NO._____

IN THE SUPREME COURT
OF THE
UNITED STATES

2024-2025 TERM

JERMAINE SMITH

Petitioner,

vs.

SECRETARY, DEPARTMENT OF CORRECTIONS,
STATE OF FLORIDA

Respondent.

**PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

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QUESTIONS PRESENTED

I.

WHETHER THE ELEVENTH CIRCUIT'S DENIAL OF SMITH'S MOTION FOR THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY IS A FUNDAMENTAL MISCARRIAGE OF JUSTICE.

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NO._____

IN THE
SUPREME COURT
OF THE
UNITED STATES

2024-2025 TERM

JERMAINE SMITH,

SMITH,

vs.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

The Petitioner, JERMAINE SMITH, (hereinafter "SMITH"), by and through his undersigned counsel, respectfully prays that a Writ of Certiorari issue to review the denial of SMITH'S Motion for the Issuance of a Certificate of Appealability by

the United States Court of Appeals for the Eleventh Circuit in these proceedings on March 13, 2025.

OPINION OF THE COURT BELOW

The Court of Appeals for the Eleventh Circuit entered an unpublished opinion denying SMITH'S motion for the issuance of a certificate of appealability *Jermaine Smith v. Secretary, Florida Department of Corrections,* on March 13, 2025. *Appendix 1.*

JURISDICTION

The judgment of the Eleventh Circuit Court of Appeals denying SMITH'S Motion for the Issuance of a Certificate of Appealability was entered on March 13, 2025. The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. §1254 and Rule 10.1, Rules of the Supreme Court. This Petition for Writ of Certiorari is filed pursuant to Rule 13.1, Rules of the Supreme Court.

CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION, AMENDMENT V

The Fifth Amendment to the Constitution provides, in relevant part that: "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 deprived of life, liberty, or property, without due process of law."

UNITED STATES CONSTITUTION, AMENDMENT VI

The Sixth Amendment to the Constitution provides in relevant part that: "In all criminal prosecutions, the accused shall enjoy the right … 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 defence."

STATEMENT OF THE CASE

1. Course of Proceedings

This case originated in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (case number 50-2017-CF-005182-MB). [DE 13-1 at 5]. SMITH was charged with Robbery with a Deadly Weapon and proceeded to trial on that charge. [DE 13-1 at 15, 18–19]. Following a jury trial, on September 27, 2018, the jury found SMITH guilty of the lesser included offense of Robbery with a Weapon, finding that, in the course of committing the offense, SMITH did not carry a deadly weapon.2 [DE 13-1 at 17]. Thus, that same day, on September 27, 2018, SMITH was adjudicated guilty of Robbery with a Weapon. [DE 13-1 at 20]. And on December 7, 2018, the trial court sentenced SMITH to fifteen (15) years in

the Department of Corrections, with 74 days of credit for time served. [DE 13-1 at 24–25].

SMITH appealed his Judgment and Sentence. On December 26, 2019, the Fourth District Court of Appeal affirmed, *per curium*, the lower court's decision without a written opinion. *Smith v. State*, 288 So. 3d 66 (Fla. 4th DCA 2019). The Mandate issued on January 24, 2020. [DE 13-1 at 117].

SMITH'S issues on direct appeal were: (1) sufficiency of the evidence that the sledgehammer used during the robbery was a weapon; (2) sufficiency of the evidence that a robbery occurred; and (3) whether the trial court properly admitted testimony regarding evidence of a cut observed by Virginia State Police.

On March 10, 2021, SMITH filed an Amended Motion for Post-Conviction Relief, arguing that he was deprived of his right to the effective assistance of counsel based on trial counsel's failure to advise him that he would likely be found guilty due to the overwhelming nature of the evidence against him, and trial counsel's failure to advise him that acceptance of the State's plea deal was in his best interest. [DE 13-1 at 120–35]. Subsequently, on March 24, 2022, the trial court entered an Order Denying [SMITH's] Amended Motion for Postconviction Relief. [DE 13-1 at 141–46].

The trial court found that the record conclusively refuted SMITH'S purported lack of knowledge of the surveillance video, as "the State mentioned the video

during the discussion of the plea offer and colloquy with" SMITH. [DE 13-1 at 143]. Moreover, during discussion of the plea offer and the colloquy with SMITH, SMITH "was present in the courtroom and, subsequent to the State mentioning its intention to utilize the surveillance footage and DNA evidence, SMITH rejected the plea offer in open court." [DE 13-1 at 144]. And, as to the overwhelming nature of the evidence against SMITH, the trial court noted that the State "introduced photographs depicting scenes captured from the video and the witnesses at trial could not identify SMITH based on the surveillance video but rather only acknowledged the similarities between SMITH and the individual in the video." [DE 13-1 at 144]. Thus, the trial court found that SMITH failed to prove prejudice under *Strickland v. Washington,* 466 U.S. 668, 104 S.Ct. 2052 (1984). [DE 13-1 at 144].

SMITH appealed the trial court's denial of his amended motion for postconviction relief. [DE 13-1 at 147]. The Fourth District Court *per curiam* affirmed the denial of his amended motion for postconviction relief, with Judge Warner including a written dissent. [DE 13-1 at 204]. Specifically, Judge Warner stated:

"I dissent from the affirmance of the trial court's order summarily denying appellant's motion for postconviction relief. In the motion, appellant claimed ineffective assistance of counsel in failing to apprise him of the overwhelming strength of the State's case before he rejected a favorable plea offer. Because the

record does not conclusively refute his allegations, I would reverse for an evidentiary hearing on the issue." [DE 13-1 at 204].

SMITH then filed a Motion for Rehearing, Request that the Court Enter a Written Opinion, and/or Request for Clarification [DE 13-1 at 205–211] Said Motion was also denied. [DE 13-1 at 212]. Again, Judge Warner dissented and wrote that she would have granted the rehearing. [DE 13-1 at 212].

On April 14, 2023, SMITH filed a petition for writ of habeas corpus and memorandum in this Court, pursuant to 28 U.S.C. § 2254. [DE 1]. SMITH'S Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody ("Petition") was timely filed. On April 17, 2023, SMITH filed an amended petition along with a memorandum. [DE 3]. Following the District Court's order for the same, SMITH filed a second amended petition on April 25, 2023. [DE 7]. The District Court ordered Respondent to file a response to the petition. [DE 8]. An evidentiary hearing was held on August 16, 2024 [DE 38].

On September 3, 2024, the District Court entered its Final Judgment and Order Denying Amended Petition for Writ of Habeas Corpus Pursuant U.S.C. § 2254. [DE 42] SMITH filed his Notice of Appeal on September 30, 2024. [DE 43]

The Court of Appeals for the Eleventh Circuit entered an unpublished opinion denying SMITH'S motion for the issuance of a certificate of appealability on March 13, 2025. [DE 12-1].

2. Statement of the Facts.

a. The Offense Conduct.

On May 7, 2017, Mr. Jamie Torres ('Torres') was a pawn broker at Value Pawn in West Palm Beach. (T 128-29). 1 Torres was working at the jewelry counter showing a customer a gold chain from the jewelry case. (T 130-31). The glass-top jewelry counter is "enclosed and locked" so only employees could enter the jewelry counter. (T 37-38). Mr. Alexander Pacquin ('Pacquin') was managing the Value Pawn on May 7, 2017. (T 33-35). Mr. Eldridge Turner was a customer at Value Pawn. (T 67-72). The store is monitored from different areas. (T 36).

About an hour after opening, three men entered wearing hoodies, masks or face coverings, and sledgehammers. See (T 35, 40 ,54, 76) see also (SE1 01:35-01:45) (outside camera showing three men entering Value Pawn in hoodies and masks); (SE1 04:08-04:15, 06:49-06:53) (entryway cameras showing three men entering Value Pawn in hoodies in hoodies and masks).

The three men began smashing the jewelry case "really close to" Torres. (T 35, 40, 132-33); see also (SE1 08:19-09:00) (three men smashing the jewelry case and removing the case's contents). Torres, Turner, and Pacquin only heard a "big smash" initially. (T 36, 72, 133).

Torres stated that he was "really scared" and that he "just walked out really fast in order to get hurt -- you know, be [him]self, you know, secure." (T 133-34).

Pacquin hit a panic button and saw people running. (T 36-37, 50). "I had one employee who ran into my office to call 911, close the door. And I had a couple of employees run into the back warehouse. And some were just trapped out on the salesroom floor trying to get away from the incident." (T 43, 50); see also (SE1 10:43-12:01) (employee in office calling 911); and (SE1 10:11-10:41) (employees running in backroom of Value Pawn and Pacquin viewing robbery).

Concerning the customers, Pacquin described that they were running out the door or to the back of the store to get away. (T 43); see also (SE1 04:16-04:36, 06:54-06:58, 07:07-07:10) (four people ran out the front door; one climbed over a counter to exit); (SE1 07:48-08:40, 09:06-09:30) (in the vicinity of the jewelry counter, at least ten people are identifiable on camera; after the three men began smashing the glass, almost every person ran from the area surrounding jewelry counter and hid behind aisle shelving or other counters). Turner described the customers as "panicked" and trying to get out of the area. (T 73).

Turner described that the men were "pounding" on the area to break the glass. (T 72-73, 132). The three men focused on the "high-ticket" item area of the jewelry case. (T 40). The three men hit the case multiple times to breakthrough because the countertop was shatterproof laminate. (T 38-39, 72-74, 141-45); see also (SE1 08:19-09:00). Eventually, the men began peeling back the glass to force it out of the case. (T 73-74); see also (SE1 08:30-08:46).

After getting the jewelry, Pacquin saw the three men flee in a black sedan. (T 43). The cost of the jewelry was approximately $42,000. (T 41). No customer or employee appeared to be injured. (T 44, 60, 212).

3. SMITH'S Evidentiary Hearing

SMITH'S evidentiary hearing was held on August 16, 2024. [DE 48] [DE 1]. SMITH was the first witness. [DE 48:7] SMITH testified that he was charged with robbery with a weapon and his attorney was Michael Walsh. [DE 48:7]

SMITH testified that he was told about the 5 year plea offer and that he did not take the plea because "[w]hen the state presented the five-year plea offer, I looked out to my lawyer, Michael Walsh, and I told him, "I should take that, right?" He told me, "No, not if you want to go to prison." They "can give me something better or go to trial." [DE 48:8]

SMITH then testified about the video being presented: "[t]hat was the first and only time I seen that surveillance video was during a trial. And after it was played, sometime after that, I was on the stand, and the state prosecutor Luisa Berti started making comparison between the suspect and the video footage and me while I was on the stand. She pointed out distinct features. Like, I had long dreads. The suspect had long dreads. My skin complexion and knots on our forehead. But specifically, she pointed out that the suspect had two earrings on his left ear. And during the trial, while I was on the stand, I had two earrings in my left ear, and she pointed that out as well. Now, had I seen that video before trial, there was no way I would have gone to trial. And had Michael Walsh played that video for me, I definitely wouldn't have gone to trial with two earrings in my left ear to further increase the evidence." [DE :9] SMITH testified that had he seen the video he would have absolutely accepted the plea. [DE 48:9]

SMITH testified that he went to trial because "my counsel told me it was in my best interest to go to trial, that's what I did. I accepted my counsel's advice." [DE 13] SMITH testified that he regretted not taking the plea after he saw the video. [DE 48:16]

SMITH had no other witnesses and the government called Luisa Berti, who was the prosecuting attorney. [DE 48:19] Ms. Berti testified that the plea of 5 years was given and rejected by SMITH. [DE 48:20-21] Ms. Berti testified that

"I don't specifically recall revoking the offer, but I did take a look at the transcript, and I see that certainly at some point I did revoke that. That language was reflected in the transcript. I don't have an independent recollection right now." [DE 48:25].

The government then called Michael Walsh, who was SMITH'S attorney. [DE 48:28] Mr. Walsh testified that he was disbarred but that he was disbarred after SMITH'S case and that his disbarment had nothing to do with his representation of SMITH. [DE 48:29]

Mr. Walsh testified that he did not know whether SMITH had seen the video or not. [DE 48:34] Mr. Walsh further testified that he could not remember the exact plea that was offered. Mr. Walsh testified as to why he was disbarred and that same was after he represented SMITH. Mr. Walsh confirmed he had a cocaine addiction. [DE 48:37-39] Mr. Walsh testified that he barely remembered is discussions with SMITH. [DE 48:43].

In closing SMITH'S attorney argued that "[s]o we would submit that trial counsel performed deficiently by failing to discuss with Mr. Smith the fact there was a surveillance video at the Value Pawn, which was the site of the robbery, that depicted somebody that looked strikingly similar to him smashing the jewelry case and cutting himself. So, we would submit that the trial counsel was deficient for not going over that with him prior to him rejecting the state's plea offer,

because any reasonable attorney knows that they are not going. The reason we believe that would be deficient is because any reasonable attorney knows that they are not going to win this case. It's just not winnable to have somebody on camera, then have their DNA in the same place, you just couldn't explain it away to win this case. It's just not winnable to have somebody on camera, then have their DNA in the same place, you just couldn't explain it away." [DE 48:47] The following occurred:

"THE COURT: What about Mr. Walsh's testimony that he provided the discovery to the -- at the time to the defendant, now the petitioner, Jermaine Smith, prior to the trial along with all of the discovery? What about that testimony?

MR CHASE: So, as I recall, he never testified that he actually went over it with him, that he provided it to him. There's a huge discrepancy there. Mr. Smith asserted that Mr. Walsh never explained to him what that discovery meant, just that he knew it existed.

THE COURT: And what about Mr. Walsh's testimony that Mr. Smith was adamant that he would not accept any incarcerative type of plea?

MR CHASE: Well, I would submit that Mr. Smith testified that he would today, but also that Mr. Walsh's memory of this is subjective, at best. He testified about his substance abuse and prior to that mental incapacitation, both of which surrounded his representation of Mr. Smith, but he wants us to believe that there

was issue during his representation of Mr. Smith. Other than that, Mr. Walsh missed details such as which Mr. Smith was convicted of a first degree, not a second-degree felony, punishable by a maximum of 30 years, not 15 years. So, would I say Mr. Walsh's credibility is all but shot.

THE COURT: Anything else.

MR CHASE: We acknowledge Mr. Berti said there was no offer. The record would indicate otherwise. The hearing that counsel went over with Mr. Smith, they discussed the offer at length. Ms. Berti never said there's no offer on the table. And Mr. Walsh said there was an offer on the table during that plea discussion. Regarding whether or not it would have been accepted by the state attorney, she said that it would have up until possibly, the day before trial, but they also discussed it the day before trial. She never said she wasn't going to accept it. The judge wouldn't have gone over the offer with Mr. Smith if he wasn't planning on accepting it. Ultimately, Mr. Smith would have had a lesser sentence if he had accepted the plea offer. So, all of the prongs have been met." [DE 48:47-49]. The District Court advised it would take it under advisement and the hearing was ended. [DE 48:51]

A. The Eleventh Circuit's Denial Of Smith's Motion For The Issuance Of A Certificate Of Appealability Is A Fundamental Miscarriage Of Justice.

The denial of SMITH'S Motion for the issuance of a certificate of appealability is a fundamental miscarriage of justice because the denial of his motion for the issuance of a certificate of appealability allowed the Eleventh Circuit to affirm the District Court's denial of SMITH'S claim of ineffective assistance of counsel and therefore affirmed the District Court's denial of SMITH'S constitutional right to effective assistance of counsel.

REASONS FOR GRANTING THE PETITION

I.

CERTIORARI REVIEW SHOULD BE GRANTED WHERE THE ELEVENTH CIRCUIT'S DENIAL OF SMITH'S MOTION FOR THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY IS A FUNDAMENTAL MISCARRIAGE OF JUSTICE.

The Eleventh Circuit is correct in finding that for SMITH to obtain a COA, he must make "a substantial showing of the denial of a constitutional right" and that SMITH satisfies this requirement by demonstrating that "reasonable jurists would find the District Court's assessment of the constitutional claims debatable or wrong." 28 U.S.C. §2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595 (2000).

In order for a state prisoner to seek federal habeas relief the state prisoner must first "exhaus[t] the remedies available in the courts of the State, 28 U.S.C. §2254(b)(1)(A), thereby affording those courts 'the first opportunity to address the correct alleged violations of [the] prisoner's federal rights." *Walker v. Martin,* 562 U.S. 307, 131 S.Ct. 1120, 1127 (2011) (quoting *Coleman v. Thompson,* 501 U.S. 722, 731, 111 S.Ct. 2546, (1991)). Accordingly, this imposes a "total exhaustion" requirement in which all of the federal issues must have first been presented to the state courts. *Rhines v. Weber,* 544 U.S. 269, 274, 125 S.Ct. 1528 (2005). "Exhaustion requires that state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process. That is, to properly exhaust a claim, the petitioner must fairly present every issue raised in his federal petition to the state's highest court, either on direct appeal or on collateral review." *Mason v. Allen,* 605 F.3d 1114, 1119 (11th Cir.2010) and *Castile v. Peoples,* 489 U.S. 346, 351, 109 S.Ct. 1056 (1989).

Both the Eleventh Circuit and the Supreme Court broadly interpret what is meant by an adjudication on the merits. Thus, a state court's summary rejection of a claim, even without explanation, qualifies as an adjudication on the merits that warrants deference by a federal court. *See also Ferguson v. Culliver,* 527 F.3d 1144, 1146 (11th Cir.2008). "[U]nless the state court clearly states that its decision was based solely on a state procedural rule [the Court] will presume that the state court

has rendered an adjudication on the merits when the petitioner's claim 'is the same claim rejected' by the court." *Early v. Packer,* 537 U.S. 3, 8, 123 S.Ct. 362 (2002).

"A state court decision involves an unreasonable application of federal law when it identifies the correct legal rule from Supreme Court case law but unreasonably applies that rule to the facts of the petitioner's case, or when it unreasonably extends, or unreasonably declines to extend, a legal principle from Supreme Court case law to a new context." *Ponticelli v. Sec'y, Fla. Dep't of Corr.,* 690 F.3d 1271, 1291 (11th Cir. 2012). The "unreasonable application" inquiry requires the Court to conduct the two-step analysis set forth in *Harrington v. Richter*, 562 U.S. 86, 131 S.Ct. 770 (2011).

First, the Court determines what arguments or theories support the state court decision; and second, the Court must determine whether "fair-minded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior" Supreme Court decision. *Harrington v. Richter*, 562 U.S. 86, 131 S.Ct. 770 (2011). More specifically, SMITH must "show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fair-minded disagreement." *Harrington v. Richter*, 131 S.Ct. at 770, 786-787.

In his 28 U.S.C. §2254, SMITH argued ineffective assistance of counsel.

In determining ineffective assistance of counsel under the *Strickland* test, both the performance and prejudice prongs are mixed questions of law and fact, with deference on appeal to be given only to the Trial Court's factual findings.

A two-pronged test was established by the Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 1252 (1984), for determining if counsel rendered ineffective assistance. Under this test, a defendant must first establish that, considering all the circumstances, counsel's performance fell below an objective standard of reasonableness.

The Eleventh Circuit Court of Appeals makes its first mistake in denying SMITH'S Motion for Issuance of Certificate of Appealability by not considering SMITH'S arguments. In his 28 U.S.C. §2254 Petition SMITH clearly identified the grounds for relief and showed equivocally how the state court erred and that said error clearly denied SMITH his constitutional right to effective assistance of counsel. SMITH identified the errors in the state court's factual findings and showed that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fair-minded disagreement." *Harrington v. Richter*, 562 U.S. 86, 131 S.Ct. 770, 786-87 (2011). SMITH demonstrated in his 28 U.S.C. §2254 Petition that he is entitled to habeas relief on his claims. *Breedlove v. Moore*, 279 F.3d 952 (11th Cir. 2002); *see also Dickson v. Wainwright*, 683 F.2d 348 (11th

Cir. 1982). And because the denial of his Petition was affirmed by the Eleventh Circuit Court of Appeals, SMITH'S Petition for Writ of Certiorari to this Court must be granted.

SMITH argued in his 2254 Petition that he was "deprived of his right to the effective assistance of counsel by his trial counsel's failure to adequately advise him with respect to the state's plea offer of 5 years[']imprisonment" and that he therefore is "entitled to have his state court Judgment and Sentence vacated." [DE 3 at 5].

Specifically, SMITH argued that his trial counsel performed deficiently. In this regard, while SMITH acknowledges that "[h]ow to define the duties and responsibilities of defense counsel in the plea bargaining process, for purposes of *Strickland's* deficient performance prong has not been outlined by the United States Supreme Court," SMITH argued the fact that "the right to effective assistance of counsel encompasses the accused's right to be informed by his attorney as to the relative merits of pleading guilty and proceeding to trial, is hardly novel, having been articulated by the Supreme Court nearly a half-century ago". See *Von Moltke v. Gillies*, 332 U.S. 708, 721, 68 S.Ct. 316 (1948). And on this matter, SMITH argued in his Petition the following:

> In the state court proceedings SMITH argued that he was deprived of his right to the effective assistance of counsel by his trial counsel's failure to discuss with SMITH the fact a surveillance video from Value Pawn portraying a man who looked strikingly similar to SMITH smashing the glass case and cutting himself would be played at trial. Instead, Mr. Walsh simply advised SMITH that five (5) years

imprisonment was too much, that they could obtain a better offer, and, failing that, they had a solid chance of winning at trial as he could explain away the DNA evidence. However, had SMITH been properly advised that a surveillance video from Value Pawn portraying a man who looked strikingly similar to him smashing the glass case and cutting himself would be played at trial, SMITH would have accepted the state's offer of five (5) years imprisonment. Furthermore, had SMITH been properly advised that due to the overwhelming nature of the evidence against him he would likely be found guilty, and that in all likelihood he would be sentenced to greater than five (5) years imprisonment, SMITH would have accepted the state's offer of five (5) years imprisonment. [DE 3]

According to SMITH, the state court's finding that the record conclusively refuted this argument "is contrary to and/or constitutes an unreasonable application of clearly established federal law." [DE 3,4,7]. SMITH "acknowledges the record is clear that the State informed [him] of the evidence against him" but argues that "[w]hat is not in the record is whether trial counsel allowed [him] to view the evidence against him or discussed the evidence against him, and what it meant to his chances of success at trial," as well as "trial counsel's advice regarding the evidence." [DE 3,4,7]

SMITH further argued that it was unreasonable for trial counsel to advise him that five (5) years' imprisonment was too much and that they could win at trial, and that trial counsel "performed deficiently by failing to advise him that the state's evidence would ensure he would lose at trial, and, therefore, that acceptance of the state's plea offer of five (5) years imprisonment was in his best interest." [DE 3,4,7]. More specifically, SMITH argued that his "trial counsel was required to offer him

his informed advice regarding the state's evidence prior to advising SMITH to reject the state's offer, and that no reasonable attorney would have failed to advise SMITH that in light of the overwhelming nature of the state's case against him, and the grave consequences he faced by rejecting the offer, that acceptance of the offer was in his best interest." [DE 3,4,7]

SMITH further argued that he was overwhelmingly prejudiced by his trial counsel's deficient performance. [DE 3,4,7]. A defendant must also show that counsel's deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. at 693, 104 S.Ct. 2052 (1984). "The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland v. Washington*, 466 U.S. at 693, 104 S.Ct. 205, (1984). Prejudice analysis must not only focus on outcome determination, but on "the question whether counsel's deficient performance renders the result of the trial unreliable or the proceeding fundamentally unfair". *Lockhart v. Fretwell*, 506 U.S. 364, 372, 113 S.Ct. 838 (1993).

Based upon the evidence and argument, SMITH "met the prejudice prong of *Strickland*". It is quite clear that the record demonstrated that SMITH would have accepted the state's offer of 5 years imprisonment had he been properly advised in connection with the state's plea offer.

Therefore, SMITH made a substantial showing of the denial of a constitutional right, and thus a certificate of appealability should have been issued. *See*, 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84, 120 S.Ct. 1595 (2000). And because it was not, SMITH'S Petition for Writ of Certiorari must be granted.

CONCLUSION

The Eleventh Circuit's denial of SMITH'S Motion for the Issuance of a Certificate of Appealability is clearly a fundamental miscarriage of justice and seriously affects the fairness, integrity and public reputation of the judicial proceedings. *See generally, United States v. Olano*, 507 U.S. 725, 113 S.Ct. 1770 (1993). For all of these reasons and in the interest of justice, SMITH prays that this Court grant his Petition for Writ of Certiorari.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 3rd day of October, 2025, to the SOLICITOR GENERAL OF THE UNITED STATES, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001.

By David J. Joffe
DAVID J. JOFFE, ESQUIRE

APPENDIX

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1. Order Denying Petition for a Certificate of Appealability (March 13, 2025)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 3rd day of October 2025, to the Supreme Court of the United States 1 First Street, NE, Washington, DC 20543, and to the Solicitor General of The United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001.

By David J. Joffe
DAVID J. JOFFE, ESQUIRE

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-13221

JERMAINE SMITH,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:23-cv-80657-DMM

ORDER:

Jermaine Smith moves for a certificate of appealability in order to appeal the denial of his 28 U.S.C. § 2254 habeas corpus petition. His motion is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

/s/ Andrew L. Brasher

UNITED STATES CIRCUIT JUDGE