CASE AND FACTS ..... 1

REASONS FOR DENYING THE WRIT ..... 4

The Eleventh Circuit Properly Denied COA Where  
Petitioner Failed To Make A Substantial Showing That  
Refusing To Consolidate His Multiple Section 2254  
Petitions Violated Any Constitutional Right. .... 4

CONCLUSION ..... 9

**TABLE OF CITATIONS**

**Cases**

*Brady v. Maryland*,  
373 U.S. 83 (1963) ..... 4, 10

*Davila v. Davis*,  
582 U.S. 521 (2017) ..... 9

*Eagle v. Linahan*,  
279 F.3d 926 (11th Cir. 2001) ..... 8

*Johnson v. State*,  
104 So. 3d 1010 (Fla. 2012)..... 3

*Johnson v. State*,  
104 So. 3d 1032 (Fla. 2012)..... 3

*Johnson v. State*,  
660 So. 2d 637 (Fla. 1995)..... 3

*Johnson v. State*,  
660 So. 2d 648 (Fla. 1995)..... 3

*Martel v. Clair*,  
565 U.S. 648 (2012) ..... 7

*Martinez v. Ryan*,  
566 U.S. 1 (2012) ..... 3

*Shinn v. Ramirez*,  
596 U.S. 366 (2022) ..... 9

*Slack v. McDaniel*,  
529 U.S. 473 (2000) ..... 8

*Stone v. Powell*,  
428 U.S. 465 (1976) ..... 4, 10

**Other Authorities**

28 U.S.C. § 1254(1) ..... 3

28 U.S.C. § 2253(c)(2) ..... 6, 8

28 U.S.C. § 2254..... 3, 4, 6

## CITATION TO OPINION BELOW

The Eleventh Circuit's denial of COA is found in Petitioner's Appendix at A2.

## JURISDICTION

Johnson invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

Respondent accepts the Petitioner's statement of the constitutional and statutory provisions involved.

## STATEMENT OF THE CASE AND FACTS

Johnson was convicted of two unrelated murders and was sentenced to death on both. *Johnson v. State*, 660 So. 2d 637 (Fla. 1995); *Johnson v. State*, 660 So. 2d 648 (Fla. 1995). Subsequent to affirmance of his judgment and sentence, the trial court appointed Capital Collateral Regional Counsel, Middle (CCRC-M), to represent Johnson. Those attorneys were John Jennings, Mark Gruber, and Maria Perinetti. During the pendency of his state postconviction proceedings, Johnson advanced a number of *pro se* arguments which his attorneys eventually agreed to include and argue with his counseled claims. The Florida Supreme Court affirmed the lower court's denial of collateral relief. *Johnson v. State*, 104 So. 3d 1010 (Fla. 2012); *Johnson v. State*, 104 So. 3d 1032 (Fla. 2012).

In federal court Johnson, apparently without consulting his attorneys, filed two *pro se* Section 2254 petitions in the Middle District of Florida challenging the effectiveness of CCRC-M and arguing entitlement to relief pursuant to *Martinez v. Ryan*, 566 U.S. 1 (2012).

Shortly after Johnson's *pro se* petitions were docketed, CCRC-M filed two Section 2254 petitions in the Middle District of Florida challenging the state court proceedings. Johnson's counseled petitions were filed in 2024; by this time, Johnson was represented by Joshua Chaykin, Morgan Laurienzo, and Michael Hope,<sup>1</sup> all employed by CCRC-M, the same state agency that represented Johnson during his state postconviction challenge, but a completely different set of attorneys.

The District Court appointed the Federal Capital Habeas Unit (CHU) to litigate Johnson's four *Martinez* claims. CHU argued first that postconviction counsel was ineffective because he failed to do a better job during the state postconviction hearing. Next, CHU complained that collateral counsel failed to challenge the ineffectiveness of appellate counsel's failure to assert the federal dimension of a claim raised on direct appeal. Third, CHU asserted prosecutorial misconduct for failing to disclose alleged defects in the search warrant and sought to blame postconviction counsel for failing to detect a *Brady*<sup>2</sup> claim. Finally, CHU sought federal review of a Fourth Amendment claim because he was denied due process, thus reducing the bar imposed by *Stone v. Powell*.<sup>3</sup>

The district court found no merit to any of Johnson's claims, rejected Johnson's request that his multiple Section 2254 petitions be consolidated, and denied his motion for Certificate of Appealability (COA).

---

<sup>1</sup> See Case Numbers 8:13-cv-00392 and 8:13-cv-00393, both filed in the Middle District of Florida, unresolved petitions as of this filing.

<sup>2</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

<sup>3</sup> *Stone v. Powell*, 428 U.S. 465 (1976).

The Eleventh Circuit found that no jurist of reason would debate the District Court's decision and, specific to the consolidation issue, denied COA because Johnson failed to make a substantial showing that he was denied a constitutional right. The instant Petition followed.

## REASONS FOR DENYING THE WRIT

### **The Eleventh Circuit Properly Denied COA Where Petitioner Failed To Make A Substantial Showing That Refusing To Consolidate His Multiple Section 2254 Petitions Violated Any Constitutional Right.**

Petitioner seeks certiorari review of the Eleventh Circuit's denial of Certificate of Appealability (COA). Because the standard is statutory and not constitutional, Johnson has no inherent right to COA but instead must make a substantial showing that the District Court denied him a constitutional right. 28 U.S.C. § 2253(c)(2).

Petitioner complains that the District Court improperly declined to consolidate the multiple Section 2254 petitions that arose out of what Johnson describes as an "administrative anomaly" (Petition, p. 2). Johnson created this anomaly when he, apparently without consulting counsel, filed two *pro se* Section 2254 petitions shortly before his attorneys filed counseled petitions. Collateral counsel's petitions alleged constitutional deficiencies in the state court proceedings. Johnson's *pro se* petitions alleged deficiencies in collateral counsel. The District Court addressed the procedural "anomaly" by appointing the Federal Capital Habeas Unit (CHU) to litigate Johnson's two *pro se* petitions. CHU then attempted to establish that *Martinez v. Ryan*, and in effect, the Sixth Amendment, applies to collateral ineffectiveness claims.

Johnson's decision to file his own *pro se* habeas petitions without consulting counsel is consistent with his history. He has persistently disagreed with collateral counsel by advancing meritless claims and demanding that counsel adopt and argue them. The instant petition portrays Johnson as the victim of defective representation who was forced to self-advocate meritorious claims improperly ignored by counsel,

while assiduously ignoring the fact that every single one of his preferred claims is procedurally defaulted or lacking in merit.

The District Court's decision not to consolidate Johnson's meritless *Martinez* claims prior to resolution of his counseled petitions was implicit recognition that (one) the Sixth Amendment does not apply to collateral counsel,<sup>4</sup> and (two) Johnson's *pro se* claims largely pend on his belief to the contrary. As combining Johnson's various petitions would have required resolution of his *Martinez* claims in any event, the District Court *could* have consolidated them, but its discretionary decision to the contrary did not prejudice Johnson. And, with CHU's meritless claims now fully resolved, the suggestion that Johnson still needs "conflict free" counsel (and consolidation of petitions) becomes moot. While CCRC-M is the same state agency, ineffectiveness of counsel claims are attorney-specific; as noted earlier, the attorneys Johnson has complained about no longer represent him. And if CCRC-M itself were replaced, what possible benefit would there be? There are no new claims to be raised, merits briefing in Johnson's counseled petitions is nearly complete,<sup>5</sup> the complaints against original CCRC-M counsel have been deemed meritless, and appointing new counsel at this stage would change none of these facts. *See Martel v. Clair*.<sup>6</sup>

The rule directing when and under what circumstances a Certificate of

---

<sup>4</sup> *Coleman v. Thompson*, 501 U.S. 722, 753 (1991) ("there is no constitutional right to an attorney in state postconviction proceedings")

<sup>5</sup> Johnson's two counseled petitions are in their final form and the Secretary's response on the merits has been filed in both cases.

<sup>6</sup> *Martel v. Clair*, 565 U.S. 648, 665 (2012).

Appealability may issue is clear. AEDPA mandates that federal challenges to state court criminal convictions be limited to those where violation of the United States Constitution may reasonably be perceived. Once a district court has denied relief, the circuit court may not grant COA unless the petitioner has made a substantial showing of denial of a constitutional right, 28 U.S.C. § 2253(c)(2). Despite all of his complaints regarding the lower court's rejection of his claims on procedural grounds, Johnson has quite simply failed to meet his burden and the COA was properly denied.

Johnson inexplicably asserts that the lower court's refusal to consolidate deprives him of full habeas review because in rejecting his *Martinez* claims, the Court touched on aspects of his still-pending counseled claims. But the District Court's decision denying Johnson's *pro se* claims is not debatable by reasonable jurists, as the Eleventh Circuit correctly concluded. The District Court's resolution of Johnson's *pro se* claims may well signal the possible outcome of his counseled petitions, but only insofar as his pending claims also lack merit. Indeed, only upon conclusion of the entirety of Johnson's federal claims can it be assessed whether he has been deprived of anything—thus this argument is premature and not properly addressed here.

Finally, Johnson contends that in denying COA, the Eleventh Circuit improperly focused on procedural rules, failed to consider that the underlying claims demonstrate a substantial violation of a constitutional right, and got it wrong when it concluded that the District Court's resolution of his claims is not debatable. *Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *Eagle v. Linahan*, 279 F.3d 926, 935 (11th Cir. 2001). But because Johnson is incorrect, we now turn to the District Court's Order.

Claim One—Johnson first focuses on the state court’s rejection of his postconviction claim that trial counsel ineffectively permitted the prosecution to depose his expert witnesses, which was denied because state law mandates that trial witnesses be disclosed, and authorizes the parties to depose them. Johnson’s *Martinez* argument in the District Court was that he should be permitted to prove that the claim failed because it was inadequately developed by postconviction counsel. The district court rejected Johnson’s request for additional evidentiary development because of *Shinn v. Ramirez*, 596 U.S. 366 (2022), and declined to consider any additional evidence not developed during Johnson’s state court proceeding. The District Court’s application of *Martinez* and *Shinn* to Johnson’s request to permit additional evidentiary development, the Eleventh Circuit concluded, was not debatable.<sup>7</sup>

Claim Two—Johnson next complained that appellate counsel was ineffective in failing to argue a federal constitutional violation on direct appeal of his motion to suppress, thus limiting federal habeas review. Recognizing that his claim is foreclosed by *Davila v. Davis*, 582 U.S. 521, 525-526 (2017) Johnson (despite *Davila’s* clear holding to the contrary) sought to excuse the default because collateral counsel negligently failed to bring the matter to the Florida Supreme Court’s attention. The

---

<sup>7</sup> Notably, the District Court’s order addressed only Johnson’s request for an evidentiary hearing, and not whether postconviction counsel was ineffective, a matter the district court said would be addressed in the counseled petition, where an identical claim was raised. This is one of the claims Johnson contends has been tainted by the lower court’s decision to resolve his *Martinez* claims independently.

District Court rejected Johnson's cause and prejudice argument because both *Davila* and *Coleman v. Thompson*, 501 U.S. 722 (1991) preclude ineffectiveness claims against collateral counsel. This, the Eleventh Circuit agreed, was correct and not reasonably debatable.

Claim Three—This claim focuses on Johnson's *pro se* postconviction argument that defects in the warrant used to search his home rendered it invalid. Rejected in the trial court for failure of proof, collateral counsel chose not to appeal. Johnson's *Martinez* argument challenged collateral counsel's decision, but the District Court found that (one) the State's failure to disclose alleged defects in the warrant was actually a *Brady* claim and not actionable under *Martinez*, and (two) collateral counsel's decision not to appeal was fatal to Johnson's cause and prejudice argument under *Coleman*. The Eleventh Circuit agreed that the District Court's resolution of this claim was not reasonably debatable.

Claim Four—Still focusing on his Fourth Amendment defective search warrant claim, Johnson asserted that he did not receive a full and fair hearing in state court,<sup>8</sup> in part because collateral counsel chose not to appeal. Hoping to excuse the procedural default, Johnson argued that postconviction counsel's failure to challenge appellate counsel's actions via state habeas petition established cause and prejudice. The District Court disagreed. Collateral counsel chose not to pursue an avenue clearly available to Johnson. With no Sixth Amendment right to collateral counsel, the

---

<sup>8</sup> Thus averting the procedural bar imposed by *Stone v. Powell*.

defendant bears the consequences of attorney error at this stage, *Coleman, id.* Johnson's cause and prejudice argument relying on the ineffectiveness of collateral counsel failed to excuse the procedural default. The Eleventh Circuit found the District Court's conclusion not reasonably debatable.

As all of the preceding claims were denied by the District Court on grounds not reasonably debatable, the Eleventh Circuit's decision not to grant COA was the correct result. And because Johnson failed to make a substantial showing of denial of a constitutional right with regard to the refusal to consolidate, COA was properly denied as to this final claim, as well.

### **CONCLUSION**

Based on the foregoing, Respondent respectfully requests that this Court deny the petition for writ of certiorari.

Respectfully submitted,

JAMES UTHMEIER  
FLORIDA ATTORNEY GENERAL

SCOTT A. BROWNE  
Chief Assistant Attorney General  
Florida Bar No. 0802743

TIMOTHY A. FREELAND  
Special Counsel Assistant Attorney General  
Florida Bar No. 0539181

Office of the Attorney General  
3507 E. Frontage Road, Suite 200  
Tampa, Florida 33607-7013  
Telephone: (813) 287-7910  
capapp@myfloridalegal.com  
scott.browne@myfloridalegal.com  
timothy.freeland@myfloridalegal.com

COUNSEL FOR RESPONDENT