

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

Order, U.S. Court of Appeals for the Eleventh Circuit (May 21, 2026).....	1a
Order Adopting Magistrate Report and Recommendation, U.S. District Court for the Northern District of Florida Panama City Division (September 29, 2025).....	6a
Magistrate Report and Recommendation, U.S. District Court for the Northern District of Florida Panama City Division (September 15, 2025).....	8a
Order Denying Petition for Review, Supreme Court of Florida (August 4, 2020)	66a
Opinion on Motion for Rehearing, Certification, and/or Issuance of a Written Opinion, First District Court of Appeal State of Florida (March 24, 2020).....	68a
Order Denying Petition Alleging Ineffective Assistance of Appellate Counsel, First District Court of Appeal State of Florida (October 31, 2019)	75a
Per Curiam Opinion, First District Court of Appeal State of Florida (February 20, 2018)...	76a
Judgment and Sentence, Circuit Court, Fourteenth Judicial Circuit, in and for Bay County, Florida (November 10, 2016)	78a

APPENDIX TABLE OF CONTENTS (Cont.)

STATUTORY PROVISIONS

Fla. Stat. 794.0115 [2016]	86a
----------------------------------	-----

CASE DOCUMENTS

Sentencing Hearing Transcript, Circuit Court, Fourteenth Judicial Circuit, Bay County, Florida (November 10, 2016)	89a
Jury Selection Transcript, Circuit Court, Fourteenth Judicial Circuit, Bay County, Florida (October 10, 2016)	110a
Renewed Application for a Certificate of Appealability (November 7, 2025)	132a
Reply to Respondent's Answer to Petition for Writ of Habeas Corpus (February 11, 2024) .	155a
Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (August 22, 2023)	164a
Petitioner's Memorandum of Law In Support of Petition for Writ of Habeas Corpus (August 22, 2023)	185a
Petitioner's Brief On Jurisdiction, Supreme Court of Florida (May 3, 2020)	203a
Notice to Invoke Discretionary Jurisdiction, First District Court of Appeal, State of Florida (April 23, 2020)	214a

APPENDIX TABLE OF CONTENTS (Cont.)

Petitioner’s Motion for Rehearing, Certification, and/or Issuance of a Written Opinion, First District Court of Appeal State of Florida (November 7, 2019)	216a
Petition for Writ of Habeas Corpus Alleging Ineffective Assistance of Appellate Counsel (July 24, 2018)	224a
Petitioner’s Reply to State’s Response (November 13, 2018)	234a
Response to Order to Show Cause (October 24, 2018)	239a
Verdict, Circuit Court Fourteenth Judicial Circuit, Bay County, Florida (October 11, 2016)	247a
Fourth Amended Information, Circuit Court Fourteenth Judicial Circuit, Bay County, Florida (October 10, 2016)	249a
First Information, Circuit Court Fourteenth Judicial Circuit, Bay County, Florida (July 16, 2016)	252a

**ORDER, U.S. COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
(MAY 21, 2026)**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

SEGWAYNE KIRK ANTHONY GOLDSON,

Petitioner-Appellant,

v.

SECRETARY, Florida Department of Corrections,

Respondent-Appellee.

No. 25-13668

Appeal from the United States District Court
for the Northern District of Florida

D.C. Docket No. 5:23-cv-00225-TKW-MAF

Before: BARBARA LAGOA, U.S. Circuit Judge.

ORDER

Segwayne Goldson moves for a certificate of appealability (“COA”), in order to appeal the district court’s denial of his 28 U.S.C. § 2254 petition. In his petition, Goldson argued that: (1) appellate counsel was ineffective for not challenging his dangerous-sexual-offender designation and the resulting 50-year mandatory minimum, (2) trial counsel was ineffective for failing to present photographic evidence that

undermined testimony from the victim, “T.R.”, and (3) trial counsel’s closing argument did not sufficiently attack T.R.’s credibility. The district court denied the petition on its merits.

To obtain a COA, a petitioner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When the district court denied a constitutional claim on the merits, the petitioner must show that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong” or that the issues “deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotations omitted).

To make a successful ineffective-assistance-of-counsel claim, a petitioner must show that counsel’s performance: (1) was deficient; and (2) prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To establish deficiency, a petitioner must demonstrate that “no competent counsel would have taken the action that his counsel did take.” *United States v. Freixas*, 332 F.3d 1314, 1319-20 (11th Cir. 2003) (quotations omitted). When analyzing deficiency under § 2254(d), “[t]he question is not whether a federal court believes the state court’s determination under the *Strickland* standard was incorrect but whether that determination was unreasonable—a substantially higher threshold.” *Mendoza v. Sec’y, Fla. Dep’t of Corr.*, 761 F.3d 1213, 1236 (11th Cir. 2014) (quotations omitted).

Here, reasonable jurists would not debate the district court’s denial of Goldson’s § 2254 petition. *See id.* First, in denying Goldson’s ineffective-assistance-of-appellate-counsel claim, the First District Court of Appeal found that Goldson had actual notice that he was facing a 50-year mandatory minimum for a

dangerous sexual felony offense, because the transcript of the pretrial hearing showed that the trial court, the state, and Goldson's attorney had explained that, if the jury found that he caused serious physical injury to T.R., he was facing a 50-year mandatory minimum sentence, and Goldson said that he understood that he was potentially facing a 50-year mandatory minimum on each count.

"[U]nder the Due process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt." *Jones v. United States*, 526 U.S. 227, 243 n.6 (1999). These requirements "safeguard[]" "the formality of notice, the identity of the factfinder, and the burden of proof." *Id.* Neither *Apprendi v. New Jersey*, 530 U.S. 466 (2000), nor *Alleyne v. United States*, 570 U.S. 99 (2013), addressed a situation where a fact necessary to increase punishment was not charged in the indictment, but the defendant had actual notice that he was facing increased punishment.

Because *Apprendi* and its progeny do not address actual notice, and Goldson had actual notice of the 50-year mandatory minimum that he was facing, it was not unreasonable for the state court to conclude that appellate counsel was not deficient for failing to raise the issue. *See Smith v. Singletary*, 170 F.3d 1051, 1054 (11th Cir. 1999); *see also Mendoza*, 761 F.3d at 1236.

Second, Goldson alleged that T.R. had sent him nude photos of herself after he had allegedly assaulted her in Jamaica. He argued that trial counsel was ineffective for not presenting these photos, because

they supported his testimony that he and T.R. were in a clandestine relationship, and therefore all of the alleged assaults were actually consensual encounters. He argued that the photographs would have also impeached T.R.'s testimony that she never sent Goldson nude photos.

Before trial, the trial court found that the photographs would be admissible if counsel could establish "how they were transmitted and whose body" was in the photographs, as it was unclear if the photographs were of T.R.'s torso, and if T.R. had sent them to Goldson. Rather than confirming that it was her in the photos and that she sent nude photos of herself to Goldson, T.R. testified that she never sent Goldson nude pictures of herself. She also testified that Goldson took her phone during the assault, she saw him take a picture, and heard him typing, which creates doubt as to whether Goldson received the photos from T.R., or took the pictures and sent them to himself. Furthermore, although T.R. and the torso in the photos have similar tattoos, it was never confirmed that it was T.R. in the photographs.

Because the trial court outlined specific circumstances under which the photographs would be admissible, and those circumstances were arguably not satisfied, it was not unreasonable to conclude that counsel was not deficient for failing to introduce the nude photographs. *See Mendoza*, 761 F.3d at 1236; *see also Freixas*, 332 F.3d at 1319-20.

Third, counsel's closing argument attacked the victim's credibility, and the implausibility of her testimony that Goldson had repeatedly assaulted her, but she still lived with, worked with, and socialized with him regularly. It was not unreasonable for the state

court to conclude that it was reasonable for counsel to leave her closing argument at that, instead of attacking T.R. further by challenging whether it was physically possible for Goldson to “always” have his hand on her throat. *See Mendoza*, 761 F.3d at 1236; *see also Freixas*, 332 F.3d at 1319-20.

For these reasons, Goldson’s motion for a COA is DENIED.

/s/ Barbara Lagoa

United States Circuit Judge

**ORDER ADOPTING MAGISTRATE REPORT
AND RECOMMENDATION, U.S. DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
FLORIDA PANAMA CITY DIVISION
(SEPTEMBER 29, 2025)**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

SEGWAYNE KIRK ANTHONY GOLDSON,

Petitioner,

v.

RICKY D. DIXON, Secretary,
Florida Department of Corrections,

Respondent.

Case No. 5:23-cv-225-TKW-MAF

Before: T. Kent WETHERELL, II, U.S. District Judge.

ORDER

This case is before the Court based on the magistrate judge's Report and Recommendation (Doc. 14) and Petitioner's objections (Doc. 15). Upon due consideration of the Report and Recommendation and the entire case file, the Court agrees with the magistrate judge's determinations that Petitioner is not entitled to habeas relief; that a certificate of appealability should

be denied;¹ and that leave to appeal in forma pauperis should be denied. Accordingly, it is

ORDERED that:

1. The magistrate judge's Report and Recommendation is adopted and incorporated by reference in this Order.
2. Petitioner's § 2254 habeas petition (Doc. 1) is DENIED on the merits.
3. A certificate of appealability is DENIED.
4. Leave to appeal in forma pauperis is DENIED.
5. The Clerk shall enter judgment in accordance with this Order and close the case file.

DONE AND ORDERED this 29th day of September, 2025.

/s/ T. Kent Wetherell, II
U.S. District Judge

¹ The Report and Recommendation directed the parties to make any argument regarding a certificate of appealability in their objections, *see* Doc. 14 at 52, but Petitioner's objection did not include any argument on that issue.

**MAGISTRATE REPORT AND
RECOMMENDATION, U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
FLORIDA PANAMA CITY DIVISION
(SEPTEMBER 15, 2025)**

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

SEGWAYNE KIRK ANTHONY GOLDSON,

Petitioner,

v.

RICKY D. DIXON, Secretary,
Florida Department of Corrections,

Respondent.

Case No. 5:23-cv-225-TKW/MAF

Before: Martin A. FITZPATRICK,
U.S. Magistrate Judge.

REPORT AND RECOMMENDATION

On August 22, 2023, Petitioner Segwayne Kirk Anthony Goldson, a state inmate represented by counsel, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and a supporting memorandum. ECF No. 1. He challenges his conviction entered June 30, 2016, and sentence imposed November

10, 2016, by the Fourteenth Judicial Circuit, Bay County, following a jury trial in case number 2016-CF-2683. *Id.* at 1-2.

On January 22, 2024, Respondent filed an answer, ECF No. 8, with exhibits, ECF No. 9. Petitioner Goldson filed a reply on February 11, 2024. ECF No. 10.

At that point, this case was placed in line for review. On review, as part of the Court's initial examination, the petition is checked for timeliness under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). *See Day v. McDonough*, 547 U.S. 198, 209 (2006) (holding that "district courts are permitted, but not obliged, to consider *sua sponte*, the timeliness of a state prisoner's habeas petition"); *Jackson v. Sec'y for Dep't of Corr.*, 292 F.3d 1347, 1349 (11th Cir. 2002) (holding that district court has discretion to raise § 2254 timeliness issue *sua sponte*). *See also, e.g., Sweet v. Sec'y, Dep't of Corr.*, 467 F.3d 1311, 1319-20 (11th Cir. 2006) (affirming dismissal of § 2254 petition as untimely and, among other things, rejecting petitioner's argument that State did not preserve timeliness argument because State did not raise issue in first responsive pleading).

In this case, Goldson's counsel explained the "timeliness of petition":

Petitioner's direct appeal was per curiam affirmed on 2-20-18. 154-days elapsed until Petitioner filed a petition for writ of habeas corpus alleging ineffective assistance of appellate counsel on 7-24-18. After the denial of rehearing with opinion, Petitioner sought discretionary review in the Florida Supreme

Court. Meanwhile, Petitioner filed a motion for postconviction relief on 3-19-20. The Florida Supreme Court denied discretionary review on 8-4-20. Petitioner's motion for postconviction relief was denied, appealed, and the mandate issued 10-31-22.

Petitioner appealed followed the judgment and sentence of the lower court; therefore, Petitioner had 90-days in which to seek certiorari in the Supreme Court of the United States before the 1-year Anti-Terrorism and Effective Death Penalty ("AEDPA") began. Petitioner's "federal clock" under AEDPA ran from 2-20-18 through 7-24-18, and was tolled from 7-24-18 through 10-31-22. Accordingly, the instant petition is timely if filed on or before 8-28-23.

ECF No. 1 at 13-14 (bold emphasis added). Using the dates in this explanation, the petition is untimely as 154 days ran from February 20, 2018, until July 24, 2018, and then the remaining 211 days (365-154 = 211) ran from November 1, 2022, through May 30, 2023, when the one-year AEDPA period would have expired according to the dates provided by Petitioner.

Respondent addressed timeliness in its answer and explained:

Petitioner's judgment became final for purposes of federal habeas corpus proceedings on May 21, 2018, *i.e.*, 90 days after the 1st DCA affirmed his judgment and sentence on direct appeal in *Goldson v. State*, 241 So.3d 918 (Fla. 1st DCA 2018). (Ex. B12). *See Nix v. Sec'y for Dept. of Corr.*, 393 F.3d 1235,

1236 (11th Cir. 2004) (“Section 2244(d)(1)(A) provides that the one-year limitations period in which a state prisoner has to file a writ for habeas corpus begins to run from ‘the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.’”). *See also Michel v. United States*, 519 F.3d 1267, 1268 (11th Cir. 2008) (“A petition for writ of certiorari must be filed within 90 days of the day the appellate court’s judgment was entered.”).

Thus, barring any tolling events, Mr. Goldson had until May 21, 2019, to file his federal Petition for Writ of Habeas Corpus. *See Downs v. McNeil*, 520 F.3d 1311, 1318 (11th Cir. 2008) (explaining that § 2244(d)(1)’s “limitations period should be calculated according to the ‘anniversary method’ under which the limitations period expires on the anniversary date it began to run.”).

When Petitioner’s judgment became final on May 21, 2018, his one-year AEDPA limitations period commenced running and continued to do so until July 24, 2018 (*i.e.*, for 64 days), when he filed his Petition for Writ of Habeas Corpus Alleging Ineffective Assistance of Appellate Counsel in the 1st DCA. (Ex. C1). Mr. Goldson’s limitations period then remained tolled until October 31, 2022, when the 1st DCA issued its mandate following its affirmance of the postconviction order in *Goldson v. State*, 348 So.3d 494 (Fla. 1st DCA 2022). (Ex. E6).

Thereafter, Petitioner's one-year limitations period recommenced running and continued to do so for another 295 days, when his Petition for Writ of Habeas Corpus was filed in the instant case on August 22, 2023. (Ex. F1). Therefore, because only 359 un-tolled days elapsed from the date Petitioner's judgment became final until his federal habeas petition was filed, it appears that the petition is timely. However, should this Court disagree, Respondent respectfully reserves the right to challenge the timeliness of the petition.

ECF No. 8 at 4-5 (bold emphasis added).

Thus, based on the information provided by Petitioner and Respondent, a dispute existed regarding the start date for calculating the one-year AEDPA limitations period. The parties agreed that Goldson appealed his judgment and sentence to the First District Court of Appeal (First DCA). In that appeal, First DCA case number 1D16-5299, Goldson's counsel filed an initial brief in pursuant to *Anders v. California*, 386 U.S. 738 (1967), asserting no issue of arguable merit existed. Ex. B6.¹ By order on August 10, 2017, the First DCA directed Goldson's counsel to file a supplemental brief addressing three issues involving the trial court's denial of a motion to suppress as well as motions in limine seeking admission of hearsay and *Williams*² rule evi-

¹ Hereinafter, all citations to the state court record, "Ex. __," refer to exhibits, ECF No. 9, submitted with Respondent's answer, ECF No. 8.

² *Williams v. State*, 621 So.2d 413 (Fla. 1993).

dence because, contrary to counsel's assertion, the trial court appeared to have rendered a definitive ruling thereon, obviating the need for renewed objections to preserve any claims of error for appeal. Ex. B8. Counsel filed the supplemental brief asserting reversible errors had occurred, Ex. B9; Goldson filed a pro se brief, Ex. B10. The State filed an answer brief. Ex. B11. In a written opinion issued February 20, 2018, a panel of the First DCA, consisting of Judges Bilbrey, Winsor, and M.K. Thomas, affirmed the case. *Goldson v. State*, 241 So.3d 918 (Fla. 1st DCA 2018); Ex. B12. Goldson did not seek further review.

Given the foregoing, it appeared Goldson's conviction and sentence became final for federal habeas purposes on either March 22, 2018, upon expiration of the thirty-day period for seeking review in the Florida Supreme Court, or May 21, 2018, upon expiration of the ninety-day period for seeking review in the U.S. Supreme Court, affecting the timeliness of his § 2254 petition. *See* 28 U.S.C. § 2244(d)(1)(A); *Gonzalez v. Thaler*, 565 U.S. 134, 137 (2012) (holding that "for a state prisoner who does not seek review in a State's highest court, the judgment becomes 'final' on the date that the time for seeking such review expires"); *Jackson*, 292 F.3d at 1349 ("According to the Supreme Court Rules, a petitioner must file for a writ of certiorari to the Supreme Court of the United States within 90 days after entry of judgment in the state court of last resort. Sup. Ct. R. 13."). *See also, e.g.*, Fla. Const. art. V, § 3(b)(3) (providing that Florida Supreme Court "[m]ay review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of consti-

tutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law”); Fla. R. App. P. 9.120(b) (“The jurisdiction of the supreme court shall be invoked by filing a notice . . . within 30 days of rendition of the order to be reviewed.”); *see, e.g., The Fla. Star v. B.J.F.*, 530 So.2d 286, 288 (Fla. 1988) (explaining that Florida Supreme Court “in the broadest sense has subject-matter jurisdiction under article V, section 3(b)(3) of the Florida Constitution, over any decision of a district court that expressly addresses a question of law within the four corners of the opinion itself”); *Jones v. Fla. Dep’t of Corr.*, No. 21-10331-E, 2021 WL 3824675, at *1 (11th Cir. Apr. 20, 2021) (citing *Gonzalez* and Rule 9.120(b) and explaining, “Because Jones did not appeal his convictions to the Florida Supreme Court, the convictions became final when the time to seek appellate review expired on August 18, 2017, which was 30 days after the Fourth District Court of Appeal affirmed his convictions and sentence on July 19, 2017.”); *Palmer v. Inch*, No. 5:19cv002-MCR/HTC, 2021 WL 4526709, at *3 (N.D. Fla. July 1, 2021) (Report and Recommendation to dismiss § 2254 as untimely, explaining, “For purposes of the AEDPA, Petitioner’s conviction became final on January 4, 2016, the expiration of the 30-day deadline for Petitioner to seek discretionary review with the Florida Supreme Court of the First DCA’s written affirmance of the state court judgment and sentence.”), *adopted by order of district judge*, 2021 WL 4523079 (N.D. Fla. Oct. 4, 2021); *Dailey v. Crews*, No. 3:13cv148-WS/EMT, 2014 WL 2158428, at *4 (N.D. Fla. May 23, 2014) (Order adopting Report and Recommendation to dismiss § 2254 as untimely, in which magistrate judge

had explained that conviction became final “upon expiration of the 30-day period for seeking review in the Florida Supreme Court” as “[t]he First DCA’s affirmance [of direct appeal] was not unelaborated” and “Florida Supreme Court could have considered whether the decision ‘expressly and directly conflict[ed] with a decision of another district court of appeal or of the supreme court on the same question of law,’ thus invoking the court’s discretionary jurisdiction”); *Coulliette v. Sec’y, Dep’t of Corr.*, No. 5:12cv355-MW/GRJ, 2014 WL 518936, at *2 (N.D. Fla. Feb. 10, 2014) (Order adopting Report and Recommendation to dismiss § 2254 petition as untimely, in which magistrate judge had explained, “Because the First DCA had issued a written opinion, Petitioner could have sought discretionary review in the Florida Supreme Court, but he did not do so. Accordingly, Petitioner’s conviction became final on April 2, 2007, 30 days after the First DCA denied his motion for rehearing, when the time to seek discretionary review expired.”).

Because of the discrepancy between the petition and the answer regarding the start date for calculating Goldson’s one-year AEDPA limitations period, the undersigned ordered a supplemental response, with time for Petitioner to file a supplemental reply, if any. ECF No. 11. *See, e.g., Day*, 547 U.S. at 210-11; *Paez v. Sec’y, Fla. Dep’t of Corr.*, 947 F.3d 649, 654-55 (11th Cir. 2020). Respondent filed a supplemental response on May 19, 2025. ECF No. 12. On June 18, 2025, counsel for Petitioner filed a supplemental reply. ECF No. 13.

The matter was referred to the undersigned United States Magistrate Judge for report and re-

commendation pursuant to 28 U.S.C. § 636 and Northern District of Florida Local Rule 72.2(B). After careful consideration, the undersigned has determined no evidentiary hearing is required for the disposition of this matter. *See* Rule 8(a), *R. Gov.* § 2254 Cases. The pleadings and attachments before the Court show the petition should be dismissed as untimely. *See* Rule 4, *R. Gov.* § 2254 Cases (authorizing dismissal “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief” in federal court).

Procedural Background

By a fourth amended information filed October 10, 2016, in Bay County Circuit Court Case 2016-CF-2683, the State of Florida charged Petitioner Segwayne Kirk Anthony Goldson with three counts of sexual battery with physical force likely to cause serious personal injury on a person 12 years of age or older, a life felony in violation of section 794.011(3) and 775.087(1), Florida Statutes (2016). Ex. B1 at 105; *see id.* at 9 (initial information), 12 (amended information), 41-42 (second amended information), 51-52 (third amended information). The charges arose from events that occurred on or between June 30, 2016, and July 1, 2016, involving the victim T.R. *See* Ex. B1 at 105; ECF No. 1-2 at 4-5.

Goldson proceeded to a jury trial, with jury selection on October 10, 2016, Ex. B1 at 102-04, Ex. B3; and the trial on October 11, 2016, Ex. B1 at 107-10, Ex. B5, during which Goldson testified, Ex. B5 at 215-54. The jury returned a verdict finding him not guilty on the first count; guilty as charged on the second count, with a specific finding that Goldson “did

cause serious personal injury to the victim”; and guilty of the lesser included offense of sexual battery on the third count, with a specific finding that Goldson “did not cause serious personal injury to the victim.” Ex. B1 at 135-37; Ex. B5 at 288-90. On November 10, 2016, the trial court adjudicated him guilty and sentenced him to fifty (50) years in prison, minimum mandatory, on the second count and fifteen (15) years in prison on the third count, to run consecutively. Ex. B1 at 158-64; Ex. B4 at 302-28. The court also designated Goldson as a sex offender. Ex. B1 at 164.

As indicated above, Goldson appealed to the First District Court of Appeal (First DCA), and his counsel filed an *Anders* brief. Ex. B6. Counsel subsequently filed the supplemental brief as directed by the First DCA, Ex. B9, and Goldson filed a pro se brief, Ex. B10. The State filed an answer brief. Ex. B11. In a written opinion issued February 20, 2018, the First DCA affirmed the case with the following explanation:

Appellant Segwayne Goldson appeals his judgment of conviction and sentence for sexual battery with physical force likely to cause serious injury and sexual battery. His appointed appellate counsel filed an *Anders* brief. Thereafter, counsel was ordered to file a supplemental brief addressing three issues identified by this court as potentially meritorious. Consideration of the arguments raised on appeal as well as our independent review of the record and applicable law has revealed no reversible error in the circuit court’s proceedings. Accordingly, the judgment of conviction and sentences are AFFIRMED.

Goldson v. State, 241 So.3d 918 (Fla. 1st DCA 2018) (footnote omitted, which cited *Anders* as well as *In re: Order of First DCA Regarding Brief filed in Forester v. State*, 556 So.2d 1114 (Fla. 1990)); Ex. B12.

On July 24, 2018, through counsel, Goldson filed a petition for writ of habeas corpus in the First DCA, alleging ineffective assistance of appellate counsel, assigned case number 1D18-3080. Ex. C1; *see* Ex. C2 (appendix). The State filed a response. Ex. C3; *see* Ex. C4 (appendix). Goldson filed a reply to the State's response. Ex. C5. On October 31, 2019, the First DCA per curiam denied the petition without a written opinion. *See* <https://acis.flcourts.gov/portal/court>. Goldson filed a motion for rehearing, certification, and/or issuance of a written opinion. *See id.* On March 24, 2020, the First DCA withdrew the previous disposition, denied rehearing, and issued a written opinion explaining its decision to deny the petition. *Goldson v. State*, 293 So.3d 569 (Fla. 1st DCA 2020); Ex. C6. Goldson filed a notice to invoke discretionary jurisdiction in the Florida Supreme Court, Ex. C7, assigned case number SC20-592; on August 4, 2020, that court declined to accept jurisdiction, Ex. D2.

In the meantime, on March 19, 2020, Goldson, through counsel, filed a motion to vacate or set aside his judgment and sentence pursuant to Rule 3.850 in the state trial court, alleging three claims of ineffective assistance of trial counsel. Ex. E7. By order on December 9, 2020, the court struck the motion as facially insufficient, with leave to amend within sixty (60) days. Ex. E8. Goldson filed an amended petition on January 26, 2021, which included a fourth claim of ineffective assistance of trial counsel. Ex. E1 at 11-44. By order rendered February 2, 2022, the post-convic-

tion trial court summarily denied relief on all four claims. Ex. E1 at 84-118 (exclusive of attachments).

Through counsel, Goldson appealed to the First DCA and filed an initial brief in assigned case number 1D22-0662. Ex. E2. The State filed an answer brief. Ex. E3. Goldson filed a reply. Ex. E4. On October 13, 2022, the First DCA affirmed the case without a written opinion. Ex. E5; *Goldson v. State*, 348 So.3d 494 (Fla. 1st DCA 2022) (table). The mandate issued October 31, 2022. Ex. K.

On August 22, 2023, Goldson, through counsel, filed the § 2254 petition and supporting memorandum. ECF No. 1. The petition presents two grounds alleging ineffective assistance of counsel (IAC):

- (1) IAC — Appellate Counsel. *Id.* at 6, 16-18.
- (2) IAC — Trial Counsel. *Id.* at 7, 18-23.

On January 22, 2024, Respondent filed an answer, ECF No. 8, with exhibits, ECF No. 9. Goldson filed a reply on February 11, 2024. ECF No. 10.

Thereafter, as explained above, this Court ordered the supplemental response on timeliness, ECF No. 11, which Respondent filed on May 19, 2025, ECF No. 12. Petitioner filed a reply thereto on June 18, 2025. ECF No. 13.

Timeliness

Under the AEDPA, there is a one-year limitations period for filing a § 2254 petition. 28 U.S.C. § 2244 (d)(1). The period generally runs from “the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.” *Id.* § 2244(d)(1)(A). Later dates which

may commence the period are the date on which an unconstitutional impediment that prevented the applicant from filing is removed; the date on which the constitutional right asserted was recognized by the U.S. Supreme Court and made retroactive on collateral review; and the date on which the factual predicate for the claim could have been discovered with due diligence. *Id.* § 2244(d)(1)(B)-(D). The limitations period is tolled for the time during which a “properly filed” application for relief is pending in state court. *Id.* § 2244(d)(2). The time may be equitably tolled, but “only if a petitioner establishes *both* extraordinary circumstances and due diligence.” *Diaz v. Sec’y for Dep’t of Corr.*, 362 F.3d 698, 702 (11th Cir. 2004).

In the order directing supplemental filings on timeliness, as set forth above, this Court cited authority for the proposition that it “appears Goldson’s conviction and sentence became final for federal habeas purposes on March 22, 2018, upon expiration of the thirty-day period for seeking review in the Florida Supreme Court.” ECF No. 11 at 6. Rather than explaining or analyzing this issue, in its supplemental filing, Respondent merely cited *Gonzalez*, 565 U.S. at 137 — which Petitioner’s counsel correctly points out is a decision originating in Texas, not Florida — and concluded that Petitioner had to petition the Florida Supreme Court for review of the First DCA’s decision in the direct appeal and did not do so; therefore, his conviction and sentence became final on March 22, 2018. Accordingly, Respondent asserts in the supplemental filing that the § 2254 petition is untimely and should be dismissed. ECF No. 12 at 2-3.

In the supplemental reply, Petitioner’s counsel addresses the issue and asserts “Goldson could not

have sought discretionary review from the February 20, 2018, single-paragraph written opinion because no basis in law or fact existed to seek discretionary review.” ECF No. 13 at 2. Counsel explains that “[d]iscretionary review cannot be sought [in the Florida Supreme Court] from unelaborated affirmances and ?CA’ opinions [issued by a district court of appeal].” *Id.* at 4 (citing *Wells v. State*, 132 So.3d 1110, 1112-13 (Fla. 2014)). Counsel asserts that “Goldson’s direct appeal was final on February 20, 2018, because he was legally precluded from seeking discretionary review based on the absence of an express and direct conflict with another court on the same point of law” and “[h]is 90-day certiorari period thus commenced.” ECF No. 13 at 8. Counsel then states, “This Court should consider Goldson’s petition for writ of habeas corpus timely filed an allow the case to proceed.” *Id.*

The U.S. Supreme Court has held that where a state criminal defendant seeks certiorari review there following review in the state’s highest court, the judgment becomes final when the U.S. Supreme Court affirms the conviction or denies review. *Gonzalez*, 565 U.S. at 150. If the state criminal defendant does not seek review in the state’s highest court of last resort, however, the judgment becomes final when the time for seeking such review expires. *Id.* “Determining what constitutes a ‘state court of last resort’ or the ‘highest court of a State in which a decision could be had’ for purposes of the Supreme Court’s certiorari jurisdiction requires an examination of state court procedures.” *Dailey v. Crews*, No. 3:13cv148-WS/EMT, 2014 WL 2158428, at *3 (N.D. Fla. May 23, 2014) (district court Order adopting Report and Recommendation); see *Costarelli v. Massachusetts*, 421 U.S. 193, 195-97

(1975); *Pugh v. Smith*, 465 F.3d 1295, 1299-1300 (11th Cir. 2006).

Article V, section 3(b), of the Florida Constitution governs the jurisdiction of the Florida Supreme Court. *See Wells v. State*, 132 So.3d 1110, 1112 (Fla. 2014). That provision provides:

- (b) Jurisdiction.—The supreme court:
- (3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

Fla. Const. art. V, § 3(b)(3). In *Wells*, the Florida Supreme Court summarized decisions addressing its jurisdiction under this constitutional provision:

[B]ased on our case law since *Jenkins [v. State]*, 385 So.2d 1356 (Fla.1980)], it is clear that we have explicitly held that this Court lacks discretionary review jurisdiction over the following four types of cases: (1) a per curiam affirmance rendered without written opinion — *see Jenkins*, 385 So.2d at 1359; (2) a per curiam affirmance with a citation to (i) a case not pending review or a case that has not been quashed or reversed by this Court, (ii) a rule of procedure, or (iii) a statute — *see Dodi Publishing [Co. v. Editorial America, S.A.]*, 385 So.2d [1369,] 1369 [(Fla.1980)], and *Jollie [v. State]*, 405 So.2d [418,] 421

[(Fla.1981)]; (3) a per curiam or other unelaborated denial of relief rendered without written opinion — *see Stallworth [v. Moore]*, 827 So.2d [974,] 978 [(Fla. 2002)]; and (4) a per curiam or other unelaborated denial of relief with a citation to (i) a case not pending review or a case that has not been quashed or reversed by this Court, (ii) a rule of procedure, or (iii) a statute — *see Gandy [v. State]*, 846 So.2d [1141,] 1144 [(Fla. 2003)].

132 So.3d at 1113. *See also, e.g., Persaud v. State*, 838 So.2d 529, 532 (Fla. 2003) (“[T]his Court has historically applied the reasoning of *Dodi Publishing* to other district court citation per curiam decisions, like those in *Persaud’s* and *Baker’s* cases, which merely cite to a statute, a rule, or a decision of the United States Supreme Court or this Court.”). In another case, *The Florida Star v. B.J.F.*, the Florida Supreme Court answered a certified question from the U.S. Supreme Court:

This Court in the broadest sense has subject-matter jurisdiction under article V, section 3(b)(3) of the Florida Constitution, over any decision of a district court that expressly addresses a question of law within the four corners of the opinion itself. That is, the opinion must contain a statement or citation effectively establishing a point of law upon which the decision rests.

530 So.2d 286, 288 (Fla. 1988) (footnoted omitted). In a footnote, the Florida Supreme Court explained, “This Court does not, however, have subject-matter jurisdiction over a district court opinion that fails to

expressly address a question of law, such as opinions issued without opinion or citation.” *Id.* n.3.

In Goldson’s case, the First DCA affirmed the direct appeal with the following opinion:

Appellant Segwayne Goldson appeals his judgment of conviction and sentence for sexual battery with physical force likely to cause serious injury and sexual battery. His appointed appellate counsel filed an *Anders* brief. Thereafter, counsel was ordered to file a supplemental brief addressing three issues identified by this court as potentially meritorious. Consideration of the arguments raised on appeal as well as our independent review of the record and applicable law has revealed no reversible error in the circuit court’s proceedings. Accordingly, the judgment of conviction and sentences are AFFIRMED.

Goldson v. State, 241 So.3d 918 (Fla. 1st DCA 2018) (footnote omitted, which cited *Anders* and *In re; Order of First DCA Regarding Brief filed in Forester v. State*, 556 So.2d 1114 (Fla. 1990)); Ex. B12. This affirmance thus appears unelaborated and not reviewable by the Florida Supreme Court. *See Gee v. Sec’y, Fla. Dep’t of Corr.*, No. 3:21cv327-MMH/LLL, 2023 WL 7166656, at *2 *3 (M.D. Fla. Oct. 31, 2023) (“Here, the Florida Supreme Court did not have subject-matter jurisdiction over Gee’s appeal. The First DCA opinion constituted a ‘mere citation’ [to *Williams v. State*, 39 Fla. L. Weekly D1336 (Fla. 1st DCA June 25, 2014),] per curiam affirmance and failed to expressly address a question of law. It did not cite a case ‘pending review’ because the Florida Supreme court never granted the petition for discretionary review in *Williams*. Further,

in the absence of subject-matter jurisdiction, the Florida Supreme Court’s assignment of a case number to Gee’s petition and the *sua sponte* stay had no effect on the finality of Gee’s direct appeal. Because the Florida Supreme Court did not have jurisdiction over Gee’s notice, his judgment and sentence became final when the ninety-day period in which to file a petition for certiorari in the United States Supreme Court expired.” (citations omitted)). *Cf. Pereira v. Sec’y, Dep’t of Corr.*, No. 23-13230, 2025 WL 262382, at *2 (11th Cir. Jan. 22, 2025) (“[T]he district court did not abuse its discretion in denying Pereira’s Rule 60(b) motion because the court correctly determined that his § 2254 petition was untimely. The Fifth DCA’s [one paragraph] opinion expressly resolved a question of law within its four corners by discussing facts from Pereira’s case about the trial court’s failure to enter a written competency order and resolving a procedural issue this raised by remanding for the entry of a *nunc pro tunc* written order declaring Pereira competent to proceed. This means the Florida Supreme Court had discretionary jurisdiction to review the Fifth DCA’s decision, and Pereira’s one-year deadline to file his § 2254 petition began running upon the expiration of the 30 days Pereira had to seek review of the Fifth DCA’s decision before the Florida Supreme Court.”).

Nothing in the four corners of the First DCA’s *Goldson* opinion satisfies the guidelines in *The Florida Star* case for Florida Supreme Court subject-matter jurisdiction. The *Goldson* opinion does not reference or discuss any particular facts in the case, nor does it set out or explain the “potentially meritorious” issues identified by that court in its order directing counsel to file a supplemental brief. The only cases it cites, in

a footnote, are *Anders* and *Forrester*, which concerned briefing requirements in *Anders* cases. Therefore, it does not appear Goldson could have sought Florida Supreme Court review of this unelaborated opinion. *Cf., e.g., Bravo v. Sec’y, Dep’t of Corr.*, No. 1:22cv69-AW/MJF, 2022 WL 17668456, at *1 (N.D. Fla. Dec. 14 2022) (district court order adopting Report and Recommendation and explaining: “Bravo could have sought Florida Supreme Court review of the DCA’s decision because that decision was neither an affirmance without opinion nor an unelaborated opinion. The opinion was not particularly long, but it set out the facts, and it addressed issues of law. It did enough to give the Florida Supreme Court jurisdiction to review.”).

Given this conclusion, Goldson’s § 2254 petition is not untimely. A Florida prisoner’s conviction becomes “final 90 days after the Florida district court of appeal affirm[s] his conviction” where a “prisoner could have sought review in the Supreme Court of the United States without first seeking review in the Supreme Court of Florida.” *Pugh*, 465 F.3d at 1299-1300 (citation omitted). Accordingly, Goldson’s conviction became final for AEDPA purposes on May 21, 2018, when the period for seeking certiorari review with the U.S. Supreme Court expired following the First DCA’s decision affirming his judgment and sentence. *See* Sup. Ct. R. 13; *Gonzalez*, 565 U.S. at 150 (“For petitioners who pursue direct review all the way to this Court, the judgment becomes final at the ‘conclusion of direct review’ — when this Court affirms a conviction on the merits or denies a petition for certiorari. For all other petitioners, the judgment becomes final at the ‘expiration of the time for seeking such review’

— when the time for pursuing direct review in this Court, or in state court, expires.”); *Kaufman v. United States*, 282 F.3d 1336, 1338 (11th Cir. 2002) (concluding that conviction does not become “final” for purposes of § 2555(f)(1) until the 90-day period for seeking certiorari review expires, even if the prisoner does not petition for such review).

Goldson had one year thereafter — until May 21, 2019 — to file his federal habeas petition, absent tolling activity. *See, e.g., Cadet v. Fla. Dep’t of Corr.*, 853 F.3d 1216, 1218 (11th Cir. 2017) (explaining Cadet’s conviction became final “on December 23, 2002, . . . [and] [o]n that same date, Cadet’s one-year statute of limitations for filing a federal habeas petition began to run,” citing 28 U.S.C. § 2244(d)(1)(A)); *Downs v. McNeil*, 520 F.3d 1311, 1318 (11th Cir. 2008) (calculating limitations period according to “anniversary method”); *Ferreira v. Sec’y, Dep’t of Corr.*, 494 F.3d 1286, 1289 n.1 (11th Cir. 2007) (applying anniversary date analysis).

On July 24, 2018, Goldson filed his petition for writ of habeas corpus in the First DCA, stopping the AEDPA clock at 64 days. Ex. C1. Because of overlapping post-conviction filings in state court, Goldson’s AEDPA time remained tolled through October 31, 2022, when the First DCA issued the mandate in the appeal affirming the denial of post-conviction relief. Ex. E6. The clock resumed running on November 1, 2022, and ran for an additional 295 days, until Goldson filed this § 2254 petition on August 22, 2023. ECF No. 1. Because only 359 un-tolled days (64 + 295) of the one-year AEDPA limitations period had passed at this point, Goldson’s petition is timely.

Analysis

Pursuant to 28 U.S.C. § 2254, federal courts may grant habeas corpus relief for persons in state custody. Section 2254(d) provides:

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.

28 U.S.C. § 2254(d). *See, e.g., Cullen v. Pinholster*, 563 U.S. 170, 180-83 (2011); *Gill v. Mecusker*, 633 F.3d 1272, 1287-88 (11th Cir. 2011). “This is a ‘difficult to meet’ and ‘highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt.’” *Cullen*, 563 U.S. at 181 (quoting *Harrington v. Richter*, 562 U.S. 86, 102 (2011), and *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002)). This Court’s review “is limited to the record that was before the state court that adjudicated the claim on the merits.” *Id.*

For IAC claims, the United States Supreme Court has adopted a two-part test:

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

Strickland v. Washington, 466 U.S. 668, 687 (1984). To demonstrate ineffectiveness, a "defendant must show that counsel's performance fell below an objective standard of reasonableness." *Id.* at 688. To demonstrate prejudice, a 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." *Id.* at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* For this Court's purposes, importantly, "[t]he question 'is not whether a federal court believes the state court's determination' under the *Strickland* standard 'was incorrect but whether that determination was unreasonable — a substantially higher threshold.'" *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009) (quoting *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007)). "And, because the *Strickland* standard is a general standard, a state court has even more latitude to reasonably determine that a defendant has not satisfied that standard." *Id.* It is a "doubly

deferential judicial review that applies to a *Strickland* claim evaluated under the § 2254(d)(1) standard.” *Id.*

Ground 1: Appellate IAC-Sentencing Enhancement

In his first ground, Petitioner Goldson asserts the First DCA erred in denying his petition for writ of habeas corpus which had alleged ineffective assistance of appellate counsel. ECF No. 1 at 5. In particular, Goldson asserts his appellate counsel provided ineffective assistance by not raising a point on appeal that his 50-year mandatory sentence as a Dangerous Sexual Felony Offender (DSFO) violated *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. U.S.*, 570 U.S. 99 (2013), where the State did not put Goldson on notice of the DSFO enhancement by charging it in the information. ECF No. 1-2 at 3-6. Respondent indicates Petitioner exhausted this ground in state court. ECF No. 8 at 7.

In particular, Petitioner Goldson raised this claim in his petition for writ of habeas corpus filed by counsel in the First DCA, alleging ineffective assistance of appellate counsel for not challenging his sentence as a DSFO imposed pursuant to section 794.0115, Florida Statutes. Ex. C1. The First DCA denied the petition and explained its decision in an opinion issued March 24, 2020, ultimately concluding that because Goldson had actual notice that he faced a 50-year mandatory minimum DSFO sentence. *Goldson v. State*, 293 So.3d 569 (Fla. 1st DCA 2020).

Specifically, at the outset, the First DCA set forth the background, arguments, and statutes involved:

In 2016, Petitioner was charged with three counts of sexual battery with the use of physical force likely to cause serious injury,

violations of section 794.011, Florida Statutes. After trial Petitioner was found guilty as charged (sexual battery with physical force) as to count 2 of the information and guilty of a lesser offense (sexual battery without physical force) as to count 3. [Ex. B1 at 105.] As to count 2, the jury made a specific finding that Petitioner caused serious personal injury to the victim. [Ex. B1 at 135.]

For count 2, Petitioner was sentenced to a 50-year mandatory minimum term as a DSFO. [Ex. B1 at 160.] For count 3, he was sentenced to 15 years. [Ex. B1 at 162.] The sentences were to run consecutively. [Ex. B1 at 163.]

The State did not charge or allege section 794.0115, Florida Statutes, the DSFO statute, in the information. [See Ex. B1 at 105.] Nonetheless, the State argued at sentencing — and the trial court agreed — that, because the State orally advised Petitioner during a plea offer prior to jury selection that if he did not accept the plea he would be subject to a 50-year mandatory minimum as a DSFO [, Ex. B3 at 192-205], this was sufficient notice to impose the DSFO sentence. [Ex. B4 at 323-25.] In the instant petition, Petitioner argues that the DSFO statute or the element of “actually caused serious personal injury to the victim” should have been included in the information.

The sexual battery statute, section 794.011(3), Florida Statutes, provides:

A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury commits a life felony, punishable as provided in § 775.082, § 775.083, § 775.084, or § 794.0115.

(emphasis added). The last clause of section 794.011(3) expressly indicates that the offense is punishable under the DSFO statute, section 794.0115. Section 794.0115(2), Florida Statutes, provides:

Any person who is convicted of a violation of § 787.025(2)(c); § 794.011(2), (3), (4), (5), or (8); § 800.04(4) or (5); § 825.1025(2) or (3); § 827.071(2), (3), or (4); or § 847.0145; or of any similar offense under a former designation, which offense the person committed when he or she was 18 years of age or older, and the person:

- (a) Caused serious personal injury to the victim as a result of the commission of the offense;

. . . .

is a dangerous sexual felony offender, who must be sentenced to a mandatory minimum term of 25 years imprisonment up to, and including, life imprisonment. If the offense described in this subsection was committed on or after October 1, 2014, a person who qualifies as a dangerous sexual felony offender pursuant to this subsection must be sentenced to a mandatory minimum term of 50 years imprisonment up to, and including, life

imprisonment.

(emphasis added).

Id. at 570. The court then discussed case law:

Generally, where a certain factual finding is necessary to implicate a sentence enhancement statute, the State must charge that fact in the information or cite the enhancement statute in order to provide notice to the defendant that he may face the enhancement. *See, e.g., Arnett v. State*, 128 So.3d 87, 88 (Fla. 1st DCA 2013) (imposition of mandatory minimum under § 775.087(2)(a) was illegal because defendant was not charged with “actual possession” of a firearm); *Davis v. State*, 884 So.2d 1058, 1060-61 (Fla. 2d DCA 2004) (imposition of mandatory term under section 775.087(2)(a) was illegal because information did not charge death or great bodily harm); *Altieri v. State*, 835 So.2d 1181, 1183 (Fla. 4th DCA 2002) (imposition of mandatory minimum under section 775.087(2)(a) was illegal because information did not charge defendant with having discharged a firearm, but only charged him with having “used” a firearm). A special finding by the jury does not cure the defect in the charging document. *Arnett v. State*, 128 So.3d at 88; *Davis*, 884 So.2d at 1060-61. In *Davis v. State*, 277 So.3d 1111 (Fla. 1st DCA 2019), this court reversed and remanded with instructions to “strike the mandatory minimum term of his life sentence for attempted first-degree premeditated murder *because the allegations in the charging*

document were not sufficient to place him on notice that he was subject to an enhanced sentence under section 775.087(2)(a)(3), Florida Statutes (providing for the imposition of a 25-year mandatory minimum when a defendant inflicts death or great bodily harm through the discharge of a firearm).” (Emphasis added). As authority, the Davis panel relied on *Bienaime v. State*, 213 So.3d 927, 929 (Fla. 4th DCA 2017), wherein the Fourth DCA held the State must “allege grounds for enhancement in the charging document” to pursue an enhanced mandatory sentence under the 10-20-Life statute. *Id.*

Id. at 570-71. The court distinguished some of the referenced cases and found a Florida Supreme Court case more applicable:

In this case, the element of the underlying offense — sexual battery in violation of section 794.011(3), Florida Statutes — that the defendant “used actual physical force likely to cause serious personal injury” was charged in the information. The 50-year mandatory minimum under the DSFO statute, section 794.0115(2), Florida Statutes, required a finding that the defendant actually “caused serious personal injury to the victim as a result of the commission of the offense.” These are different requirements such that the inclusion of the “actual physical force likely” element in the information did not also sufficiently put the defendant on notice of the “caused serious personal injury” requirement for DSFO. *Cf. Altieri*, 835

So.2d at 1183 (information alleging that defendant “used” a firearm was insufficient to place defendant on notice that he could be subject to mandatory minimum if he was found to have “discharged” a firearm).

This case differs from *Altieri*, *Davis*, and the others cited above in that there is no indication in those opinions that the defendants were clearly made aware through pretrial hearings that they faced the sentencing enhancement that was not charged in the information. In this case, it is clear that a plea discussion on the record prior to jury selection included a discussion that Petitioner faced a 50-year mandatory minimum as a DSFO. [Ex. B3 at 192-205, 213-16.] The jury also made the factual finding [on the verdict form] which met the statutory requirements. [Ex. B1 at 135-36.] There is very little analysis in the case law whether the defendant must demonstrate prejudice. In *Bradley v. State*, 3 So.3d 1168, 1171 (Fla. 2009), the Florida Supreme Court held that a defendant, in making a nolo contendere plea, could waive a defective information that failed to charge him with discharging a firearm — the fact on which imposition of a mandatory minimum was based. The Florida Supreme Court noted that Bradley’s trial counsel clearly stated at the plea hearing that Bradley faced the mandatory minimum. *Id.* The Florida Supreme Court also noted that Bradley’s plea agreement and the factual stipulation “reflects that he understood the

nature and consequences of his plea, negating any notion that he was misled or prejudiced.” *Id.* Altieri and the other similar cases cited above did not involve a prejudice analysis. While *Bradley* involved a plea and arguably actual acceptance of the defect, we see no reason not to apply a prejudice analysis in the context of the claim we have before us.

The instant case has clear record support that Petitioner knew prior to trial that he faced a 50-year mandatory minimum sentence as a DSFO. [Ex. B3 at 192-205, 213-16; Ex. B4 at 323-25.] We conclude that the instant case is sufficiently similar to the circumstances involving the plea that satisfied the Florida Supreme Court’s analysis in *Bradley*. Similarly to *Bradley*, Petitioner’s trial counsel (as well as the judge and prosecutor) acknowledged at the hearing that Petitioner was facing a 50-year mandatory minimum sentence as a DSFO. Petitioner’s counsel did indicate some inclination to challenge the information prior to the swearing in of the jury, but counsel acknowledged receiving the information and acknowledged the State’s plea offer and Petitioner’s sentencing exposure. Both the judge and the attorneys explained the sentencing exposure to Petitioner. Because Petitioner had actual notice, the petition alleging ineffective assistance of appellate counsel is denied on the merits.

Id. at 571-72.

“An ineffective assistance of appellate counsel claim is governed by the familiar two-part performance-

and-prejudice standard set forth in *Strickland*.” *Clark v. Crosby*, 335 F.3d 1303, 1310 (11th Cir. 2003); *see, e.g., Tuomi v. Sec’y, Fla. Dep’t of Corr.*, 980 F.3d 787, 795 (11th Cir. 2020); *Heath v. Jones*, 941 F.2d 1126, 1130 (11th Cir. 1991). “Counsel’s performance will be deemed prejudicial if . . . ‘the neglected claim would have a reasonable probability of success on appeal.’” *Heath*, 941 F.2d at 1132 (quoting *Cross v. United States*, 893 F.2d 1287, 1290 (11th Cir. 1990))).

In this case, the First DCA’s denial on the merits of the habeas petition alleging ineffective assistance of appellate counsel constitutes an adjudication entitled to deference under 28 U.S.C. § 2254(d). *See Richter*, 562 U.S. at 99. A review of the record supports the court’s determination, as reflected in the citations to the record in the brackets in the quotes from the First DCA’s opinion, *supra*. Given the record, as well as the court’s review of the statutes and case law, it was not unreasonable for the court to conclude that appellate counsel’s performance was not deficient because Goldson had actual notice of the DSFO sentencing enhancement and thus the omitted claim would not have succeeded on appeal.

Regardless of this finding of actual notice, Goldson asserts in his memorandum that “[t]he final fourth amended information failed to place [him] on notice of the DSFO enhancement” and “[t]he fact that DSFO enhancement was noted for the first time just prior to the jury being sworn is irrelevant and did not cure the errors under *Apprendi* and *Alleyne*.” ECF No. 1-2 at 6-7. Goldson relies on three cases: *Gautt v. Lewis*, 489 F.3d 993 (9th Cir. 2007); *Chase v. Macauley*, 971 F.3d 582 (6th Cir. 2020); and *Simmons v. Inch*, No. 3:20cv5461-MCR/EMT, 2021 WL 2905428 (N.D. Fla.

Feb. 24, 2021), *adopted by order of district judge*, 2021 WL 2904921 (N.D. Fla. July 8, 2021). ECF No. 1-2 at 7-9. In particular, he argues:

Though slightly different from Petitioner's case, the foregoing cases show Petitioner is entitled to relief. The holding in *Gault* outlines how Petitioner was constitutionally entitled under *Apprendi* and *Alleyne* to a charging information which apprised him of sentencing enhancements. *Gault* and *Simmons* both show that a charging information's failure to list the sentencing enhancement that a defendant will ultimately be subjected to is not cured by facts adduced at trial or a jury verdict. Thus, the state court finding that the discussion of DSFO cured the defect in the final information resulted in a decision that was contrary to or involved an unreasonable application of *Apprendi* and *Alleyne*. *Chase* shows that the petition alleging ineffective appellate counsel properly preserved Petitioner's claim and warrants relief. Regarding prejudice, Petitioner submits prejudice is easily shown because the 50-year minimum mandatory DSFO sentence on Count Two could not have been imposed absent the uncharged enhancement. Accordingly, the proper remedy is to remand for resentencing without the DSFO enhancement.

ECF No. 1-2 at 9-10.

Respondent asserts Goldson's reliance on these three cases is misplaced "because unlike the instant case, nothing in those decisions indicates that the

defendants had actual knowledge of their exposure to an enhanced sentence prior to trial.” ECF No. 8 at 25. Respondent’s point is well-taken. *Cf.* *Gautt*, 489 F.3d at 998 (*post-Apprendi/pre-Alleyne* and explaining *Gautt* was charged with sentencing enhancement under one statute but had his sentence enhanced under different statute which was not charged); *Chase*, 971 F.3d at 586-87 (explaining sentencing judge used judge-found facts “based on offense variables that had not been found by the jury, such as serving as a “leader,” causing “[bodily injury requiring medical treatment,” and causing “[s]erious psychological injury requiring professional treatment,” as defined in Michigan statutes, to increase mandatory minimum sentence from 135 months to 270 months); *Simmons*, 2021 WL 2905428 at *4 *5, *11-*13 (finding *Alleyne* error because fact underlying 10-year mandatory minimum enhancement — that defendant actually possessed firearm during commission of burglary — was not charged in amended information or found by jury).

Indeed, the Ninth Circuit Court of Appeals has recently explained that its decision in *Gautt*, relied on here by Petitioner Goldson, “did not hold that the [Sixth Amendment notice] inquiry is limited to the information, let alone that clearly established federal law embodies such a limitation.” *Handley v. Moore*, 145 F.4th 1167, 1189 (9th Cir. 2025). In *Handley*, the court affirmed the denial of § 2254 habeas relief to a petitioner who had alleged the denial of his Sixth Amendment right “to be informed of the nature and cause of the accusation” where “he lacked adequate notice of the special allegations” that subjected him to a sentence of life without parole “because they were

omitted from the written information.” *Id.* at 1173. The court summarized its decision:

At the time of the California Court of Appeal’s decision, it was not clearly established that the Sixth Amendment requires state charging documents to allege punishment-enhancing facts such as the special allegations at issue here. Nor was it clearly established that the notice required by the Sixth Amendment must be provided by the written information itself and that it cannot be provided through informal amendment of the information. The record accordingly does not support Handley’s contention that the state court’s decision was “contrary to” clearly established federal law under 28 U.S.C. § 2254(d)(1). We also reject Handley’s contention that the state court’s factual findings regarding informal amendment of the information were objectively unreasonable under § 2254(d)(2). The state court reasonably found that Handley receive notice of and consented to the special allegations during the jury instruction conference. Finally, we reject Handley’s contention that the state court decision was “contrary to” clearly established federal law because he was never expressly informed that the special allegations exposed him to a sentence of life without parole. Handley was informed of the special allegations, and section 209(a) itself states that the punishment triggered by a jury’s true findings on those allegations is life without the possibility of parole. Hendley does not point

to any Supreme Court decision requiring more explicit notice of the prescribed punishment.

Id. at 1173-74.

As did the petitioner in *Hendley*, Petitioner Goldson relies on the U.S. Supreme Court's decisions in *Apprendi* and *Alleyne* in support of his argument that the punishment enhancement had to be alleged in the information. In *Hendley*, the Ninth Circuit explained the holdings of those cases, particularly that neither establish that "the Sixth Amendment requires punishment-enhancing facts to be alleged in a state charging information":

In *Apprendi*, a New Jersey indictment charged the defendant with several state criminal offenses but made no mention of the state's hate crimes statute or the defendant's allegedly racially-motivated purpose in committing the crimes. 530 U.S. at 469. . . . After the defendant pleaded guilty, the state trial court applied the hate crimes statute, found by a preponderance of the evidence that the defendant acted with a racially-motivated purpose, and sentenced the defendant accordingly. *Id.* at 469-71. . . . On review, the Supreme Court quoted [the statement in *Jones v. United States*, 526 U.S. 227 (1999),] that "under the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt" and stated that "[t]he Fourteenth

Amendment commands the same answer in this case involving a state statute.” *Id.* at 476 . . . (quoting *Jones*, 526 U.S. at 243 n.6 . . .). The Court noted, however, that the petitioner “has not here asserted a constitutional claim based on the omission of any reference to sentence enhancement or racial bias in the indictment. . . . We thus do not address the indictment question separately today.” *Id.* at 477 n.3. . . . The Court ultimately held only that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” *Id.* at 490. . . . The holding made no reference to pleading requirements.

. . . .

In *Alleyne v. United States*, 570 U.S. 99 . . . (2013), a federal indictment charged the defendant with using or carrying a firearm in relation to a crime of violence, in violation of 18 U.S. C. § 924(c)(1)(A). *Id.* at 103. . . . Neither the indictment nor the verdict form mentioned § 924(c)(1)(A)(ii), which increases the statute’s minimum sentence to seven years’ imprisonment if the firearm is brandished, and the jury, which convicted the defendant, made no finding that the defendant brandished a weapon. *Id.* at 103-04. . . . The district court, however, found that the defendant brandished a weapon and applied the seven-year statutory minimum. *Id.* at 104. . . . Applying *Apprendi* and the

Sixth Amendment right to jury trial, the Court reversed, holding that “facts that increase mandatory minimum sentences must be submitted to the jury.” *Id.* at 116. . . . In reaching this conclusion, the Court cited the common law principle that “if ‘a statute prescribes a *particular punishment* to be inflicted on those who commit it under special circumstances which it mentions, or with particular aggravations,’ then those special circumstances must be specified in the indictment.” *Id.* at 112.

Id. at 1184-86 (bold emphasis added). The court concluded “there is no Supreme Court decision looking back at the *Apprendi* line of cases and characterizing them as clearly requiring state charging documents to allege punishment-enhancing facts.” *Id.* at 1187. The court further concluded that “the *Apprendi*-era decisions upon which Handley relies do not clearly state that the notice requirement of the Sixth Amendment requires state charging documents to allege punishment-enhancing facts.” *Id.* The court explained:

Apprendi expressly declined to “address the indictment question.” 530 U.S. at 477 n. 3. . . . *Blakely* [*v. Washington*, 542 U.S. 296 (2004)], *Southern Union* [*Co. v. United States*, 567 U.S. 343 (2012)], and *Alleyne* discussed common law principles requiring charging documents to allege each element of an offense, including punishment-enhancing facts, but none of those cases specifically stated that the Sixth Amendment notice requirement incorporates those common law principles.

Id. The court also concluded that “the federal circuits have not, to our knowledge, widely applied [those cases] as setting forth a Sixth Amendment standard requiring state charging documents to allege punishment-enhancing facts.” *Id.* at 1188. Accordingly, the court rejected “Handley’s contention that the *Apprendi* line of decisions clearly established that the Sixth Amendment requires punishment-enhancing facts to be alleged in state charging documents.” *Id.*

Similarly, in this case, Goldson’s contention that he is constitutionally entitled under the *Apprendi* and *Alleyne* decisions to a charging information that apprised him of DSFO sentencing enhancements should be rejected. The First DCA’s conclusion, in denying the petition alleging ineffective assistance of appellate counsel, that Goldson had actual notice of exposure to a 50-year mandatory minimum DSFO sentence did not contravene or involve an unreasonable application of those decisions. The jury specifically found that he “did cause serious personal injury to the victim,” Ex. B1 at 135-36, and thus the state court properly imposed the DSFO sentence.

Based on the foregoing, Petitioner Goldson has not shown the state courts’ rejection of this ground was contrary to, or involved an unreasonable application of, clearly established U.S. Supreme Court precedent, or based on an unreasonable determination of the facts. *See* 28 U.S.C. § 2254(d)(1)-(2). Thus, Goldson’s claim of ineffective assistance of appellate counsel, denied by the First DCA, should also be denied here.

Ground 2(a): Trial IAC — Failure to Investigate and Introduce Photos

In the second ground, Goldson asserts his trial counsel provided ineffective assistance by not investigating and not presenting at trial evidence that would have supported the defense theory, specifically photos the victim had sent Goldson. ECF No. 1 at 7; ECF No. 1-2 at 11-15. Goldson raised this ground as the first claim in his amended Rule 3.850 motion. *See* Ex. E1 at 27-32. The state post-conviction trial court set forth the claim:

- I. In ground one, Defendant argues that his trial counsel was ineffective for failing to present certain photos he allegedly received from [the victim, T.R.]. [Ex. E1 at 28-29.] Defendant alleges that his phone contained pictures of [the victim] and him dancing, pictures of [the victim] drunk, and a picture of [the victim] on his back in a pool. [Ex. E1 at 28-29.] Additionally, his Google drive contained numerous nude pictures of her. [Ex. E1 at 28-29.] He acknowledges that while the Google drive pictures are headless, he notes that [the victim]’s tattoo of stars on her stomach is visible in all of them. [Ex. E1 at 28.] Defendant also notes that the picture properties all list a 2016 creation date, which would have been after the 2015 allegations of previous rapes. [Ex. E1 at 28.]

Defendant points out that this Court ruled that several photos were relevant to the nature of the relationship between Defendant and [the victim]. [Ex. E1 at 27-28, 30.] He acknowledges that trial counsel did use some

of the photos at trial. [Ex. E1 at 30.] However, he urges that counsel should have presented “all” of them. [Ex. E1 at 30.] In his view, the selfie nude photos of [the victim] do not constitute cumulative evidence because they differed in quality and substance from the ones presented at trial. [Ex. E1 at 30-31.] *See Valle v. State*, 502 So.2d 1225, 1226 (Fla. 1987) (evidence not cumulative when “different in quality and substance” from other evidence). He suggests that while [the victim] denied having a relationship with Defendant and sending him nude photos, the photo creation dates and the volume of nude pictures “would lead to the reasonable conclusion that [the victim] was not telling the truth.” [Ex. E1 at 30.]

Defendant argues that trial counsel’s failure to present the additional photos constituted a deficient performance, since the instant case was a “credibility contest” between [the victim] and him and they would have undermined [the victim]’s testimony. [Ex. E1 at 31.] He notes that during trial, [the victim] testified that she never flirted with him, never thought of him in a sexual way, and never sent him any nude pictures; she also conceded that she had stars tattooed on her stomach. [Ex. E1 at 18-19.] He further urges that the additional photos would have “added credence” to his testimony with respect to an “ongoing, clandestine sexual relationship with [the victim].” [Ex. E1 at 31.]

Defendant also argues that he suffered prejudice due to counsel's deficient performance since the additional photos were never presented to the jury. [Ex. E1 at 32.] He urges that if they had been presented, there is a reasonable probability that the jury would have disbelieved [the victim], believed him, and found him not guilty. [Ex. E1 at 32.]

The Court determines that Defendant is not entitled to relief on ground one. The Court finds that . . . he is unable to establish ineffective assistance of counsel as he fails to demonstrate either deficient conduct or prejudice as required under *Strickland v. Washington*.

Ex. E1 at 98-99. The court then made detailed findings in support of its determination to deny relief, first finding no deficient performance:

No deficient performance. First, the Court finds that trial counsel's performance was not deficient under *Strickland* with respect to ground one. Before trial, counsel successfully argued to the Court that certain photos were relevant with respect to the nature of the relationship between [the victim] and Defendant. (T. 5-9). [Ex. B5 at 5-8.] As indicated, during cross examination, counsel elicited testimony from [the victim] that one of the photos showed Defendant and her together at the beach. (T. 94). [Ex. B5 at 94.]

Even to assume for the sake of argument that the additional photos referenced by

Defendant would not have been cumulative, as he urges, trial counsel was not deficient for seeking their admission. As for the photos on Defendant's phone, the record reflects that they were not available to counsel or the State. Corporal Rhinehart testified that he collected Defendant's phone and sent it to FDLE for testing, but FDLE was not able to access its contents.

As for the nude photos of [the victim] on Defendant's Google drive, Defendant himself acknowledges that while [the victim's]'s tattoo of stars on her stomach is visible in them, they were otherwise all headless. [Ex. E1 at 28.] Further, [the victim] in her testimony den[ie]d ever sending Defendant nude photos of herself. (T. 95). [Ex. B5 at 95.] While Defendant suggests that the jury could have chosen to disbelieve [the victim], in view of the number of nude photos involved, he overlooks that the jury just as likely could have chosen to disbelieve Defendant, since, as indicated, he admitted that he twice lied to law enforcement about the facts and circumstances of the instant criminal episode. (T. 229-230). [Ex. B5 at 229-30.]

Because of the issues with the nude photos, trial counsel arguably did better to focus on the photos that showed [the victim] and Defendant together, as part of her effort to show that [the victim] and Defendant had a clandestine relationship. As indicated, counsel got [the victim] to acknowledge that one photo showed Defendant and her together at

the beach, and that a second photo also showed Defendant and her together. (T. 94). [Ex. B5 at 94.] As for the second photo, counsel also got [the victim] to acknowledge that she was wearing a bikini in it. (T. 94). [Ex. B5 at 94.]

In any case, photos aside, trial counsel was also successful in eliciting from [the victim] testimony that would potentially lend credence to Defendant's claim of a clandestine relationship. On cross examination, counsel got [the victim] to admit that she would go to parties with Defendant where her sister was not present. (T. 95). [Ex. B5 at 95.] Counsel also got [the victim] to acknowledge that she lived in the same residence with Defendant on two occasions. On the first occasion, she lived with Defendant, his mother, and her sister in Jamaica. (T. 93). [Ex. B5 at 93.] On the second occasion, she stayed at Defendant's residence for several months when she first came to the United States. (T. 95). [Ex. B5 at 93.] Counsel also got [the victim] to acknowledge that on the second occasion, she stayed at his residence even after he had raped her in Jamaica, and that Defendant slept directly above her in a bunk bed. (T. 95-96). [Ex. B5 at 95-96.] In short, counsel's performance was not deficient.

Ex. E1 at 100-02. The court then went on to find no prejudice, making additional detailed findings:

No prejudice. Next, even to assume for the sake of argument that trial counsel's performance was somehow deficient, the Court

finds that there was no possible prejudice for purposes of *Strickland* with respect to ground one. The Court finds that any deficiency on the part of trial counsel with respect to the additional photos did not deprive Defendant of a fair trial, in view of the strong evidence of guilt adduced at trial. While Defendant claims that the instant case was essentially a credibility contest between [the victim] and him, he overlooks that [the victim]’s testimony was corroborated by testimony from other witnesses and physical evidence.

As indicated, according to [the victim]’s testimony, Defendant ran up to her, pulled her to a wooded area while squeezing her throat. (T. 61-62). [Ex. B5 at 61-62.] She fought back and struggled to get away, pleading with him to let her go and not hurt her, but he pushed her to the ground and tied her hands behind her back. (T. 63-65). [Ex. B5 at 63-66.] He maintained pressure on her throat. (T. 64-65). [Ex. B5 at 64-65.] Defendant took off her shoes, pants, and underwear before raping her. (T. 66-69). [Ex. B5 at 66-69.] She passed out. (T. 70). [Ex. B5 at 68, 70.]

When [the victim] woke up, her hands were untied, and she was still wearing her red shirt. (T. 70, 74). [Ex. B5 at 70, 74.] She was crying. (T. 71). [Ex. B5 at 71.] When she left the scene, she took only her purse, leaving her other articles of clothing behind. (T. 74). [Ex. B5 at 74.] She ran through the woods, flagged down a car, and received a ride home.

(T. 71-72). [Ex. B5 at 71-72.] She used a yellow shirt that was inside her purse to cover the lower part of her body. (T. 74). [Ex. B5 at 74.] [She] attempted to converse with the driver, but he could not understand her. (T. 72). [Ex. B5 at 72.] When she arrived home, she was crying, and she told her roommates what had happened. (T. 72). [Ex. B5 at 72.] [She] went with law enforcement to the crime scene. (T. 77). [Ex. B5 at 77.] In open court, [the victim] recognized her belongings that law enforcement later recovered from the crime scene, including her shoes, pants, socks, and underwear. (T. 75-76). [Ex. B5 at 75-76.]

[The victim]'s testimony regarding a struggle between Defendant and her and Defendant tying her hands behind her back was corroborated by Jordan, the nurse who examined her after the criminal incident and took photographs of [the victim]'s injuries. (T. 191, 194). [Ex. B5 at 191, 194.] As indicated, Jordan saw grass in [the victim]'s hair and bruises on her face. (T. 191). [Ex. B5 at 191.] As also indicated, Jordan testified that the photographs depicted "multiple abrasions" on [the victim]'s neck, an abrasion across the back of her wrist, scratches and bruises on her arms, several abrasions on her left inner thigh, and scratches and abrasions on her face. (T. 196-198). [Ex. B5 at 196-98.] Jordan further testified that the injuries to [the victim]'s wrists appeared to be rope burns. (T. 200). [Ex. B5 at 200.]

[The victim]’s testimony that she flagged down a car was corroborated by Phelps, the man who gave her a ride home. (T. 117). [Ex. B5 at 117.] Consistent with [the victim]’s testimony, Phelps indicated that she was wearing only a red shirt and nothing else when he first saw her, and that he had trouble understanding her as [she] was crying “hysterically.” (T. 117-118). [Ex. B5 at 117-18.] [The victim]’s roommate Salman similarly testified that [the victim] was crying hysterically, was only wearing a shirt and nothing else, with a sheet wrapped around her lower half, and had no shoes on. (T. 122). [Ex. B5 at 122.] [The victim] also had grass and leaves in her hair. (T. 122). [Ex. B5 at 122.]

As a result of the Court’s excited utterance ruling, Salman was allowed to give testimony about [the victim]’s statements about what happened to her. (T. 34). [Ex. B5 at 34.] Notably, the substance of [the victim]’s excited utterance to Salman was consistent with her trial testimony. According to Salman, [the victim] stated that Defendant grabbed her from behind, placed something over her mouth, and started pulling her. (T. 123-124). [Ex. B5 at 123-24.] [The victim] also stated that she told Defendant to stop, but he “raped her.” (T. 124). [Ex. B5 at 124.]

Similar to the testimony given by Phelps and Salman, Deputy Johnson, who responded to [the victim]’s residence, testified that [she] “had been crying,” had grass in her hair, and

had a towel “wrapped around her waist.” (T. 131). [Ex. B5 at 131.] Johnson also corroborated [the victim]’s testimony regarding the location of the criminal incident and the belongings she had left there. According to Johnson, after [the victim] directed him to the scene, he found some articles of clothing, a Wal-Mart receipt, shoes, and undergarments. (T. 132). [Ex. B5 at 132.]

Finally, [the victim]’s testimony about the instant criminal episode was corroborated by her own *Williams* Rule testimony, in which she recounted three prior episodes involving Defendant. As indicated, in all three episodes, Defendant grabbed her by the throat and [she] tried to get away from him. (T. 81, 83-84, 89). [Ex. B5 at 81, 83-83, 89.] As also indicated, she was able to get away from Defendant in the first episode but was unable to do so in the second and third episodes, and then he raped her. (T. 81, 84, 89). [Ex. B5 at 81, 84, 89.] Her *Williams* Rule testimony reinforced her testimony that the sexual activity in the instant episode, in which he also grabbed her by the throat, and tried to get away, was also not consensual. (T. 61). [Ex. B5 at 61.]

In short, [the victim] gave detailed testimony demonstrating that the sexual episode in the instant case was not consensual and the details of her testimony were corroborated by other witnesses and testimony as well as physical evidence. To be sure, Defendant claims that [the victim] and he were in a

clandestine relationship, and that the additional photos would have corroborated that. However, whether or not they were in a clandestine relationship is ultimately not determinative of whether she gave her consent in the instant case. *Cf. State v. Smith*, 401 So.2d 1126, 1129 (Fla. 5th DCA 1981) (“We hold that the fact of marriage carries with it no implied consent to sexual battery as defined under section 794.011, Florida Statutes. The statute proscribes a crime of violence, not a crime of sex.”). Indeed, the evidence, as set forth above, is overwhelming that she did not.

Defendant also overlooks that he substantially undermined his own credibility with the jury. As indicated, Defendant in his testimony admitted that he twice lied to law enforcement, first claiming that he did not have sex with [the victim] at all, and then claiming that they had consensual sex on his living room couch. (T. 229-230). [Ex. B5 at 229-30.] Given his lack of credibility, the jury would have been fully entitled to discount his claim that [the victim] sent him the nude photos.

Accordingly, under the instant circumstances, the Court finds that there was no possible prejudice with respect to counsel’s failure to seek admission of the additional photos. Therefore, the Court summarily denies relief on ground one.

Ex. E1 at 102-06 (footnote omitted).

As indicated above, Goldson appealed the denial of post-conviction relief to the First DCA, which per curiam affirmed the case without a written opinion. Ex. E5. This adjudication on the merits is entitled to AEDPA deference under 28 U.S.C. § 2254(d), even though no reasoning is set forth in the decision. *See Richter*, 562 U.S. at 99 (“When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary.”); *Wright v. Sec’y, Dep’t of Corr.*, 278 F.3d 1245, 1254-55 (11th Cir. 2002). A review of the record supports the state courts’ determination. *See Wilson v. Sellers*, 584 U.S. 122, 125 (2018) (“We hold that the federal court should ‘look through’ the unexplained decision to the last related state-court decision that does provide a relevant rationale. It should then presume that the unexplained decision adopted the same reasoning.”).

In particular, the record references in brackets in the quoted portions of the state post-conviction trial court’s order, above, support the court’s findings regarding the photos that were admitted and defense counsel’s cross-examination of the victim. The record also supports the court’s findings regarding the victim’s testimony about the attack, the details of which were corroborated by other witnesses (Jordan, Phelps, Salman, and Johnson) and physical evidence, and Goldson’s own testimony undermining his own credibility. As that court explained, given all this, the jury could have reasonably discounted his claim that the victim sent him the photos at issue.

Further, in ruling on the motion in limine, the trial court allowed all but four (4) photos (1E, 1F, 1G, and 1H) and indicated those four headless photos may also be admissible “if you can lay the proper foundation for how they were transmitted and whose body we’re looking at, since it’s not apparent.” Ex. B5 at 8. The victim testified during the trial that Goldson took her phone during the attack and she “could hear tapping so [she] knew he was texting.” Ex. B5 at 67. She testified she did not know “if he was still using my phone or his phone.” *Id.* She further testified, “I saw, I’m not sure if he was taking pictures because I saw flashes, and it was dark so I knew he was using the phone to take pictures because I could see the flashes.” *Id.* She “passed out after that.” *Id.* at 68. When she woke up, she did not see Goldson in the area and she could not find her phone. *Id.* at 71. Given this, and that the victim lost her phone in the incident, it is at least arguably not clear how the photos at issue were transmitted and whether they could have been taken by Goldson during the crime.

Based on the foregoing, Petitioner Goldson has not shown the state courts’ rejection of this ground involved an unreasonable application of clearly established federal law or that it was based on an unreasonable determination of the facts. *See* 28 U.S.C. § 2254(d)(1)-(2). This ground should be denied.

Ground 2(b): Trial IAC — Closing Argument

In the second ground alleging IAC of trial counsel, Goldson asserts his “counsel’s closing argument omitted many notable and beneficial facts and inferences adduced at trial.” ECF No. 1-2 at 15; *see* ECF No. 1 at 7. Goldson raised this ground as the second claim in his amended Rule 3.850 motion. *See*

Ex. E1 at 33-37. The state post-conviction trial court set forth the claim:

- II. In ground two, Defendant argues that his trial counsel was ineffective for failing to point out in closing argument the inconsistencies of the State's case and the "inherent unbelievability" of [the victim]'s testimony. [Ex. E1 at 33-34.] While [the victim] stated that she realized she had urinated on her pants when he threw them over her face, he points out that the photograph of the pants showed no wetness. [Ex. E1 at 35.] Similarly, he complains that counsel failed to note that the search of his room did not produce any black outfit, gloves, means to tie [the victim]'s hands, rag with chemicals, or phone belonging to [the victim]. [Ex. E1 at 35.] He also complains that trial counsel also failed to note that no evidence was ever presented that [the victim]'s hands and arms bore any grass or dirt as would be expected. [Ex. E1 at 35-36.] Finally, he complains that counsel failed to take issue with [the victim]'s testimony that he "always" maintained a hand on her throat as he performed the sexual acts. [Ex. E1 at 35.] In his view, "digital penetration, penile penetration, and using a phone, all while keeping a hand on [the victim]'s throat, is not a believable set of events during an alleged rape." [Ex. E1 at 35.]

Defendant argues that he suffered prejudice because of his trial counsel's alleged deficient performance with respect to the closing

argument. [Ex. E1 at 36-37.] He claims that had counsel provided effective assistance, there is a reasonable probability that the jury would have disbelieved [the victim], believed the defense theory of the instant case, and found him not guilty. [Ex. E1 at 36-37.]

Ex. E1 at 106-07. The court then found no deficient performance, making detailed findings:

No deficient performance. First, the Court finds that trial counsel's performance was not deficient under *Strickland* with respect to ground two. Rather, the Court finds that counsel made a cogent and professional closing argument to the jury, in which she, among other things, pointed to testimony that [the victim] and Defendant were in a consensual, clandestine relationship, pointed to inconsistencies in [the victim]'s testimony, took issue with [the victim]'s credibility and the plausibility of her testimony, and sought to offer a reasonable explanation for defendant twice changing his story to law enforcement. [Ex. B5 at 266-69.]

Specifically, in arguing that [the victim] and Defendant were in a consensual, clandestine relationship, trial counsel noted that [the victim] lived with Defendant in Jamaica and the United States and worked with him after the alleged rape incidents. (T. 266-267). [Ex. B5 at 266-67.] Additionally, [the victim] socialized with him both here and in Jamaica before and after these alleged assaults took place. (T. 267). [Ex. B5 at 267.]

Counsel asked rhetorically, “Why does she keep coming back to the States and living near him or around him and working with him or around him if he had been raping her all these times?” (T. 269). [Ex. B5 at 269.] Counsel argued,

[Defendant] told you that they had a consensual relationship behind his girlfriend’s back. That makes sense. It makes sense for many reasons. If they were having consensual sex, then it wouldn’t be scary for her to come and live with [him] here, it wouldn’t be scary for her to come and work with [him] here. If they were having consensual sex so there was nothing to be scared about.

(T. 268). [Ex. B5 at 268.] In this connection, counsel also explained why the relationship was clandestine, while at the same time suggesting a motive for [the victim] not telling the truth: “[Defendant] had consensual sex with her and she doesn’t want to admit it. Her sister is here, she doesn’t want to admit it in front of her sister.” (T. 269). [Ex. B5 at 269.]

Trial counsel pointed out that [the victim]’s testimony was inconsistent with the physical evidence. [Ex. B5 at 267.] Counsel asked rhetorically about the rag that Defendant held over her face and what he used to tie her hands: “And where is the rag that he held over her face and where is whatever he used to tie her hands? If he left everything else

there, which they came and found everything else, right, where are those things?" (T. 267). [Ex. B5 at 267.]

Trial counsel took issue with [the victim]'s credibility and the plausibility of her testimony. [Ex. B5 at 267-68.] Counsel challenged [the victim's] credibility as follows:

[I]f you noticed when [the victim] talked to [the prosecutor] she was very tearful, very upset, but as soon as I started talking to her she got pretty angry and pretty defensive, didn't she? She didn't want to answer my questions, the judge had to tell her to answer my questions because she didn't want to answer them, because she knows that she's not telling the truth. That's the problem here, she knows that everything that we're telling but her relationship with him there and here doesn't make any sense. And she knows that every time she had to answer a question yes, when I asked her if she had been with him in Jamaica and she had been with him she had to say yes, and she didn't want to do that because it doesn't go with her story.

(T. 268). [Ex. B5 at 267-68.] Counsel pointed out that [the victim]'s testimony about the criminal episode was implausible as follows:

[H]ow would [Defendant] know that [the victim] was walking down the path at that particular time? She admitted that he didn't know her schedule at

Hammerhead Fred's, so how did he know she was going to be there? It doesn't make any sense. He's going to dress all in black, get something ready to put over her nose, get something ready to tie her hands with, but he didn't know she was going to be there? So does it make any sense at all? It doesn't.

(T. 267-268). [Ex. B5 at 267-68.]

Finally, trial counsel sought to offer a reasonable explanation for Defendant changing his story as follows:

He told you that he lied because he didn't want to get in trouble, and that's the truth, he didn't want to get in trouble here. Things must be different in Jamaica, he thought if he said anything at all, first, about having sex, he was gonna go get locked up. Then he thought that here you would get [in] trouble if you did something outside, so he didn't want to tell that, either. Was he smart about that? No. Does that make him a rapist? No.

(T. 269). [Ex. B5 at 269.]

To be sure, trial counsel did not point to every inconsistency in [the victim]'s testimony or to every implausible aspect of it. As Defendant argues, counsel did not specifically point to the alleged inconsistency about [the victim] urinating on her pants, or the lack of grass or dirt on her hands. [Ex. E1 at 35-36.] And while counsel did not specifically point to the

lack of corroborating evidence of a black outfit, gloves, or phone belonging to [the victim], as noted counsel did point to the absence of other such evidence, namely the absence of the rag that Defendant held over her face and what he used to tie her hands. (T. 267). [Ex. B5 at 269.] Counsel also did not take issue with [the victim] testifying that Defendant “always” maintained a hand on her throat as he performed the sexual acts against her. [Ex. E1 at 35.] However, [the victim]’s testimony could be fairly construed simply to mean that according to her, Defendant continually kept his hand over her throat. Counsel otherwise did well not to quibble with [the victim]’s choice of words, as doing so could have well backfired. In any case, as indicated, counsel did point to other implausible aspects of her testimony, namely her testimony that Defendant was lying in wait for her when he admittedly did not know her work schedule that night. (T. 267-268). [Ex. B5 at 267-68.]

In short, trial counsel’s performance was not deficient under *Strickland* with respect to her closing argument.

Ex. E1 at 107-10 (footnote omitted regarding “alleged inconsistency about [the victim] urinating on her pants, or the lack of grass on or dirt on her hands,” stating: “However, whether [the victim] urinated on her pants was not a critical portion of her testimony, and the mere absence [of] grass or dirt on her hands would not necessarily indicate that she was not on the ground with her hands behind her back.”).

The court went on to find no prejudice, given the overwhelming evidence of guilt previously discussed:

No prejudice. Next, even to assume for the sake of argument that trial counsel's performance was somehow deficient, the Court finds that there was no possible prejudice for purposes of *Strickland* with respect to ground two, in light of the evidence and testimony set forth above in the discussion of lack of prejudice for ground one, which reflects that the evidence was "overwhelming" that she did [not] consent. Therefore, the Court summarily denies relief on ground two.

Ex. E1 at 111. As indicated above, Goldson appealed the denial of post-conviction relief to the First DCA, which per curiam affirmed the case without a written opinion. Ex. E5. This adjudication on the merits is entitled to AEDPA deference under 28 U.S.C. § 2254(d), even though no reasoning is set forth in the decision. *See Richter*, 562 U.S. at 99; *Wright*, 278 F.3d at 1254-55. A review of the record supports the state courts' determination. *See Wilson*, 584 U.S. at 125.

In particular, the record references in brackets in the quoted portions of the order, above, support the state post-conviction trial court's findings regarding the points made by defense counsel in the closing argument. As that court explained, defense counsel challenged the victim's testimony using particular examples and also attempted to explain why Goldson lied and changed his story. The court also pointed out that whether the victim urinated on her pants (which may not have been visible in a photograph at any rate) was not a critical part of her testimony and the absence of

grass or dirt on her hands does not necessarily indicate she was not on the ground. As the court indicated, defense counsel perhaps strategically chose not to challenge the victim's testimony that Goldson "always" maintained a hand on her throat as that may have been how the victim perceived it and taking issue with the victim's word choice may have backfired.

Based on the foregoing, Petitioner Goldson has not shown the state courts' rejection of this ground was contrary to, or involved an unreasonable application of, clearly established U.S. Supreme Court precedent, or based on an unreasonable determination of the facts. *See* 28 U.S.C. § 2254(d)(1)-(2). Accordingly, this ground should be denied.

Conclusion

The § 2254 petition is timely, but Petitioner Goldson is not entitled to federal habeas relief. Therefore, it is respectfully recommended that the petition, ECF No. 1, be DENIED.

Certificate of Appealability

Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts provides that "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant," and if a certificate is issued "the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2)." Rule 11(b) provides that a timely notice of appeal must still be filed, even if the court issues a certificate of appealability.

Petitioner fails to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000) (explaining substantial showing) (citation omitted). Therefore, the Court should deny a certificate of appealability. The second sentence of Rule 11(a) provides: “Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue.” The parties shall make any argument regarding a certificate by filing objections to this Report and Recommendation.

Leave to appeal in forma pauperis should also be denied. *See* Fed. R. App. P. 24(a)(3)(A) (providing that before or after notice of appeal is filed, the court may certify appeal is not in good faith or party is not otherwise entitled to appeal in forma pauperis).

Recommendation

It is therefore respectfully RECOMMENDED that the Court DENY the § 2254 petition (ECF No. 1). It is further RECOMMENDED that a certificate of appealability be DENIED and that leave to appeal in forma pauperis be DENIED.

IN CHAMBERS at Tallahassee, Florida, on September 15, 2025.

/s/ Martin A. Fitzpatrick
U.S. Magistrate Judge

**ORDER DENYING PETITION FOR REVIEW,
SUPREME COURT OF FLORIDA
(AUGUST 4, 2020)**

SUPREME COURT OF FLORIDA

SEGWAYNE GOLDSON,

Petitioner(s),

v.

STATE OF FLORIDA,

Respondent(s).

No. SC20-592

Lower Tribunal No(s).: 1D18-3080;
032016CF002683XXAXMX

Before: POLSTON, LABARGA, LAWSON,
MUNIZ, and COURIEL, Judges.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

A True Copy

Test:

/s/ John A. Tomasino

Clerk, Supreme Court

[SEAL]

db

Served:

ROBERT "CHARLIE" LEE

ROBERT D. MALOVE

STEVEN E. WOODS

HON. BILL KINSAUL, CLERK

HON. KRISTINA SAMUELS, CLERK

HON. MICHAEL § ORFINGER, WDGE

**OPINION ON MOTION FOR REHEARING,
CERTIFICATION, AND/OR ISSUANCE OF A
WRITTEN OPINION, FIRST DISTRICT COURT
OF APPEAL STATE OF FLORIDA
(MARCH 24, 2020)**

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

SEGWAYNE GOLDSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

No. 1D18-3080

Petition Alleging Ineffective Assistance of Appellate
Counsel – Original Jurisdiction.

Before: WOLF, ROBERTS, ROWE, Judges.

**OPINION ON MOTION FOR REHEARING,
CERTIFICATION, AND/OR ISSUANCE OF A
WRITTEN OPINION, FIRST DISTRICT COURT
OF APPEAL STATE OF FLORIDA**

WOLF, J.

We previously denied Goldson’s petition alleging ineffective assistance of appellate counsel. On rehearing,

Petitioner continues to assert that his appellate counsel was ineffective for not challenging his sentence as a dangerous sexual felony offender (DSFO) pursuant to section 794.0115, Florida Statutes, because the information did not allege a violation of that statute. We write to explain our decision to deny the petition; therefore, we deny appellant's motion for rehearing and certification but grant the motion for issuance of a written opinion.

In 2016, Petitioner was charged with three counts of sexual battery with the use of physical force likely to cause serious injury, violations of section 794.011, Florida Statutes. After trial Petitioner was found guilty as charged (sexual battery with physical force) as to count 2 of the information and guilty of a lesser offense (sexual battery without physical force) as to count 3. As to count 2, the jury made a specific finding that Petitioner caused serious personal injury to the victim.

For count 2, Petitioner was sentenced to a 50-year mandatory minimum term as a DSFO. For count 3, he was sentenced to 15 years. The sentences were to run consecutively.

The State did not charge or allege section 794.0115, Florida Statutes, the DSFO statute, in the information. Nonetheless, the State argued at sentencing—and the trial court agreed—that, because the State orally advised Petitioner during a plea offer prior to jury selection that if he did not accept the plea he would be subject to a 50-year mandatory minimum as a DSFO, this was sufficient notice to impose the DSFO sentence. In the instant petition, Petitioner argues that the DSFO statute or the element of “actu-

ally caused serious personal injury to the victim” should have been included in the information.

The sexual battery statute, section 794.011(3), Florida Statutes, provides:

A person who commits sexual battery upon a person 12 years of age or older, without that person’s consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury commits a life felony, punishable as provided in § 775.082, § 775.083, § 775.084, or § 794.0115.

(emphasis added). The last clause of section 794.011(3) expressly indicates that the offense is punishable under the DSFO statute, section 794.0115. Section 794.0115(2), Florida Statutes, provides:

Any person who is convicted of a violation of § 787.025(2)(c); § 794.011(2), (3), (4), (5), or (8); § 800.04(4) or (5); § 825.1025(2) or (3); § 827.071(2), (3), or (4); or § 847.0145; or of any similar offense under a former designation, which offense the person committed when he or she was 18 years of age or older, and the person:

(a) Caused serious personal injury to the victim as a result of the commission of the offense;

....

is a dangerous sexual felony offender, who must be sentenced to a mandatory minimum term of 25 years imprisonment up to, and including, life imprisonment. If the offense

described in this subsection was committed on or after October 1, 2014, a person who qualifies as a dangerous sexual felony offender pursuant to this subsection must be sentenced to a mandatory minimum term of 50 years imprisonment up to, and including, life imprisonment.

(Emphasis added).

Generally, where a certain factual finding is necessary to implicate a sentence enhancement statute, the State must charge that fact in the information or cite the enhancement statute in order to provide notice to the defendant that he may face the enhancement. *See, e.g., Arnett v. State*, 128 So.3d 87, 88 (Fla. 1st DCA 2013) (imposition of mandatory minimum under § 775.087(2)(a) was illegal because defendant was not charged with “actual possession” of a firearm); *Davis v. State*, 884 So.2d 1058, 1060-61 (Fla. 2d DCA 2004) (imposition of mandatory term under section 775.087(2)(a) was illegal because information did not charge death or great bodily harm); *Altieri v. State*, 835 So.2d 1181, 1183 (Fla. 4th DCA 2002) (imposition of mandatory minimum under section 775.087(2)(a) was illegal because information did not charge defendant with having discharged a firearm, but only charged him with having “used” a firearm). A special finding by the jury does not cure the defect in the charging document. *Arnett v. State*, 128 So.3d at 88; *Davis*, 884 So.2d at 1060-61. In *Davis v. State*, 277 So.3d 1111 (Fla. 1st DCA 2019), this court reversed and remanded with instructions to “strike the mandatory minimum term of his life sentence for attempted first-degree premeditated murder *because the allegations in the charging document were not*

sufficient to place him on notice that he was subject to an enhanced sentence under section 775.087(2)(a)(3), Florida Statutes (providing for the imposition of a 25-year mandatory minimum when a defendant inflicts death or great bodily harm through the discharge of a firearm).” (Emphasis added). As authority, the *Davis* panel relied on *Bienaime v. State*, 213 So.3d 927, 929 (Fla. 4th DCA 2017), wherein the Fourth DCA held the State must “allege grounds for enhancement in the charging document” to pursue an enhanced mandatory sentence under the 10-20-Life statute. *Id.*

In this case, the element of the underlying offense—sexual battery in violation of section 794.011(3), Florida Statutes—that the defendant “used actual physical force likely to cause serious personal injury” was charged in the information. The 50-year mandatory minimum under the DSFO statute, section 794.0115(2), Florida Statutes, required a finding that the defendant actually “caused serious personal injury to the victim as a result of the commission of the offense.” These are different requirements such that the inclusion of the “actual physical force likely” element in the information did not also sufficiently put the defendant on notice of the “caused serious personal injury” requirement for DSFO. *Cf. Altieri*, 835 So.2d at 1183 (information alleging that defendant “used” a firearm was insufficient to place defendant on notice that he could be subject to mandatory minimum if he was found to have “discharged” a firearm).

This case differs from *Altieri*, *Davis*, and the others cited above in that there is no indication in those opinions that the defendants were clearly made aware through pretrial hearings that they faced the sentencing enhancement that was not charged in the

information. In this case, it is clear that a plea discussion on the record prior to jury selection included a discussion that Petitioner faced a 50-year mandatory minimum as a DSFO. The jury also made the factual finding which met the statutory requirements. There is very little analysis in the case law whether the defendant must demonstrate prejudice. In *Bradley v. State*, 3 So.3d 1168, 1171 (Fla. 2009), the Florida Supreme Court held that a defendant, in making a nolo contendere plea, could waive a defective information that failed to charge him with discharging a firearm—the fact on which imposition of a mandatory minimum was based. The Florida Supreme Court noted that Bradley’s trial counsel clearly stated at the plea hearing that Bradley faced the mandatory minimum. *Id.* The Florida Supreme Court also noted that Bradley’s plea agreement and the factual stipulation “reflects that he understood the nature and consequences of his plea, negating any notion that he was misled or prejudiced.” *Id.* *Altieri* and the other similar cases cited above did not involve a prejudice analysis. While *Bradley* involved a plea and arguably actual acceptance of the defect, we see no reason not to apply a prejudice analysis in the context of the claim we have before us.

The instant case has clear record support that Petitioner knew prior to trial that he faced a 50-year mandatory minimum sentence as a DSFO. We conclude that the instant case is sufficiently similar to the circumstances involving the plea that satisfied the Florida Supreme Court’s analysis in *Bradley*. Similarly to *Bradley*, Petitioner’s trial counsel (as well as the judge and prosecutor) acknowledged at the hearing that Petitioner was facing a 50-year mandatory mini-

mum sentence as a DSFO. Petitioner's counsel did indicate some inclination to challenge the information prior to the swearing in of the jury, but counsel acknowledged receiving the information and acknowledged the State's plea offer and Petitioner's sentencing exposure. Both the judge and the attorneys explained the sentencing exposure to Petitioner. Because Petitioner had actual notice, the petition alleging ineffective assistance of appellate counsel is denied on the merits.

ROBERTS, J., concurs; ROWE, J., concurs in result.

**ORDER DENYING PETITION ALLEGING
INEFFECTIVE ASSISTANCE OF APPELLATE
COUNSEL, FIRST DISTRICT COURT OF
APPEAL STATE OF FLORIDA
(OCTOBER 31, 2019)**

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

SEGWAYNE GOLDSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

No. 1D18-3080

Petition Alleging Ineffective Assistance of Appellate
Counsel – Original Jurisdiction.

Before: WOLF, ROBERTS, ROWE, Judges.

PER CURIAM.

The petition alleging ineffective assistance of appellate counsel is denied on the merits.

**PER CURIAM OPINION, FIRST DISTRICT
COURT OF APPEAL STATE OF FLORIDA
(FEBRUARY 20, 2018)**

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

SEGWAYNE GOLDSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 1D16-5299

On appeal from the Circuit Court for Bay County.

Michael C. Overstreet, Judge

Before: BILBREY, WINSOR, and
M.K. THOMAS, Judges.

PER CURIAM.

Appellant Segwayne Goldson appeals his judgment of conviction and sentence for sexual battery with physical force likely to cause serious injury and sexual battery. His appointed appellate counsel filed

an *Anders* brief.¹ Thereafter, counsel was ordered to file a supplemental brief addressing three issues identified by this court as potentially meritorious. Consideration of the arguments raised on appeal as well as our independent review of the record and applicable law has revealed no reversible error in the circuit court's proceedings. Accordingly, the judgment of conviction and sentences are AFFIRMED.

¹ See *Anders v. California*, 386 U.S. 738 (1967), and *In re Order of First Dist. Court of Appeal Regarding Brief Filed in Forrester v. State*, 556 So.2d 1114 (Fla. 1990).

**JUDGMENT AND SENTENCE, CIRCUIT
COURT, FOURTEENTH JUDICIAL CIRCUIT,
IN AND FOR BAY COUNTY, FLORIDA
(NOVEMBER 10, 2016)**

Segwayne Goldson vs. State of Florida

LT Case No: 16002683CFMA

HT. Case No: 1D16-5299

Judge: Michael C. Overstreet

Court Reporter: 3:44pm

State Attorney: Beasley, Barbara F

State vs. Goldson Segwayne Kira Anthony

Clerk: Joanne Gilpin

Pro bation Off: {signature not legible}

Defense Attorney: McCarthy Laura, Jonathan, Dingus

Date: 11/10/2016

Case# 16002683CFMA

Count 1 – Charge SEXUAL BATTERY–PHYSICAL
FORCE LIKELY TO CAUSE SERIOUS PERSONAL
INJURY – Prev found . . .

OBTS 0303032063 – Action FILED

Count 2 – Charge SEXUAL BATTERY–PHYSICAL
FORCE LIKELY TO CAUSE SERIOUS PERSONAL
INJURY

Action FILED

Count 3 – Charge SEXUAL BATTERY

Action FILED

PLEA

PSI – Prev Found Guilty by Jury or Cts. 2 on 10-22-16

SENTENCING

Case # 16-2683 Ct. 2

☒ GUILTY

DOC – 50 yrs

BCJA – 94 dy

REST – Reserved

Case # 16-2683 Ct. 3

☒ GUILTY

DOC – 15 yrs

BCJA – 94 dy

REST – 1

CONSECT – Ct 2.

APPEAL ☒

Comments – . . .

1. Motion Fee Post Trial Judgment of Acquitted
Notwithstanding
2. The Jurt Verdict – Denied by Court
[. . .]
4. Motion for New Trial – Denied by Court

Order for substitution of Counsel signed by Court

Sent as Dangerous Sexual Offender & sentenced as
Sex offender

Def declared Indigent for purpose of Appeal
Previously found Not Guilty as to Ct 1 by Jury

[. . .]

The defendant, GOLDSON, SEGWAYNE KIRK ANTHON, being personally before this court

represented by JONATHAN WESLEY DINGUS,
the attorney of record, and the state

represented by BEASLEY, BARBARA F, and
having:

☒ been tried and found guilty by jury of the
following crime(s).

**Count II – Crime SEXUAL BATTERY–
PHYSICAL FORCE LIKELY TO CAUSE
SERIOUS PERSONAL INJURY.**

Minimum Fine: \$0.00.

Offense State Number(s): 794011.

Degree of Crime: LF.

Case Number: 16002683CFMA.

OBTS Number: DIRECT.

Count III – Crime SEXUAL BATTERY.

Minimum Fine: \$0.00.

Offense State Number(s): 794011.

Degree of Crime: 1F.

Case Number: 16002683CFMA.

OBTS Number: DIRECT.

☒ And no cause being shown why the defendant
should not be adjudicated guilty, IT IS

ORDERED that the defendant is hereby
ADJUDICATED GUILTY of the above
crime(s).

- ☒ And pursuant to section 943.325, Florida Statutes, having been convicted of attempts or offenses relating to sexual battery (ch. 794) or lewd and lascivious conduct (ch. 800), the defendant shall be required to submit to blood specimens.

FINGERPRINTS OF DEFENDANT

1. Right Thumb



2. Right Index



3. Right Middle



4. Right Ring



5. Right Little



6. Left Thumb



7. Left Index



8. Left Middle



9. Left Ring



10. Left Little



Fingerprints taken by: Howard Alexander
Name

Title: Deputy Sheriff

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, Segwayne Kirk Goldson, and that they were placed thereon by the defendant in my presence in open court this date.

DONE AND ORDERED in open court in Bay County, Florida, this 10 day of November, 2016.

/s/ Michael C. Overstreet
Judge

As to Count 2 – SEXUAL BATTERY – PHYSICAL
FORCE LIKELY TO CAUSE SERIOUS PERSONAL
INJURY

The defendant, being personally before this court, accompanied by the defendant's attorney of record, JONATHAN WESLEY DINGUS, and having been adjudicated guilty herein, and the court having given the defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law, and no cause being shown.

IT IS THE SENTENCE OF THE COURT THAT:

- ☒ The defendant is hereby committed to the custody of the Department of Corrections.

TO BE IMPRISONED (MARK ONE, UNMARKED SECTIONS ARE INAPPLICABLE):

Minimum Mandatory

- ☒ For a term of 50.00 Years

STATUTORY PROVISION INVOLVED

Fla. Stat. 794.0115 [2016]

Dangerous sexual felony offender; mandatory sentencing

- (1) This section may be cited as the “Dangerous Sexual Felony Offender Act.”
- (2) Any person who is convicted of a violation of § 787.025(2)(c); § 794.011(2), (3), (4), (5), or (8); § 800.04(4) or (5); § 825.1025(2) or (3); § 827.071(2), (3), or (4); or § 847.0145; or of any similar offense under a former designation, which offense the person committed when he or she was 18 years of age or older, and the person:
 - (a) Caused serious personal injury to the victim as a result of the commission of the offense;
 - (b) Used or threatened to use a deadly weapon during the commission of the offense;
 - (c) Victimized more than one person during the course of the criminal episode applicable to the offense;
 - (d) Committed the offense while under the jurisdiction of a court for a felony offense under the laws of this state, for an offense that is a felony in another jurisdiction, or for an offense that would be a felony if that offense were committed in this state; or
 - (e) Has previously been convicted of a violation of § 787.025(2)(c); § 794.011(2), (3), (4), (5), or (8); § 800.04(4) or (5); § 825.1025(2) or (3); § 827.071(2), (3), or (4); § 847.0145; of any

offense under a former statutory designation which is similar in elements to an offense described in this paragraph; or of any offense that is a felony in another jurisdiction, or would be a felony if that offense were committed in this state, and which is similar in elements to an offense described in this paragraph, is a dangerous sexual felony offender, who must be sentenced to a mandatory minimum term of 25 years imprisonment up to, and including, life imprisonment. If the offense described in this subsection was committed on or after October 1, 2014, a person who qualifies as a dangerous sexual felony offender pursuant to this subsection must be sentenced to a mandatory minimum term of 50 years imprisonment up to, and including, life imprisonment.

- (3) “Serious personal injury” means great bodily harm or pain, permanent disability, or permanent disfigurement.
- (4) The offense described in subsection (2) which is being charged must have been committed after the date of commission of the last prior conviction for an offense that is a prior conviction described in paragraph (2)(e).
- (5) It is irrelevant that a factor listed in subsection (2) is an element of an offense described in that subsection. It is also irrelevant that such an offense was reclassified to a higher felony degree under § 794.023 or any other law.
- (6) Notwithstanding § 775.082(3), chapter 958, any other law, or any interpretation or construction

thereof, a person subject to sentencing under this section must be sentenced to the mandatory term of imprisonment provided under this section. If the mandatory minimum term of imprisonment imposed under this section exceeds the maximum sentence authorized under § 775.082, § 775.084, or chapter 921, the mandatory minimum term of imprisonment under this section must be imposed. If the mandatory minimum term of imprisonment under this section is less than the sentence that could be imposed under § 775.082, § 775.084, or chapter 921, the sentence imposed must include the mandatory minimum term of imprisonment under this section.

- (7) A defendant sentenced to a mandatory minimum term of imprisonment under this section is not eligible for statutory gain-time under § 944.275 or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under § 947.149, before serving the minimum sentence.

**SENTENCING HEARING TRANSCRIPT,
CIRCUIT COURT, FOURTEENTH JUDICIAL
CIRCUIT, BAY COUNTY, FLORIDA
(NOVEMBER 10, 2016)**

IN THE CIRCUIT COURT, FOURTEENTH
JUDICIAL CIRCUIT IN AND FOR
BAY COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

SEGWAYNE KIRK ANTHONY GOLDSON,

Defendant.

Case No: 03-2016-CF-002683-AM

Before: Hon. Michael C. OVERSTREET, Circuit Judge.

[November 10, 2016, Transcript, p.3]

THE COURT: All right. So we're here in *State versus Segwayne Kirk Anthony Goldson*, Case 16-2683. Mr. Goldson attended a jury trial in October. The jury found that he was guilty of sexual battery, physical force likely to cause serious personal injury. That was as to Count II, and they found that as matter of fact, that in Count II, that he did cause serious personal injury to the victim. They found him not guilty of Count I and they found him guilty of a lesser included, Count III,

sexual battery. And accordingly marked that there was no personal injury caused to the victim, at least as it related to that particular count.

And so sentence has, sentencing was scheduled for today. A presentence investigation was ordered, and one's been prepared, and I've reviewed it. In the interim, apparently he substituted counsel, who filed a motion to, for . . .

MR. DINGUS: Substitution of counsel.

THE COURT: Huh?

MR. DINGUS: Substitution of counsel.

THE COURT: Well, we've got that part and that's been granted. And also on his behalf, filed a motion for judgment notwithstanding the verdict. What else was it, a motion for new trial?

MS. BEASLEY: That's correct, your Honor.

THE COURT: And I've read those and I think they've been provided to opposing counsel. If you want to argue those briefly, you're welcome to do so.

MR. DINGUS: Thank you, Judge. As an initial matter, I have the original copy of the substitution of counsel motion. I don't know if there's been an order signed by your Honor, but I have an order at the bottom of that document that has room for your signature.

THE COURT: Yeah, I want to say that I signed it already, but I'll sign it again.

MR. DINGUS: Okay.

THE CLERK: I don't see a copy.

THE COURT: Huh?

THE CLERK: I don't see an order, but —

THE COURT: I've seen this, though. So maybe I saw it on ICMS.

THE CLERK:—we just don't have it yet.

THE COURT: Anyway, you're appointed. Nunc pro tune.

MR. DINGUS: Thank you, Judge. Judge, on the motion for new trial, I don't have anything to add beyond what's in the body of the motion. I have some family members that would like to speak upon Mr. Goldson's behalf. As far as the motion for judgment notwithstanding verdict or judgment of acquittal post trial, I invite the Court to take a look at several cases. I've provided a copy for the Court, as well as the State. The first is *Nettles versus State*. It's found at 112 So.3d 782, a First District Court case from 19—excuse me, from 2013. *Starling versus State*, found at 152 So.3d 868, from 2014. That's also a pronouncement of the First District Court of Appeal. *State versus Jimenez* 542 So.2d 430, a pronouncement of the Third District. And then *T.F. versus State* found at 38 So.3d 196.

Judge, all these cases stand for the proposition that there, Florida law allows a verdict for a factual inconsistency, but requires reversal for a legal inconsistency. We would argue to the Court that the verdict rendered by the jury was legally inconsistent in that they made findings of fact of no bodily injury on Count I—no, no serious personal injury, excuse me, on Count I, and no serious personal injury on Count III. Count I —

THE COURT: Actually, they found him not guilty of Count I, not —

MR. DINGUS: Right, but if you look at the second page, or the third page, as it is, they went further and made an additional finding that there was no serious personal bodily injury.

THE COURT: Right.

MR. DINGUS: Count I dealt with penile to oral contact. That was the one that they found there was no serious personal injury. And Count III involved finger to vaginal penetration. They found a finding of no serious personal injury on that. The serious personal injury was found on Count II, which involved penile to vaginal penetration.

THE COURT: All right. And I thought that, just for the record, I think Count I was actually oral vaginal, not penile oral. Am I, I know it's —

MS. BEASLEY: Count I, your Honor, just for the record, was oral sex. Count II —

THE COURT: Oral sex between —

MS. BEASLEY: The defendant on the victim.

THE COURT: On the victim. Not, not oral sex by the victim on the defendant.

MR. DINGUS: I stand corrected.

THE COURT: Yes, you do.

MR. DINGUS: In any event, that doesn't change my argument, legally.

THE COURT: I just, I like the record to be accurate.

MR. DINGUS: As do I.

THE COURT: Okay.

MR. DINGUS: My mistake, my bad. In any event, I would take the position that this was one continuous course of activity, so it's based on the limited factual finding the jury made, in addition to finding him guilty of the charge as is in Count II and the charge as lesser included in Count III, based on the findings of no bodily injury—serious personal injury, excuse me, as to Count I and Count III, the verdict is legally inconsistent. The cases that I've provided stand for that proposition.

The case cited by the State stand for the proposition that you can have multiple counts based on multiple acts. We don't take issue with that. We agree that that's the law. Our argument is basically that the verdict is legally inconsistent based on the special findings by the jury.

THE COURT: Okay.

MS. BEASLEY: And, your Honor, when you read those cases that were provided by the defense, inconsistent verdicts are permissible and there's only one instance when they're not. That's when one (inaudible) in which there's a not guilty verdict on one count that negates an element of the second count.

THE COURT: All right.

MS. BEASLEY: That's the condition and that's not what we have here. They're each separate events, they're each separate crimes, according to the

Grunzel case that I supplied to you and defense earlier.

THE COURT: All right. And *Grunzel*, is it *Grunzel*, am I —

MS. BEASLEY: Yes, your Honor.

THE COURT: *Grunzel*, as you, I guess, stated a moment ago, Mr. Dingus, stands for the proposition that you could actually have, as was charged here for three, excuse me, three separate acts of sexual battery all within the same event, as long as they're different. So I know you're not arguing that now, apparently. You're just simply saying the verdict's inconsistent because they made a finding that there was no bodily injury in one and there was in the other? I'm trying to follow your argument.

MR. DINGUS: From the limited argu—, from the limited record that we have at this point—we don't have a transcript of the trial.

THE COURT: Oh, okay.

MR. DINGUS: It's not clear as to what serious personal injury was visited on the victim by the defendant. We know that the jury made a finding that it did not occur during the oral sex, in Count I, because they made that finding.

THE COURT: They made a finding, yeah, they also made a finding that it didn't happen. They specifically found him not guilty of committing a sexual battery on her at all by his mouth by her vaginal space.

MR. DINGUS: Correct.

THE COURT: So the, what—of the other two counts, what is inconsistent in your mind, I guess is what I'm getting at?

MR. DINGUS: Well, from the limited record that we have at this point, it's not, it's unclear as to what act the defendant did to cause serious personal injury to the victim.

THE COURT: I think we can, I don't want to try to—maybe you remember better than I do, but I have a pretty good recollection. Why don't you address that?

MS. BEASLEY: I do recall, during the trial, she testified quite vividly about being strangled by Mr. Goldson, how painful it was to be strangled, how she was struggling to breathe and the pain of not being able to breathe. Darkness coming, that she thought she was going to die, and she prayed to die so the pain would stop.

THE COURT: And I think there were also, just and again please correct me if I'm, my memory is not accurate, but there were, there was photographic evidence of petechial type bruises to her neck where she claimed she had been strangled by him. And I think she also said she passed out at some point and when—

MS. BEASLEY: That's correct, your Honor.

THE COURT:—she awakened, or passed out ostensibly from the choking and when she awakened, he was not around. I don't know—

MR. DINGUS: And I will confess I wasn't trial counsel for the —

THE COURT: Right, right.

MR. DINGUS: So I guess our argument would be that given that, the strangulation type injuries, our position is that would have had to have occurred during the penile to vaginal penetration for that to be recognizable by the Court for purposes of the enhanced sentence the State is seeking here.

THE COURT: Well, I don't want to, I don't want to speak out of turn again, but I think that's what Count II was, was it not? What was Count II?

MS. BEASLEY: Count II, your Honor, was the vaginal penetration by the defendant's penis.

THE COURT: Yeah. And that's the one they found, not only—that's the one they found physical violence, right?

MS. BEASLEY: Correct.

THE COURT: Physical injury.

MR. DINGUS: And if, and if the record as we have it supports that, we may be dead in the water on that. I'm just suggesting that if the record reflects that those injuries did not occur during that part of this en—, encounter is the wrong word, series of acts, then I think we win.

THE COURT: Yeah, that may be, but again, I think the record, once you get a chance to look at the transcripts, is very, is abundantly clear that these injuries occurred, they occurred during the act that they said they did. And, you know, that remains to be for you to evaluate, but as we sit here today, I don't find anything from what I've reviewed today nor from my notes from the trial

or my recollection that would suggest there's been either an inconsistent verdict or some kind of double jeopardy argument that could be advanced on his behalf. So those motions will be denied.

And beyond those pending motions, there really isn't any other legal reason why sentence should not be imposed at this time. Again, I would like to tell you that I did read the presentence investigation report and also the, I did receive a copy of the scoresheet from the, from somebody, and will ask if you've had an opportunity to review those with your client, Mr. Dingus, and if there are any corrections that you should bring to my attention for the record?

MR. DINGUS: Judge, I looked over the scoresheet. Based on the Court's findings today, I think that would be accurate. In the event that somehow that the appellate court determines that that's wrong, we may need to revisit the sentencing.

THE COURT: Right.

MR. DINGUS: On that.

THE COURT: All right, very good.

MR. DINGUS: I've had an opportunity to review the presentence investigation with Mr. Goldson and he believes it's accurate. The scoresheet, we have not had an opportunity to review it with Mr. Goldson.

THE COURT: Would you like a moment to do that?

MR. DINGUS: Yes.

THE COURT: All right, go ahead.

(Off the Record)

MR. DINGUS: Okay, Judge, he's had an opportunity to review the scoresheet and he has no objections to it.

THE COURT: All right.

MR. DINGUS: Other than, other than previously articulated.

THE COURT: All right, thank you. Let's go ahead and hear from your witnesses and Mr. Goldson, if he wants to say anything. So if you want to have—how many, how many folks do you have here?

MR. DINGUS: Two.

THE COURT: Two.

MR. DINGUS: That I know of.

THE COURT: They can, they can both come up. I think we can manage that.

MR. DINGUS: Jennifer. And Tashika.

MS. BEASLEY: And then the State has a statement from the victim, your Honor.

MR. DINGUS: Mr. Bailiff, where do you want them at?

THE BAILIFF: Right on that side will be fine.

THE COURT: All right. And will your client be testifying, do you think, Mr. Dingus?

MR. DINGUS: As of right now, he's advised me he does not wish to address the Court.

THE COURT: Okay. Folks, would you raise your right hands, please.

(Whereupon Witnesses are Sworn)

THEREUPON,

JENNIFER JENKINS called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DINGUS:

Q Ma'am, tell us your name.

A Okay. My name is Jennifer Jenkins.

Q And are you related —

THE COURT: Step up just a little closer to the podium, if you don't mind. Thanks.

Q And, yes, ma'am, are you related to Mr. Goldson here?

A Yes. My name is Jennifer Jenkins and I am Segwayne's aunt, Segwayne Goldson's aunt. I knew Segwayne Goldson —

THE COURT: Wait for, wait for a question, if you will.

THE WITNESS: Okay, I'm sorry.

Q You're related to Mr. Goldson. What would you like to tell the Court on his behalf? What would you like to say for him?

A I'd like to say that Segwayne Goldson is, he's the first child. His dad and mom and (indiscernible). He's my seventh nephew. His dad, Kirk Goldson, and (indiscernible) Allison, he is well beloved by them. (Crying) He grew up in a very tight-knit community, where he's loved by the community right now in the community where he's from in

Jamaica. They took it very hard because knowing Segwayne, he's a loving, caring, soft spoken young man. This is, we have not, we have no one, you know, family was ever been into a situation like this. This is the first time I've ever been in a courthouse. We traveled 400 miles from Orlando to be here today, along with two of my friends from Jamaica who knew him well. They're on vacation, but they took the time to be here. We took the time off from work. And we don't know what happened, but we are praying for leniency on his behalf.

Q Anything else you'd like to tell the Court?

A I know this is not Segwayne and to see him in a situation like this, it's (crying) . . . I don't know what to say.

MR. DINGUS: Thank you, ma'am. Sir, did you wish to say anything?

(Witness having been previously sworn)

THE WITNESS: I'm Russell Jenkins, Jennifer Jenkins is my wife. We've been married for 11 years and I've never seen the family go through such a traumatic experience. We came here in great investment because we love Segwayne. And we had to stand by his side whatsoever situation transpires. We beg your mercy on his life because he is not going down alone. The whole family will be affected by this. We beg your mercy. Thank you.

THE COURT: Any questions of these folks?

MS. BEASLEY: No, your Honor.

THE COURT: All right. Thank y'all very much. You can be seated. You can take your seat. Thank you.

MR. DINGUS: Judge, can we have Miss Tashika Rowe, his significant other?

(Whereupon Witness is Sworn)

THEREUPON,

TASHIKA ROWE called as a witness, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DINGUS:

Q Can you tell us your name.

A Tashika Rowe.

Q And are you related to Segwayne Goldson?

A He's the father of my child.

Q Father of the little boy you've got with you?

A Um-hm.

Q Is he a good person?

A He is.

Q What else would you like to tell the Court about this?

Q It's been really devastating for both families because we all love Segwayne. He's a very honored and respected person. His members of the church community, his friends, they all look up to him. He's a mentor. He's exceptionally, he's exceptionally well with his son. He plays a very good role as a father. I've known Segwayne for 15

years. Fifteen years. I'm just, I'm just begging for some mercy on the behalf of my son so he will get the chance to know his father. Because raising him as a single parent, it's not easy, and I know how it feels to be raised by one parent. It's nothing good, but . . . Segwayne Goldson, he's really a nice person, quite jovial, and like I said, he's a mentor. You can talk to him and he's always ready to give assistance when needed if he can. He will go out of his way to make sure that you are comfortable. He is a family oriented type of person.

Q Anything else?

A I'm just begging for some leniency. It's really devastating both sides of the family. The victim is my sister. It's devastating to watch a loved one in the state of Segwayne. My parents, they want to express sadness at what happend and they pray for leniency for Segwayne also because, like I said, he's a member of my family as well.

THE COURT: Thank you.

MR. DINGUS: Judge, the only other thing I have, I have two documents that I filed with the Court this morning, because I got them last night through Federal Express from Jamaica. One's from the defendant's mother, the other one is basically the same letter signed by members of his community. There's two of those for the Court. I have the originals if the Courts want to see them.

THE COURT: Yeah, I'll look at them right now.

MR. DINGUS: I've provided a copy to the State.

MR. DINGUS: Whatever's the Court's pleasure, if the Court wants to make those part of the record of this hearing, that's fine. They're already a part of the record.

(Long Pause)

THE COURT: Okay. I've read those and they'll be made a part of the record.

MR. DINGUS: Judge, as far as my comments, this is his first brush with the law, as I understand. His scoresheet has zero points for prior record. I'm not trying to downplay the seriousness of the allegations that were, he was convicted of by the jury, but at the same time, I wish to ask the Court for leniency on his behalf based on his lack of a prior criminal history.

Do you want to say anything? Do you . . .

THE DEFENDANT: (Inaudible).

MR. DINGUS: He wishes to invoke his right to remain silent.

THE COURT: All right. Very good.

MS. BEASLEY: If I could bring the advocate forward to read the statement?

THE COURT: Yeah, if y'all will step over there to your left a little bit.

MS. BEASLEY: And I've given a hard copy to Mr. Dingus—

MR. DINGUS: I received it.

MS. BEASLEY:—this morning and I have a hard copy for you, and the advocate will read it into the record.

THE ADVOCATE: Life, life, life. I don't even know the meaning of the word anymore. Yeah, it's complicated, it's hard and it's devastating. It's a mess. Nothing seems right anymore. My birthday, July 1, 2016, was supposed to be a very special day, but it turned out to be a nightmare. A nightmare I'll never forget. The horror of what happened that night won't go away no matter how hard I try to smile or think of positive thoughts.

Every time I close my eyes, it feels like I'm watching a movie of myself trying to escape the terror of July 1, 2016, my mind constantly reflecting on that night and making me think every day is July 1st. I was abused and taken advantage of without my permission. As I watched and struggled helplessly, I cried while enduring this horrendous sexual act that was being inflicted on me against my will, knowing how easily my breath was leaving my body. Today, I'm scared. Yes, I am scared of closing my eyes, too afraid of watching myself being strangled by someone I know, someone I expected to protect me. Each night, my sleep has been cut short due to the fact that I wake up in the middle of the night shivering with fear because I'm having nightmares. I want to forget about what happened to me and feel contented again. You've taken everything from me, because life to me matters so much less now. When I look at my reflection in the mirror, all I see is a helpless victim and I hate myself. Why didn't I fight harder? Why?

I lock myself in my room when I'm home alone, wondering if he's still around, coming after me,

and what other plans he has for me. Every little sound I hear I start feeling afraid. My heart is racing, chill and fear fills my body, and as a result, I sleep with a knife under my pillow. Not only that, but I ensure that I move closer to the window, ready to jump at the slightest indication that someone is about to hurt me again.

My appetite has changed. I can hardly eat. I'm stressed and not a day passes by that I don't cry. All I need is my life back, but I know that will never happen. It won't, not now, not ever. You have made me come to the realization that I hate myself. Why did you hurt me again? Why did you wait on me that night? Why, when I begged you to stop, when I pleaded with you, why didn't you oblige? Why, why, why? The scars I'm left with, the fear I now live with is too overwhelming. At the snap of a finger, you have changed my life. How do I move on? How do I love again? How do I feel safe again? How do I trust again? Who can I count on not to hurt me again?

I blame myself. I call myself an idiot. I have even started hitting myself in my head at times. I scream at myself. I'm hurting. I'm hurting so bad, to the point I close the door on people who I think want to help. All I want to do is forget about it, but I can't. I pray to God each and every night and day and I ask him to wipe my memory clean and make me start new, but it feels as he's not listening. So I have to live with the scars, the hatred, fear and shame. I am constantly looking over my shoulder, because I'm scared, too scared of what's next. So many unanswered questions. Suicidal thoughts have been plaguing my mind. I

really need help, because I am an emotional wreck. This is too much for me and no matter what kind of punishment the State instills on you or the amount of time you spend behind bars, my life will never be the same. I'm stuck in a place where there's nowhere to run, no door to open, no new page to turn to. It's all darkness.

THE COURT: All right. Thank you. Anything else from the State?

MS. BEASLEY: Your Honor, as you know, he is facing, under the Violent Sexual Offender Act, a minimum mandatory on Count II that he was found guilty of, of 50 years.

THE COURT: Right.

MS. BEASLEY: The other count he was found guilty on, his maximum punishment is 15. Count II is a life felony. The defendant has a total disregard for Tamika. She'll never feel safe if he's ever out of prison. The only way I think she will feel safe and the only way I think she will be safe is if he's behind bars. So the State asks for the maximum penalty on both counts, for life plus 15 with the 50-year minimum mandatory imposed on Count II.

THE COURT: Mr. Dingus, you want to follow up on that?

MR. DINGUS: He would assert that the enhanced penalty that the State is seeking is unconstitutional because no notice was given to prior counsel prior to the time that would normally be applicable for the habitual offender enhancement.

MS. BEASLEY: And, your Honor, just to respond to that allegation, I did make the defense aware of

this. If you recall, even back at jury selection we went back and forth and back and forth about the 50-year minimum mandatory that he would be facing, actually on all three counts. So he was well aware of what was going on and what the possibility was prior to deciding to move forward with the jury trial.

THE COURT: Again, we have blueman (digital recording) to bear that out. I do remember having some very candid conversations with, with the defendant about the exposure that he was facing, because obviously, it was significant. And he, I think, elected, after hearing his options, to go to trial, and now we're here.

So in this, Case 16-2683, the defendant, Segwayne Kirk Anthony Goldson, is adjudicated guilty as to Count II, one count of sexual battery, physical force likely to cause serious personal injury. In view of the fact that the, that the jury found that he, as a separate apprende, factual finding that he caused serious personal injury to the victim. He's hereby sentenced as a dangerous sexual felony offender under Section 794.0115 Florida Statutes. He is committed the Department of Corrections for a period of 50 years. This sentence is minimum, is a minimum mandatory sentence, so during that 50 years, you will receive no gain time.

As to Count III, he is adjudicated guilty of one count of sexual battery. He'll be committed to the Department of Corrections for a period of 15 years consecutive to Count II. There'll be a civil judgment for court costs and fines, on Form A, of \$1,077; on Form F, \$352. The Court will reserve

jurisdiction to determine whether any restitution should be paid to the defendant.

Now that a sentence has been announced and imposed, Mr. Goldson, you have the right, of course, to file a notice of appeal. You can appeal both the verdict of the Court and the judgment and sentence of the Court. To do that, you have to file a notice of appeal within the next 30 days. So if you want to do that, a lawyer will be provided to you free of charge to accomplish that. If you don't file your notice of appeal in that time, you'll lose the right to appeal the issue.

MR. DINGUS: Judge, on that note, I was hired by his parents. Mr. Goldson himself has no assets going forward. Can the Court make a limited, a finding of indigence for purpose of appeal?

THE COURT: He's clearly indigent for purposes of appeal.

MR. DINGUS: I'll provide the Court with an order.

MS. BEASLEY: And, your Honor, he's to be a registered sex offender.

THE COURT: And he is being sentenced as a sex offender, so he'll have to oblige with all the requirements by statute attendant to that designation.

MS. BEASLEY: The State would ask for a no contact order between him and T.R.

THE COURT: During the entire period of your sentence, you'll have no contact with the victim of any kind. If you have no questions, you'll step to your right and be fingerprinted.

THE CLERK: There's jail credit?

MR. DINGUS: Ninety-four days, I believe, as of, as part of the presentence investigation.

THE COURT: Ninety-four. Plus—is that through today? Have we counted through today?

MR. DINGUS: Yes, that's what was on the PSR. I believe he was out of custody during the pendency of the case. You ordered him taken into custody at the completion of the trial.

THE COURT: All right. Step to your right and be fingerprinted, please.

(Nothing Further)

**JURY SELECTION TRANSCRIPT,
CIRCUIT COURT, FOURTEENTH JUDICIAL
CIRCUIT, BAY COUNTY, FLORIDA
(OCTOBER 10, 2016)**

IN THE CIRCUIT COURT, FOURTEENTH
JUDICIAL CIRCUIT IN AND FOR
BAY COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

SEGWAYNE KIRK ANTHONY GOLDSON,

Defendant.

Case No: 16-2683CF

Before: Hon. Michael C. OVERSTREET, Circuit Judge.

[October 10, 2016, Transcript, p.3]

PROCEEDINGS

(Doug White, Esq. standing in for Laura McCarthy, Esq., for Defendant).

THE COURT: We are going to be selecting a jury in his case that is to be conducted tomorrow, however, there is an outstanding warrant for his arrest from Walton County. Is that right, Doc?

TH BAILIFF: Walton County.

THE COURT: So we are going to have to take him into custody and I will bring him back out at the appropriate time before we bring in the venire.

MS. BEASLEY: And, Your Honor, there's another matter, I talked with Ms. McCarthy this weekend, I am amending his Information this morning. I gave a copy of that to Mr. White just a few minutes ago, and when I talked with Ms. McCarthy, I told her that I would give Mr. Goldson an opportunity to plead to the one count that he's currently charged with before I file the three-count Information. On the Information where he's currently charged, if the jury makes a finding of serious personal injury to the victim then Your Honor would have to sentence him to a minimum mandatory of 50 years, Florida Statute 794.0115, and he's facing life. Right now if he did an open plea to that one count, the minimum mandatory would not apply because it has to be a jury finding in order for it to take effect. So if Mr. Goldson wanted to take advantage of that this morning before I filed the new three-count Information where he will be facing three counts of sexual battery with physical force likely to cause serious personal injury, he will be facing three life sentences; and if the jury makes that specific finding, he will be facing three minimum mandatory 50 year sentences.

THE COURT: Did you say you just amended this over the weekend?

MS. BEASLEY: I have it right here, Your Honor.

THE COURT: Ms. McCarthy has had an opportunity to see it before today?

MS. BEASLEY: Not to see it, Your Honor, but I did talk to her about it. We talked over the phone about the different acts that were performed during the rape, she was aware of them. She realized that that was a possibility, and so I told her, you know, just what I told you, that I would give him that opportunity before filing it and I relayed that to Mr. White this morning.

MR. WHITE: It should be clear that Mr. Goldson and I just met and he clearly has not had an opportunity to hear from me regarding the proposal. The proposal was not conveyed to me. I was filling in for Laura, I did not realize there was going to be an Amended Information and plea negotiations over the weekend. I had not been informed of that. I will stipulate that I was handed a copy of the revised Amended information, I think it's amendment number four, I have not had a chance to discuss it with the client. I had not idea what was changed other than what Ms. Beasley told me they added different acts. So, you know, I would acknowledge receipt of it, but I can't acknowledge comprehension of it before I have an opportunity to discuss it with Mr. Goldson.

THE COURT: My first question is, and I agree with Mr. White that this is a little premature to have him, his client make a decision about a plea offer since he's had no opportunity to review it with him, but was Ms. McCarthy prepared to go forward with the trial with the Amended Information?

MS. BEASLEY: She didn't indicate any kind of issues, Your Honor. The original Information had the

oral sex, the digital penetration, and the penile penetration all within Count I—

THE COURT: Right.

MS. BEASLEY:—so the amendment has the oral separated from the digital separated from the penile.

THE COURT: And the original Information did include serious personal injury?

MS. BEASLEY: Yes, it did, Your Honor.

THE COURT: Okay. So the Information as to serious personal injury has not changed. You just simply separated the events into three separate charges, is that right?

MS. BEASLEY: That is correct.

THE COURT: All right, let's do this, we still have time, Mr. White needs time to analyze the law and the potential plea offer that was just made and to also to talk to his client about it, so my suggestion would be that we go ahead and pick the second matter for jury trial first, the Hollie case, and give them an opportunity to talk and let Mr. White report back to the Court where they are. There's a holding cell right behind the courtroom here where you can interview with him and, Doc, that should be set up now?

TH BAILIFF: Yes, sir, the actual interview area is set up.

THE COURT: There's one right behind us, Doc, that should be done, too. There's an interview room right back here so use that one unless it's not available. But I suggest what we do now is let the two of them go back in the interview, he's got his

cuffs on, take him back into the back room there and, Mr. White, when you are ready, come on back out.

MR. WHITE: Yes, sir, thank you for that.

THE COURT: You're welcome.

(In recess)

Upon resuming:)

9:57 a.m.)

THE COURT: Let's go on record just informally before we address Mr. Goldson in person. Have you all had an opportunity to talk now? Should I bring him out for a colloquy with respect to the plea offer, do you think?

MR. WHITE: Yes, sir. I have been given an opportunity to talk with him and have gone over, I think a complete set of what he's looking at today and what his situation is. He speaks good English but he's Jamaican and he has some difficulty comprehending the social mores and the structure of our legal system. We came to the understanding that he wants a jury trial and he wants to proceed today; but his problem is he's given us witnesses today that he wants to appear and some of whom are flying in from Jamaica.

THE COURT: His trial is not scheduled technically until tomorrow.

MR. WHITE: It's scheduled for tomorrow, right.

THE COURT: Right.

MR. WHITE: So I will acknowledge receipt of the Fourth Amended—

THE COURT: Before you do that let me just bring him out and we will put it all on the record, I just want to make sure we were not being premature to get him out here to discover whether he's discussed with you the modification of the Information, the plea offer that was made by the State, and the fact that we are proceeding to pick a jury.

MR. WHITE: We have had those discussions. He and I have not come to a meeting of the minds but we had the discussion.

THE COURT: All right. Bring Mr. Goldson out, please.

(Attorneys conferring)

THE COURT: Even if he—I think what we should just do is arraign him—Ms. Beasley—

MS. BEASLEY: Yes, Your Honor?

THE COURT: We will arraign him when he comes in and Mr. White can put on the record he spoke to him. In the event once jury is selected, I will permit him to consider with Ms. McCarthy tomorrow whatever proposal Ms. Beasley made today. I don't know that it's imperative to make the decision today.

MS. BEASLEY: Once the Information is filed, Your Honor, then it's the State's position that we are ready to go forward.

THE COURT: So he's got to make a decision today?

MS. BEASLEY: Yes, Your Honor.

MR. WHITE: Now see, this is, that's—

MS. BEASLEY: The only thing that I agreed to with Ms. McCarthy is before I would file the Information, if he decided he had changed his mind, that would be fine and I wouldn't file the new Information. That was the only agreement that I had with her. There is no offer for any kind of sentence.

THE COURT: Oh, so he can either plead straight up or not?

MS. BEASLEY: Correct, that was it.

THE COURT: Okay.

MR. WHITE: Well, without benefit of the enhancements—we went from potential of 120 months to three times 50, you know, all in one fell swoop once we amend the Information, so it is a substantive modification.

(Defendant present)

MR. WHITE: Your Honor, before the Court is Segwayne Kirk Anthony Goldson. Mr. Goldson is here today for the selection of a jury in the case before the Court. The last number is 2683. I have on his behalf received a Fourth Amended Information today. I have informed the Court that I saw it earlier in the day when it was provided to me by Ms. Beasley. The Court granted me an opportunity to talk with Mr. Goldson about the legal ramifications and the personal jeopardy that the amendment would bring. I explained to him that the potential for him if he's convicted as charged is three life sentences with a minimum mandatory of 50 years on each. He acknowledged

that he understood that, am I correct, Mr. Goldson?

THE DEFENDANT: Yes, sir.

MR. WHITE: You are a native Jamaican, is that correct?

THE DEFENDANT: Yeah, born in Jamaica.

MR. WHITE: But you speak English well?

THE DEFENDANT: Yeah, I can speak English.

MR. WHITE: You were educated in your home country?

THE DEFENDANT: Yeah, I can speak a little English.

MR. WHITE: How long have you been in this country?

THE DEFENDANT: A year and couple of months.

MR. WHITE: So, Your Honor, he appears to understand when we discuss these matters in so far as the English comprehension is concerned but, of course, he would be a bit disadvantaged in not having grown up or studied Civics in high school, et cetera, so he has some difficulty with that and also there's a lack of full comprehension on the social mores and legal responsibilities of relationships in the United States. He understands he's subject to all of the statutes that apply to citizens as well as visitors. At this point I would acknowledge receipt of the Fourth Amended Information, waive specific reading of it, and inform the Court we would like to preserve any potential motions that are discovered between today and when jeopardy is fully attached. We would like to have an opportunity to have his counsel, Ms. McCarthy, go over the matter with him as well as re-enforce the explanations that have been given

today vis-a-vis the potential for pleading to the Court without going into the jury trial mode.

I would like to proffer to the Court Mr. Goldson so that the Court could determine whether or not Mr. Goldson appears to understand his legal rights in this matter. And I would also indicate to the Court that Mr. Goldson did not understand, and perhaps our counseling failure, he did not understand that if he had witnesses on his behalf he had to inform the State of who they were and give the State an opportunity to take statements from them or to take a deposition from them. So today he provided me with the names of four witnesses whom he considers material to his case. I relayed that information to Ms. Beasley and she noted that she, of course, has the due process right to talk with those and become acquainted with those witnesses and see what they would testify to under oath but that she would make an effort to get that done without delay. I had informed Mr. Goldson that I thought it would be in his best to plead to the Court for a delay in the matter. Mr. Goldson indicated he was—he preferred to go forward at this point.

THE DEFENDANT: I got a demand for speedy trial—

MR. WHITE: He wants to go forward.

THE COURT: Okay, let me first have his oath administered. Could you raise your right hand for me. Raise your right hand, just as best you can. There you go. She's going to administer your oath.

THE CLERK: Do you solemnly swear, or affirm, the testimony you shall give shall be the truth, the

whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: Can you repeat? I'm sorry.

THE CLERK: Do you solemnly swear, or affirm, the testimony you shall give shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: Yes, ma'am.

THE COURT: All right, you can put your hand down. If you have trouble understanding me or hearing me, tell me, okay?

THE DEFENDANT: No problem, sir.

THE COURT: Give me your name.

THE DEFENDANT: Segwayne Kirk Anthony Goldson.

THE COURT: Mr. Goldson, as you heard, we are here in 16-2683. You are here with counsel, Mr. White. You are presently charged with, before the Information was amended—the Information is the formal charging instrument charging you with crimes—before the State announced they intended to file a Fourth Amended Information—(noise interruption)—anyway, you were charged with one count of sexual battery-physical force likely to cause serious personal injury. That was a life felony, and according to our scoresheet provided, if you were convicted by a jury of that particular crime, the sentence that you could receive is, what, Ms. Beasley?

MS. BEASLEY: His minimum is 126 months prison to life and then if the jury made a specific finding

after trial, there's a possibility of a 50 year minimum mandatory.

THE COURT: So before this morning and the announcement of the State that they have filed an amended document charging you now with three separate crimes, had you gone to trial and been convicted by a jury, the minimum sentence you could possibly receive is 126 months in prison, that is a little more than ten years in prison. And the maximum that you could receive would be a life sentence, in other words, you would be in prison for the rest of your life. And also if the jury was asked to consider whether there had been serious personal injury and they said there was, if they make that determination, the minimum sentence I could give you then would be 50 years in prison. So that's where we were before this morning. This morning the State has announced they're modifying the charges now to charge you with three separate crimes, I think all arising out of the same event—

MS. BEASLEY: Correct, Your Honor.

THE COURT: They are all sexual battery-physical force likely to cause serious personal injury but one involves penile penetration of the vagina, one involves digital penetration of the vagina, and one involves oral contact between the penis and the mouth of the victim. So those are three separate charges that you would have to go to trial on tomorrow. And again if you were convicted of one of those, the minimum sentence would be 126 months. The maximum sentence would be life in prison. If the jury found just from one of those charges that physical injury, serious personal injury

occurred to the victim, I would have to least give you 50 years in prison, and you could get a maximum sentence now of 150 years of minimum mandatory sentence and technically three life sentences. So the reality is that you would be in prison, if you go to trial tomorrow on all three charges and you're convicted on all three charges, you are going to spend the rest of your life in prison because of the minimum mandatory sentences I could be required to impose, although I think they can run concurrent, I'm pretty confident, so I could elect to sentence you to 50 years, I could elect to sentence you to life, or I could elect to sentence you in such a way that you will never get out of prison. That decision has not been made by me. I would not make that decision unless, first, you were convicted and, secondly, after we have a sentencing hearing. I don't know you; I don't know anything about the case candidly. So tomorrow Ms. McCarthy will be back, she is your assigned attorney, the trial is to begin today, we are going to pick a jury, and once we select the jury then the trial will actually begin tomorrow. The State has offered you the opportunity to plead to simply one count of sexual battery with physical force likely to cause serious personal injury and to allow a sentencing hearing to occur and for me to ultimately decide what the appropriate sentence should be. And in that instance there would be no jury finding of serious physical personal injury so there would be no minimum mandatory 50 year sentence. So, in other words, if you plead to the charge today, I could sentence you to between 126 months in prison up to life, that would be my choice, and we wouldn't do that

until we had a sentencing hearing. That sentencing hearing would not occur today. It would be perhaps next month to give you an opportunity to have witnesses here to talk on your behalf and to tell me a little bit about your background and so forth. So that's where we are at right now. Because this case has been pending for sometime and you have had an opportunity throughout the duration of the case, there are rules that apply to both the State and also to you and your lawyer as to how you have to conduct the preparation for trial, and one of the rules is that you must, you must provide the State the names of any witnesses that you think you will be calling at trial, and absent any unusual circumstances, those names have to be given early in the case so not today, not yesterday, but long ago were those names supposed to be provided to the State. Now the State has indicated they are willing to at least try to meet with these witnesses before we start our trial tomorrow morning, but again I can't promise you that is going to happen. I don't even know when they are arriving. Even after she, assuming she's able to talk to them, the State may object to them testifying on your behalf because they were not provided to the State as witnesses long ago. So that's an additional problem that we have to ultimately address before we start our trial tomorrow. Are those witnesses—do you know their names? Have you provided their names, I guess to Mr. White, is that right?

MR. WHITE: He did, Your Honor.

THE COURT: Who are they?

MR. WHITE: The witness names are, his father, Kirk Goldson; his mother, Nelly Goldson; Devaska Miller—is he local or in Jamaica?

THE DEFENDANT: Devaska, he's here.

MR. WHITE: He's here—

THE DEFENDANT: Not local but he's from—

MR. WHITE: In Panama City?

THE DEFENDANT: Yeah.

MR. WHITE: And Tamika Rowe. Ms. Rowe is present in the courtroom. She is the mother of the child with Mr. Goldson. And Ms. Beasley started to talk—that's where she was a few minutes ago.

THE COURT: So it's the mom and dad coming from Jamaica and then two people that are here locally, is that your understanding?

THE DEFENDANT: Yeah, Tamika and Devasica are here. Nelly is my stepmom and Kirk is my father. Yesterday he told me he got some, he called, he's in England, and I never know, he never had the money because he spent the money to bond me out so he never had the money to come so he told me yesterday he got some money and he's going to try to come. That's why I never know. I couldn't tell Ms. McCarthy that he was going to come and testify because I'm never sure.

THE COURT: I see.

THE DEFENDANT: So yesterday he told me that he got some money and he's going to try to support me by coming to court.

THE COURT: Okay, well, I understand. Do you even know whether he's going to be here tomorrow?

THE DEFENDANT: Yes, sir, he's going to here. He said he's going to land tonight. He's going to land tonight by sometime after 8 or 9 in the night. I am not sure about the time.

THE COURT: Okay. Is he coming with your stepmother, did you say?

THE DEFENDANT: Yeah, he's going to come tomorrow.

THE COURT: Your stepmother, as well?

THE DEFENDANT: Yeah, my stepmom going to come.

THE COURT: Okay. So those are the four witnesses you were talking about?

THE DEFENDANT: Yeah, just because my other witnesses, they went back to Jamaica.

THE COURT: Okay. So the individual, the first person that is local, where is he right now?

THE DEFENDANT: Devasica Miller, I think he's here.

THE COURT: Where exactly is he, where does he live, where does he work?

THE DEFENDANT: He work at Sharkey's and he work at a laundry. I don't know the laundry's name but he live next door.

MR. WHITE: Do you have a phone number or address for him to get in touch with him?

THE DEFENDANT: Yeah, I have his phone number.

THE COURT: So do you want to—can you spell his name for the State and give the State his—

MS. BEASLEY: I know his name, Your Honor. He gave a statement to law enforcement, Mr. Miller did.

THE COURT: Oh, okay.

MS. BEASLEY: So as long as his phone number has not changed since the time he gave a statement, we should be able to hopefully reach him by phone.

THE COURT: Okay. So then after jury selection can we make time available to speak to the lady in the audience here?

MS. BEASLEY: Yes, sir. If she will stay after jury selection, I can speak with her.

THE COURT: Will you remain here in the courtroom, please?

MS. ROWE: Yes, sir.

MR. WHITE: She said yes, sir.

THE COURT: Yes, okay. So anyway that's kind of where we are at. My plan is to give you some additional time before we select your jury this morning with Mr. White to discuss and have him answer any questions you may have with respect to what we just spoke about, but the plan is to move forward with the trial, pick a jury today, later on this morning, and then start the trial tomorrow morning around 9 a.m., and because you have a warrant served on you from another county, you will have to stay in jail overnight and the trial will begin, as I said, in the morning and

they will have you over here for the trial. So do you have any questions for me about what I just said?

THE DEFENDANT: Yes, sir. The question is I got my discovery saying one charge, they charged me once for a sexual battery and now it's turned into three different charges—

THE COURT: Right.

THE DEFENDANT:—I don't understand that, like how I got three, they charged me with three different charges instead of one.

THE COURT: Well, Mr. White can explain that to you. It is relating to the same alleged event. It isn't like three different days at three different times. It's all the same time according to the State but it involves separate crimes, so if you have penile penetration of the vagina, that's one crime, it's a sexual battery. If you have digital, that's your finger or some other object, penetration of the vagina, that's a second crime. And if you have oral contact between the mouth of the alleged victim and your penis, that's a third crime. So there's three separate crimes now that they have elected to charge you again for the same alleged event, so that's where we are at.

MS. BEASLEY: Your Honor, just so the record is clear it was the reverse. It was his mouth on her vagina.

THE COURT: Okay, I have it backwards, but if you penetrate or touch her vagina with your mouth, that is a separate sexual battery charge as well.

MR. WHITE: Your Honor, if I may clarify one thing. Mr. Goldson understands the legal aspects of

being able to separate those behaviors. What he does not understand is how we could travel this far with one count and then on the day of jury selection we have three counts but he did nothing different. That's where his comprehension is, he's having some difficulty with it.

THE COURT: Well, without making it anymore complicated than I need to, I can tell you the State is allowed to do this and that's all I can tell you. There's nothing else to explain, the law permits them to do this and that's why we are here today having this conversation.

MR. WHITE: Judge, on behalf of Mr. Goldson, would you consider a procedure which would allow jeopardy to be delayed until tomorrow, pick the jury but not swear them?

THE COURT: I won't swear the jury today. I never do.

MR. WHITE: We could have an argument that jeopardy hasn't attached. I mean, he can talk to his attorney he has had this whole time—

THE COURT: Right.

MR. WHITE: He and I are just now acquainted and I was simply going to assist on the jury selection. I was not prepared to be sure he understood all of the mechanical things going back and forth.

THE COURT: Yeah.

MR. WHITE: And I don't want to put us into a situation where we build a result that is going to require questioning and start all over again because of his legal adviser.

THE COURT: Yes. I won't be swearing the jury in until trial begins tomorrow morning. We will select a jury after the Hollie case so you can take him and Mr. White, if you need additional time to talk to him, if you can arrange they sit back there in the holding area again, please.

MR. WHITE: Thank you, Judge.

MS. BEASLEY: And, Your Honor, I'll hold onto the new Information until right before we pick the jury.

THE COURT: Okay.

(In recess)

Upon resuming:)

12:34 p.m.)

THE COURT: Ms. McCarthy, do you need a few more moments to speak to him? I didn't know if you knew, we are planning to get started around 12:30 but if you need more time, that's okay, as well.

MS. McCARTHY: No, Your Honor, I can speak with him after we pick a jury.

THE COURT: All right. We need to put a couple of things on the record, one of which was the plea offer that was made earlier with respect to this defendant and the State's proposal not to file a Fourth Amended Information with three separate counts of sexual battery-physical force likely to cause serious personal injury but just leaving it at one, and we had that colloquy with your client, Mr. White, and he was going to speak to him or

have you speak to him further, so are we at a place where a decision has been made?

MS. McCARTHY: Let me ask him, Your Honor.

THE COURT: Okay.

MS. McCARTHY: (Conferring with defendant) Your Honor, he's not interested in pleading.

THE COURT: Okay. So at this time the State has an announcement?

MS. BEASLEY: Yes, Your Honor. The State is filing a Fourth Amended Information charging the defendant Segwayne Anthony Kirk Goldson in Case Number 16-2683 with three counts of sexual battery-physical force likely to cause serious personal injury. All three are life felonies and I'm passing that forward to the clerk.

THE COURT: All right, and if I may, have we made any progress on the issue of these additional witnesses and what the State's position is at this time?

MS. BEASLEY: I have spoken with Tamika Rowe and so I am satisfied with being able to talk with her. We are trying to reach Devasica Miller by telephone, have not been able to reach him. We have no phone number for the defendant's stepmother and father.

THE COURT: All right. Ms. McCarthy, are you able to help with that?

MS. McCARTHY: Your Honor, they are supposed to be here.

THE DEFENDANT: They are already here.

THE COURT: Oh, they are already here.

THE DEFENDANT: They were coming from England.
(Ms. McCarthy and defendant conferring)

MS. BEASLEY: As long as the State has an opportunity to meet with those witnesses, Your Honor, I do not believe we have any objection.

THE COURT: Yeah, I appreciate that and I guess Ms. McCarthy will keep you apprised of their numbers and location.

MS. McCARTHY: Yes, sir.

THE COURT: I'm not sure what materiality the father and stepmother have in the case but I don't know much about the case either.

MS. McCARTHY: I am not sure, Your Honor, that's one of the things I need to talk to him about.

THE COURT: Yeah, okay.

MS. BEASLEY: And, Your Honor, if I haven't already I will file a motion in limine regarding reputation evidence for tomorrow. I will get that done this afternoon. I can't recall if that's already in the motions in limine that I filed.

THE COURT: I don't think so. I don't think it is, but I don't know that I need it in writing if you want to make an oral motion tomorrow morning, we can address it with the rest of the motions.

MS. BEASLEY: Okay, Your Honor.

THE COURT: We have 30 individuals coming over starting at—

THE CLERK: 75.

THE COURT: SO we will go from there. We will stand down until they arrive.

(Pause)

THE COURT: Do you have the Fourth Amended Information, Ms. McCarthy?

MS. McCARTHY: Yes, sir, I do.

THE COURT: And I think Mr. White may have already, we have already arraigned him, but formally I guess the Amended Information had not been filed as of yet, so do you want to go ahead and do that now?

MS. McCARTHY: Yes, sir. At this time we will waive a formal reading and enter a plea of not guilty.

THE COURT: All right, thank you.

(Pause)

Upon resuming:)

12:47 p.m.)

(Prospective jurors enter courtroom)

THE COURT: All right, be seated. Welcome back, folks. We are ready to begin our jury selection process for our next trial. First of all, thank you for being so patient, we were hoping we would move a little faster but we had some legal issues to address which kind of delayed the process slightly so we are ready to begin our jury selection for the next trial.

This trial is styled State of Florida vs. Segwayne Kirk Anthony Goldson and Mr. Goldson is charged with three counts of sexual battery-physical force likely to

[. . .]

**RENEWED APPLICATION FOR A
CERTIFICATE OF APPEALABILITY
(NOVEMBER 7, 2025)**

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

SEGWAYNE GOLDSON,

Petitioner / Appellant,

v.

RICKY DIXON, SEC'Y, FLA. DEPT OF CORR.,

Respondent / Appellee.

Case Number 25-13668-A

L.T. Case Number Case No. 5:23-cv-00225-TKW-MAF

**RENEWED APPLICATION FOR A
CERTIFICATE OF APPEALABILITY FROM
AN ORDER OF DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
DENYING APPELLANT'S
28 U.S.C. § 2254 PETITION**

The Law Office of
ROBERT DAVID MALOVE, P.A.
The Malove Law Building
200 SE 9th Street
Fort Lauderdale, Florida 33316
Telephone: (954) 861-0384

peter@robertmalovelaw.com

By: /s/ Peter Felix Armstrong

Peter Felix Armstrong, Esq.

MN. Bar No. 0504833

AL. Bar No. 2704D88T

Attorney for Appellant

CERTIFICATE OF INTERESTED PERSONS

Segwayne Goldson v. Sec'y, Fla. Depot of Corr.,
Case Number 25-13668-A Undersigned counsel submits
this Certificate of Interested Persons on behalf of
Appellant, Segwayne Goldson, as follows:

1. Armstrong, Peter Felix — current counsel
2. Beasley, Barbara — prosecutor
3. Bilbrey, Ross — appellate judge
4. Couriel, John — Florida Supreme Court
Justice
5. Demetrious, Hani — federal habeas corpus
counsel
6. Dingus, Jonathan — direct appeal counsel
7. Fitzpatrick, Martin A. — U.S. Magistrate
8. Labarge, Jorge — Florida Supreme Court
Justice
9. Lawson, Alan — Florida Supreme Court
Justice
10. Malove, Robert — postconviction and federal
habeas counsel
11. McCarthy, Laura — trial counsel

12. McDermott, Michael — assistant attorney general
13. Muniz, Carlos — Florida Supreme Court Justice
14. Nordby, Rachel — postconviction appeal judge
15. Osterhaus, Timothy — postconviction appeal judge
16. Polston, Ricky — Florida Supreme Court Justice
17. Ray, Stephanie — postconviction appeal judge
18. Roberts, Clayton — postconviction appeal judge
19. Rowe, Lori — postconviction appeal judge
20. Thomas, M.K. — appellate judge
21. T.R. — victim
22. Wetherell, T. Kent — U.S. District Court Judge
23. Winsor, Allen — appellate judge
24. Wolf, James — postconviction appeal judge
25. Woods, Steven — assistant attorney general

Undersigned counsel is unaware of any publicly traded company or corporation that has an interest in the outcome of this case.

INTRODUCTION

The Petitioner/Appellant, Segwayne Goldson, by and through undersigned counsel, pursuant to 28 U.S.C. § 2253 and Federal Rule of Appellate Procedure 22(b), applies to this Court for issuance of a certificate

of appealability. The order sought to be reviewed is an order from the United States District Court for the Northern District of Florida, Panama City Division, denying Goldson's petition for writ of habeas corpus filed under 28 U.S.C. § 2254. This Court has jurisdiction to issue a certificate of appealability pursuant to 28 U.S.C. § 2253.

STATEMENT OF THE ISSUE PRESENTED

1. Whether the district court erred in denying Claim One of Goldson's petition for writ of habeas corpus?

2. Whether the district court erred in denying Claim Two of Goldson's petition for writ of habeas corpus and denying an evidentiary hearing?

STATEMENT OF THE CASE AND FACTS

Goldson was originally charged with one count of sexual battery. (DE. 9-8 at 21).¹ His information was amended three times but remained a single charge. (DE. 9-8 at 24, 53, 63). The fourth and final amended information, filed immediately before trial on October 10, 2016, charged Goldson with three counts of sexual battery using actual physical force likely to cause serious personal injury against T.R. in violation of §§ 794.011(3) & 775.087(1), *Fla. Stat.* (DE. 9-8 at 117). Count One alleged union of Goldson's mouth with T.R.'s vagina, Count Two alleged penile penetration or union

¹ Pursuant to Eleventh Circuit Rule 28-5, references to the record shall be made by the designation "DE," short for docket entry, followed by the page number.

with T.R.'s vagina, and Count Three alleged digital penetration of T.R.'s vagina. (DE. 9-8 at 117).

On the morning of October 10, 2017, while Goldson was represented by substitute counsel Doug White standing in for trial counsel Laura McCarthy, the State informed Goldson that he was facing fifty (50) year minimum mandatory sentences under § 794.0115, *Fla. Stat.*, if convicted and offered an open plea to one count. (DE. 9-5 at 1-5). White told the court that he and Goldson had just met, and he did not realize substantive proceedings would be taking place. (DE. 9-5 at 4-5). After Goldson and White were allowed some time to discuss the situation, White placed it on record that Goldson was from Jamaica, had "some difficulty comprehending the social mores and the structure of our legal system," and wanted a trial. (DE 9-5 at 6-8). White confirmed that he and Goldson "have not come to a meeting of the minds but we had the discussion." (DE. 9-5 at 8). Goldson did not understand how his single charge was turned into three charges. (DE. 9-5 at 21).

Facts adduced at trial:

In opening, the State said that T.R. was from Jamaica, lived in a house with a group of other workers, and worked a couple of jobs to which she walked or caught rides. (DE. 9-7 at 48). On her walk home after work, the State said Goldson waited for her clad in black, threw her to the ground, took off her clothes, and held a hand on her throat while he performed oral sex on her, digitally penetrated her, and had penile vaginal intercourse with her. (DE. 9-7 at 49-50). Defense counsel told the jury that T.R.'s sister had a child with Goldson, and they had a consensual

sexual relationship behind the sister's back. (DE. 9-7 at 55-56).

T.R., a Jamaican living in Panama City, testified that she got off work on June 30, 2016, around 11:00 p.m., made a couple stops, and then walked toward home through the area of an old Publix as a shortcut. (DE. 9-7 at 58-61). She said someone dressed in all black came running at her from behind a building, held a rag with some substance to her nose, and squeezed her throat. (DE. 9-7 at 62-63). T.R. knocked the person's hood off and said it was Goldson. (DE. 9-7 at 63). T.R. said she was dragged to a wooded area, her hands were tied, clothes were removed, and Goldson started performing oral sex on her while keeping a hand on her throat. (DE. 9-7 at 67-68). T.R.'s vagina was penetrated by fingers and then Goldson had vaginal intercourse with her. (DE. 9-7 at 68-70). She said Goldson took pictures of her on a phone while maintaining a hand on her throat and penetrating her with his penis. (DE. 9-7 at 107).

T.R. passed out during the event and said she urinated on her pants. (DE. 9-7 at 71). She said her hands were untied when she woke up. (DE. 9-7 at 71). T.R. ran through the woods, flagged down a passing car, and got a ride home. (DE. 9-7 at 72-73). The police were called and T.R. led them to the area. (DE. 9-7 at 75-78).

As similar fact "Williams Rule" evidence, T.R. said Goldson grabbed her throat and unlatched her belt at a party in Jamaica in January 2015. (DE. 9-7 at 81-83). She said Goldson raped her in February 2015 in Jamaica and another time in Walton County, Florida. (DE. 9-7 at 83-91).

T.R. confirmed her route home that night through the old Publix area was not her normal route, she had never been there before, and she had no idea how Goldson knew she would be there in time to be clad in black and hiding in wait. (DE. 9-7 at 100-06). Goldson was her sister's boyfriend and T.R. lived with her sister, Goldson, and his mother in Jamaica. (DE. 9-7 at 93-94). She denied flirting with Goldson but identified herself wearing a bikini with her identifiable star tattoos visible in a photo with Goldson. (DE. 9-7 at 95). She denied sending him nude photos. (DE. 9-7 at 96). She confirmed living with Goldson and sleeping under him in a bunk bed in the United States after the dates she said he previously raped her. (DE. 9-7 at 96).

A pizza deliveryman confirmed encountering T.R. running down the road crying hysterically and giving her a ride home. (DE. 9-7 at 118-21). T.R.'s roommate testified she came home hysterical and said Goldson was her assailant. (DE. 9-7 at 122-25). Police went with T.R. to the area and found her clothing, a receipt, shoes, and undergarments. (DE. 9-7 at 133). T.R. was distraught with grass in her hair. (DE. 9-7 at 132). Goldson's room was searched, and police did not find T.R.'s cell phone or dark clothing. (DE. 9-7 at 140).

In Goldson's first statement to the police, he admitted having sex with T.R. in Jamaica and the United States and insisted it was consensual. (DE. 9-7 at 146-51). On June 30, 2016, Goldson said he got off work before 10:00 p.m., got a ride home, played video games, and went to bed after midnight. (DE. 9-7 at 150-54). He learned about the accusations the next day. (DE. 9-7 at 155-56).

After giving a buccal swab for DNA testing and learning his DNA would be tested against the semen found in T.R., Goldson admitted having sex with T.R. in the early morning hours of the previous night. (DE. 9-8 at 2-6). Goldson said he had consensual sex with T.R. on the living room couch without a condom. (DE. 9-8 at 8). They made plans to meet up later. (DE. 9-8 at 22-23).

The DNA taken from swabs of T.R. matched Goldson's DNA. (DE. 9-8 at 56).

Goldson testified at trial that he was from Jamaica, knew T.R. since 2003, was in relationship with T.R.'s sister, and had an ongoing clandestine, sexual relationship with T.R. (DE. 9-8 at 66-68). T.R. followed Goldson to the United States after he came in 2015, slept in a bunk bed underneath him, and worked a job that he found for her. (DE. 9-8 at 68-71).

In the early morning hours of June 30, 2016, Goldson saw T.R. walking from Sonic and gave her a hug. (DE. 9-8 at 72). T.R. said it was her birthday, Goldson asked what she wanted, and T.R. asked what he had to give. (DE. 9-8 at 72). Goldson said he was getting his tip tomorrow and offered sex. (DE. 9-8 at 73). Many people were inside Goldson's house, so the sex could not happen there; thus, they went to the area in the woods and had sex on the grass path. (DE. 9-8 at 73-74). Goldson denied giving T.R. oral sex or putting his fingers inside her vagina. (DE. 9-8 at 74). When T.R. asked for money for a morning-after pill, T.R. got angry and started putting on her clothes. (DE. 9-8 at 77). T.R. told Goldson that she wanted a relationship and Goldson told her no because he had a son with her sister and expressed concern about T.R. getting pregnant if they continued having sex. (DE. 9-

8 at 78). This made T.R. angry. (DE. 9-8 at 78). As she was walking away, she told Goldson she would “F” him up. (DE. 9-8 at 78).

Goldson explained that he lied to the police because, in Jamaica, you cannot remain silent; rather, defendants either tell the police something or go to jail. (DE. 9-8 at 75, 85). Goldson further did not want T.R.’s sister to find out or to admit having sex in public. (DE. 9-8 at 75-76, 82).

In closing, trial counsel again argued that the sex was consensual. (DE. 9-8 at 111-14). Counsel argued certain points did not make sense, such as Goldson waiting for and catching T.R. in an area where she did not walk and T.R. staying with Goldson after he allegedly raped her. (DE. 9-8 at 113-14). The State argued that everything happened as T.R. alleged because his DNA was found in her vagina and Goldson lied to the police. (DE. 9-8 at 115-18).

The jury rendered a verdict of not guilty on Count One, guilty as charged on Count Two, and guilty of the lesser-included offense of sexual battery on Count Three. (DE. 9-3 at 147-48). The trial court sentenced Goldson on Count Two to fifty (50) years prison as a dangerous sexual felony offender (“DSFO”) under § 794.0115, *Fla. Stat.*, and fifteen (15) years consecutive on Count Three. (DE. 9-6 at 24).

Direct appeal proceedings:

Appellate counsel initially filed a brief pursuant to *Anders v. Cal.*, 386 U.S. 738 (1967), asserting that no issues were present. (DE. 9-9). Following the court’s order, (DE. 9-11), counsel filed a brief asserting three issues. (DE. 9-12). The appellate court affirmed

on February 20, 2018, with a minimal written opinion recounting the procedural history and stating that no issues were present. (DE. 9-15).

Postconviction proceedings:

Goldson then filed a petition for writ of habeas corpus alleging ineffective assistance of appellate counsel on July 24, 2018. (DE. 9-17). Goldson argued that his fifty (50) year DSFO sentence constituted a violation of *Apprendi v. N.J.*, 530 U.S. 466 (2000), and *Alleyne v. U.S.*, 570 U.S. 99 (2013), because the sentencing enhancement was not charged in the fourth and final information and found by the jury beyond a reasonable doubt. (DE. 9-17 at 6-9). On March 24, 2020, the appellate court ruled that the information did not place Goldson on notice of the DSFO enhancement but affirmed because the trial court informed Goldson of the DSFO enhancement prior to trial. (DE. 9-22). Goldson sought discretionary review in the Florida Supreme Court, (DE. 9-23), which was declined on August 4, 2020. (DE. 9-25).

Meanwhile, Goldson filed a motion for postconviction relief pursuant to Rule 3.850, *Fla. R. Crim. P.*, in the trial court on March 19, 2020. (DE. 9-26 at 3). The final amended motion included four claims of ineffective assistance of counsel. (DE. 9-26 at 14). In Ground One, Goldson argued trial counsel should have presented nude photos that T.R. sent him and denied sending him at trial which would have supported Goldson's claim of a consensual, clandestine sexual relationship. (DE. 9-26 at 27-33). The nude photos were headless but easily linked to T.R. because of her identifiable star tattoos. (DE. 9-26 at 28). Ground Two argued that trial counsel should have argued obvious

inconsistencies and the inherently unbelievable allegations from the State's case such as the physical impossibility of Goldson holding T.R. by the neck with one hand and controlling her while he allegedly performed oral sex, digitally penetrated her, and had vaginal intercourse. (DE. 9-26 at 33-36). T.R.'s pants further failed to show signs of urination as claimed. (DE. 9-26 at 36). Ground Three and Four alleged the failure to present witnesses. (DE. 9-26 at 37-41).

The trial court summarily denied Goldson's amended motion on February 2, 2022. (DE. 9-26 at 84-117). Goldson timely appealed and filed a brief in support. (DE. 9-27). The appellate court per curiam affirmed on October 13, 2022. (DE. 9-30). The mandate issued on October 31, 2022. (DE. 9-31).

Habeas corpus proceedings:

On August 22, 2023, Goldson filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, (DE. 1), with a memorandum in support. (DE. 1-2). Claim One alleged the state court denial of Goldson's ineffective assistance of appellate counsel claim resulted in a decision that was contrary to or involved an unreasonable application of clearly established law as set forth in *Apprendi*, *Alleyne*, and *Strickland v. Washington*, 466 U.S. 668 (1984). (DE. 1-2 at 3-10). Claim Two argued that the state court denial of Grounds One and Two from his Rule 3.850 motion for postconviction relief resulted in a decision that was contrary to or involved an unreasonable application of *Strickland*, and/or was based on an unreasonable determination of the facts in light of the evidence presented in state court. (DE. 1-2 at 10-17).

The State responded that the First District was correct in its ruling and Goldson was not prejudiced because he was informed of the DSFO enhancement immediately before jury selection. (DE. 8 at 16-27). On Claim Two, the State argued the photos were a collateral matter and their outweighed probative value was substantially outweighed by the likelihood of unfair prejudice. (DE. 8 at 33-38). The State further argued trial counsel presented a reasonable argument. (DE. 8 at 38-41). Goldson filed a detailed reply to each contention. (DE. 10).

The Magistrate ordered the State to file a supplemental response addressing the timeliness of Goldson's petition. (DE. 11). The State then argued Goldson's petition was untimely because he did not seek discretionary review from the appellate court's affirmance on direct appeal. (DE. 12). Goldson replied that his petition was timely filed because discretionary review was not available from his direct appeal opinion. (DE. 13).

The Magistrate found Goldson's petition was timely filed but recommended that both claims be denied. (DE. 14). Specifically, the Magistrate found Goldson had notice of the DSFO enhancement and it did not need to be charged in the information. (DE. 14 at 30-36). After reiterating the facts, the Magistrate further found the 28 U.S.C. § 2254(d) standard unmet. (DE. 14 at 46, 51). Goldson objected to the Magistrate's findings on Claims One and Two. (DE. 15). The district court adopted the Magistrate's findings and denied Goldson's petition. (DE. 17).

Goldson timely appealed. (DE. 19).

ARGUMENT

THE DISTRICT COURT ERRED IN DENYING GOLDSON'S HABEAS CORPUS PETITION. A CERTIFICATE OF APPEALABILITY IS WARRANTED.

A certificate of appealability (“COA”) is warranted following denial of a habeas corpus petition when the applicant makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When the district court denied the habeas petition on substantive grounds, the petitioner must show that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong” or that the grounds “deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

1. Jurists of reason would find it debatable whether Goldson stated valid claims of the denial of a constitutional right on Claim One. Goldson’s claim deserves encouragement to proceed further.

Here, Claim One was premised first on the Sixth and Fourteenth Amendment rights to the effective assistance of counsel during Goldson’s direct appeal. (DE. 1-2 at 3). Goldson had the right to the effective assistance of counsel both at trial and on direct appeal. *Guzman v. Sec’y, Dep’t of Corr.*, 73 F.4th 1251, 1255 (11th Cir. 2023) (citing *Strickland*, 466 U.S. at 685-86). Per *Evitts v. Lucey*, 469 U.S. 387 (1985), Goldson’s right to the effective assistance of counsel in his appeal was constitutionally guaranteed. *Id.* at 396-97. Thus, Claim One properly implicated the Sixth

and Fourteenth Amendment right to the effective assistance of counsel.

Claim One further implicated Goldson's Fifth, Sixth, and Fourteenth Amendment rights to due process, notice, and a jury trial. (DE. 1-2 at 3-4). *Jones v. U.S.*, 526 U.S. 227, 243 n.6 (1999). In *Apprendi*, the Court held that any facts other than a prior conviction that increase the penalty for a crime beyond the statutory maximum are considered elements which must be charged in the indictment or information, submitted to a jury, and proven beyond a reasonable doubt. 530 U.S. at 490-91. This principle applies to the sentencing "ceiling" as well as the "floor" for purposes of minimum mandatory sentencing. *Alleyne*, 570 U.S. at 112-13. When a judge imposes a sentence that the jury's verdict alone does not allow, the jury has not found all the facts that the law makes essential to the punishment, and the judge has exceeded his or her authority. *Blakely v. Washington*, 542 U.S. 296, 303-04 (2004). Thus, Goldson's claim properly invoked *Apprendi* and progeny.

The next question is whether Goldson demonstrated deficient performance and resulting prejudice for appellate counsel's failure to raise his *Apprendi* claim on direct appeal. Deficient performance is satisfied when appellate counsel ignored issues which were stronger than those presented on appeal. *Overstreet v. Warden*, 811 F.3d 1283, 1287 (11th Cir. 2016) (quoting *Smith v. Robbins*, 528 U.S. 259, 288 (2000)). Prejudice is satisfied where the unrepresented claim was meritorious and the neglected claim had a reasonable probability of success on appeal. *Brooks v. Comm'r*, 719 F.3d 1292, 1300 (11th Cir. 2013) (quotations omitted).

Claim One satisfied deficient performance. In Goldson's direct appeal, appellate counsel, who was privately retained, filed an *Anders* brief stating that no issues were present. (DE. 9-9). Appellate counsel believed certain issues were unpreserved, (DE. 9-9 at 12), and the appellate court disagreed, told counsel the issues were preserved, and required a supplemental brief with an admonition to "thoroughly research the law, and exercise judgment in identifying the arguments that may be advanced on appeal." (DE. 9-11 at 2). Comparing the appellate court's brief statement on direct appeal that it found no reversible error, (DE. 9-15), and the court's detailed written opinion addressing the substance of Claim One, (DE. 9-22), it is clear that Goldson demonstrated deficient performance because his unraised claim held significantly greater strength than the claims appellate counsel was forced to raise by the appellate court's order.

Claim One also satisfied prejudice because Goldson demonstrated a violation of *Apprendi* and progeny. In Count Two, Goldson was charged with a violation of § 794.011(3), *Fla. Stat.* (2016), which criminalized committing sexual battery on a person twelve (12) years of age or older, without the person's consent, "and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury." § 795.0115, *Fla. Stat.* (2016), the DSFO statute, required a mandatory fifty (50) year sentence for a conviction of enumerated crimes including § 794.011(3), *Fla. Stat.*, under certain circumstances including causing "serious personal injury to the victim as a result of the commission of the offense." *Id.* at (2)(a) & (b).

DSFO sentencing raises the “sentencing floor” to fifty (50) years without the possibility of gain time, § 794.0115(7), *Fla. Stat.*, which is a sentence the trial court would have been unable to impose. Thus, *Apprendi*, *Blakely*, *Alleyne*, and progeny were implicated.

The facts required for DSFO sentencing per *Apprendi*, *Blakely*, and *Alleyne* were not charged in the information. The fourth and final information charged Goldson as follows:

Segwayne Kirk Anthony Goldson, on or between June 30, 2016 and July 1, 2016, in the County of Bay and State of Florida, did commit sexual battery upon T.R., a person 12 years of age or older, without that person’s consent, by committing the following actions, the Defendant’s sexual organ penetrated or had union with the vagina of T.R., and in the process thereof used actual physical force likely to cause serious personal injury, contrary to Florida Statute 794.011(3) and 775.087(1).

(DE. 9-3 at 117). Clearly, the language of using physical force *likely to cause serious personal injury* is not the equivalent of the DSFO § 794.0115(2)(a) language of *caused serious personal injury* to T.R. The appellate court agreed that Goldson’s charging information did not place him on notice of the DSFO sentencing enhancement. (DE. 9-22 at 4). Nonetheless, the court found that Goldson had notice because he was informed of the DSFO enhancement immediately before jury selection in the presence of substitute counsel. (DE. 9-22 at 5). The district court ultimately

agreed with this finding in denying habeas relief. (DE.14 at 36).

Goldson respectfully submits that reasonable jurists could disagree on whether the constitutional sentencing enhancement notice requirement of *Apprendi* and progeny was satisfied in his case. The record shows Goldson, a Jamaican who was unfamiliar with United States legal process, was informed of a sentencing enhancement not charged in the final information and told for the first time that he faced three sexual battery charges instead of one. Goldson received this information immediately before jury selection with substitute counsel who was admittedly not prepared to handle substantive matters. This is insufficient notice for *Apprendi* purposes and complying with constitutional notice requirements.

The constitutional notice requirement is backed by significant precedent. “No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal.” *Cole v. Ark.*, 333 U.S. 196, 201 (1948) (citing *In re Oliver*, 333 U.S. 257, 273 (1948)). “[A] person cannot incur the loss of liberty for an offense without notice and a meaningful opportunity to defend.” *Jackson v. Va.*, 443 U.S. 307, 314 (1979). In *U.S. v. Cotton*, 535 U.S. 625 (2002), the Court began by noting that *Apprendi* sentencing enhancements “must also be charged in the indictment.” *Id.* at 627. Thus, Goldson’s claim rests on sound constitutional footing.

In deciding whether to grant a certificate of appealability, this Court should note that other rea-

sonable jurists have already disagreed on similar issues. In *Handley v. Moore*, 145 F.4th 1167 (9th Cir. 2025), Handley was sentenced to an enhanced sentence based on an enhancement that was not contained within his charging information. *Id.* at 1173. After exhausting state remedies, Handley sought federal habeas corpus relief based in part on *Apprendi* and progeny. *Id.* at 1184. A panel majority found that *Apprendi* and progeny did not require state sentencing enhancements to be alleged within charging information. *Id.* at 1187-88. The Honorable James Donato authored a lengthy dissent and found such enhancements must be contained within charging documents *per Apprendi* and progeny. *Id.* at 1198-1205. Accordingly, reasonable jurists not only *could* disagree about Goldson's issue, reasonable jurists *have disagreed* on Goldson's *Apprendi* issue.

In sum, because reasonable jurists could and have found the district court's ruling on Goldson's constitutional claim debatable or wrong and the issue warrants encouragement to proceed, this Court should issue a certificate of appealability on whether the district court erred in denying Claim One.

2. Jurists of reason would find it debatable whether Goldson stated valid claims of the denial of a constitutional right on Claim Two. Goldson's claim deserves encouragement to proceed further.

Looking through to the last state court decision that provided a relevant rationale, *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018), the trial court found the omissions described Grounds One and Two could not satisfy deficient performance or prejudice. On Ground

One, the trial court found the nude photos may have been cumulative, could have been disbelieved by the jury, counsel did better to focus on other issues, and the photos would not have changed the outcome. (DE. 9-26 at 100-06). On Ground Two, the state court found that counsel did better to focus on other points and found the evidence “overwhelming” against Goldson. (DE. 9-26 at 107-11). The district court generally agreed with the state court’s rationale. (DE. 14 at 44-45, 51).

To begin, Grounds One and Two of Goldson’s amended Rule 3.850 pleading clearly implicated his Sixth and Fourteenth Amendment right to the effective assistance of counsel and *Strickland*. (DE. 9-26 at 27-37; DE. 9-27 at 14-15). Thus, Goldson’s constitutional rights were clearly invoked.

Goldson satisfied deficient performance on Ground One. Considering the totality of the evidence, certain points were undisputed. The DNA evidence proved T.R. and Goldson had sex. The testimony and evidence proved where T.R. and Goldson had sex. T.R.’s distraught appearance and behavior was not disputed. Thus, the only question was whether the sex was consensual and part of an ongoing, clandestine sexual relationship as claimed by Goldson or the black-clad, planned sexual assault as T.R. claimed. T.R. was impeached by certain points including her living with Goldson after alleged rapes; nonetheless, these impeachment points were not dispositive on an ongoing consensual relationship because they could be easily explained by the difficulty in maintaining a stable living situation. Goldson’s possession of naked photos of T.R. with their creation date in his Google Drive predating June 30, 2016, by months would have sup-

ported an ongoing, consensual sexual relationship. The impeachment effect of the photos would have been given additional weight especially after T.R. identified her star tattoos and denied sending Goldson naked photos. The creation dates of the photos would have shown that Goldson did not and could not have acquired the photos on the night of the assault.

Goldson further satisfied prejudice. Prejudice means there is a reasonable probability that, but for counsel's failure to investigate and present the photos, the result of Goldson's trial would have been different. *Strickland*, 466 U.S. at 694. Goldson was not required to show he "more likely than not" would have been acquitted. *Harrington v. Richter*, 562 U.S. 82, 111-12 (2011). Rather, "[a] reasonable probability is less than a preponderance." *Hayes v. Sec'y, Fla. Dep't of Corr.*, 10 F.4th 1203, 1210 (11th Cir. 2021) (citing *Strickland*, 466 U.S. at 694). Here, as shown by the verdict, the jury disbelieved the State's case entirely on Count One, and partially disbelieved it on Count Three. The only real evidence of what happened during sex between Goldson and T.R. was their "he said, she said" testimonies. T.R.'s distraught behavior could be explained through her anger at Goldson in rejecting her the same way it could be offered as evidence corroborating her testimony. Thus, considering the evidence in this case, Goldson also satisfied prejudice.

Goldson also satisfied deficient performance and prejudice on Ground Two. T.R. claimed that Goldson committed a physically impossible act of holding her on the ground by her neck in one hand while performing oral sex on her, digitally penetrating her, having vaginal intercourse with her, and taking photos of her.

This argument would have exposed a major point undermining the credibility of T.R.'s narrative.

This Court has previously found deficient performance and prejudice satisfied in similar circumstances. In *Code v. Montgomery*, 799 F.2d 1481 (11th Cir. 1986), a similar “swearing match” kind of case, counsel’s failure to investigate and present evidence supporting an alibi, Code’s only defense, satisfied deficient performance and resulting prejudice warranting overturning a district court order denying habeas corpus. *Id.* at 1483-84. In *Nixon v. Newsome*, 888 F.2d 112 (11th Cir. 1989), this Court found counsel’s failure to impeach the only eyewitness to a robbery with her prior inconsistent statement at a different trial also satisfied deficient performance and resulting prejudice. *Id.* at 115-17. As in *Code* and *Newsome*, considering that trial counsel’s theory of defense was that T.R. should not be believed, deficient performance is satisfied because the unrepresented evidence and argument would have greatly supported Goldson’s only defense. Prejudice is also satisfied because the material moments in the case were known only to Goldson and T.R. and would have supported Goldson’s only defense. Thus, Goldson moves this Court to grant a certificate of appealability on whether the state court denial was contrary to or involved an unreasonable application of *Strickland*.

This Court should further grant a certificate of appealability on whether the state court’s order denying relief was based on an unreasonable determination of the facts. Specifically, the state court’s order denying Grounds One and Two found the evidence against Goldson “overwhelming” to the extent that his claims would not have changed the outcome. This Court has

described evidence as overwhelming where a recording of a drug sale, two witnesses, a confidential informant, and a coconspirator all linked the defendant to drug sales. *U.S. v. Vargas*, 792 Fed. Appx. 764, 773 (11th Cir. 2019). By contrast, in this case, the evidence supporting lack of consent was all testimonial. Both Goldson and T.R. had problems with credibility, no witnesses saw the sexual encounter, and no forensic evidence confirmed or disproved consent. The evidence was far from overwhelming; thus, Goldson's claims deserve encouragement to proceed regarding the court's factual findings.

Finally, this Court should grant a certificate of appealability on whether the district court erred in denying Goldson an evidentiary hearing. Goldson's claims were summarily denied in state court without allowing him the opportunity to substantiate his claims at a hearing. Both Grounds One and Two of his amended 3.850 would require Goldson to prove that counsel's failures were not the result of trial strategy.

In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief.

Schriro v. Landrigan, 550 U.S. 465, 474 (2007). Here, the district court abused its discretion by denying an evidentiary hearing because such a hearing would allow Goldson to prove his petition's factual allegations, which, if proven true, would entitle him to federal habeas relief. *Burgess v. Comm'r*, 723 F.3d 1308, 1320 (11th Cir. 2013) (citing *Schriro*, 550 U.S. at 474). Thus, this Court should grant a certificate of

appealability and allow Goldson the opportunity to appeal the denial of an evidentiary hearing.

CONCLUSION

WHEREFORE, based on the foregoing, Goldson moves this Honorable Court to grant a certificate of appealability.

Respectfully submitted,

The Law Office of
ROBERT DAVID MALOVE, P.A.
The Malove Law Building
200 SE 9th Street
Fort Lauderdale, Florida 33316
Telephone: (954) 861-0384
peter@robertmalovelaw.com

By: /s/ Peter Felix Armstrong

Peter Felix Armstrong, Esq.

MN. Bar No. 0504833

AL. Bar No. 2704D88T

Attorney for Appellant

**REPLY TO RESPONDENT'S ANSWER TO
PETITION FOR WRIT OF HABEAS CORPUS
(FEBRUARY 11, 2024)**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

SEGWAYNE GOLDSON,

Petitioner,

v.

SECRETARY, RICKY D. DIXON,

Respondent.

Case No. 5:23-cv-225-TKW-MAF

**REPLY TO RESPONDENT'S ANSWER TO
PETITION FOR WRIT OF HABEAS CORPUS**

COMES NOW the Petitioner, SEGWAYNE GOLDSON, by and through undersigned counsel, pursuant to Rule 5(e), Rules Governing Section 2254 Cases, and files this reply to Respondent's answer to his Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 8). In support, Petitioner submits as follows:

CLAIM ONE

1. In response to Claim One, Respondent adopted and incorporated the rationale of the First District Court of Appeal in *Goldson v. State*, 293 So.3d 569 (Fla. 1st DCA 2020) (Doc. 8 at 16). Respondent argued Petitioner had actual notice of the dangerous sexual felony offender (“DSFO”) enhancement immediately prior to jury selection and, thus, there was no resulting prejudice. (Doc. 8 at 17-23). Respondent argued Petitioner’s reliance on his cited authorities was misplaced and distinguishable because the defendants in those cases lacked actual knowledge of enhancement prior to trial. (Doc. 8 at 25). Respondent concluded by arguing Petitioner could not show prejudice. (Doc. 8 at 26-27).

2. The appendix demonstrates and Respondent concedes the primary factual substance of Petitioner’s claim. Petitioner’s fourth and final amended information charged him in Count Two with “sexual battery — physical force *likely* to cause serious personal injury” and alleged that Petitioner’s sexual organ penetrated or had union with T.R.’s vagina “and in the process thereof used actual physical force *likely* to cause serious personal injury.” (Doc. 9-3 at 117) (emphasis added). The information both cited and traced the language of § 794.011(3), *Fla. Stat.*, and referenced § 775.087(1), *Fla. Stat.* (Doc. 9-3 at 117). Notably, the information did not charge § 794.0115, *Fla. Stat.*, the DSFO statute. (Doc. 9-3 at 117). Thus, the violation of *Apprendi v. NJ.*, 530 U.S. 446 (2000), and *Alleyne v. U.S.*, 570 U.S. 99 (2013), is substantiated because facts increasing the statutory maximum and sentencing floor were not charged in the information. The First District conceded as much by noting the final

information did not place Petitioner on notice of the DSFO enhancement. (Doc. 9-22 at 4).

3. Respondent's argument that the violation of *Apprendi/Alleyne* was harmless fails when considering the totality of the circumstances. Prior to jury selection and through four charging documents, Petitioner was facing a single charge of sexual battery. (Doc. 9-3 at 21, 24, 45, and 63). The fourth amended information was announced around 9:30 a.m. on October 10, 2016, prior to jury selection. (Doc. 9-5 at 3). Petitioner's attorney, Laura McCarthy, was not present and Doug White was standing in. (Doc. 9-5 at 3). Petitioner was made aware of the DSFO enhancement for the first time and told he could enter an open plea to avoid DSFO sanctions. (Doc. 9-5 at 3-7). After a brief off-record discussion with stand-in counsel, White said Petitioner, a Jamaican, spoke English but lacked understanding of the legal structure. (Doc. 9-5 at 7-12). Petitioner was addressed by stand-in counsel and the trial court and the DSFO was explained and acknowledged. (Doc. 9-5 at 9-15).

4. The inherent harm becomes clear when viewed against this factual backdrop. Petitioner was first informed of the enhanced potential sentence with stand-in counsel just hours before jury selection. Petitioner expressed his lack of understanding on the record:

PETITIONER: The question is I got my discovery saying one charge, they charged me once for a sexual battery and now it's turned into three different charges . . . I don't understand that, like how I got three, they charged me with three different charges instead of one.

(Doc. 9-5 at 21). Court recessed for other proceedings and then resumed at 12:34 p.m. (Doc. 9-5 at 24). Petitioner's assigned attorney, Laura McCarthy, still had not had a chance to speak with him and said they would talk after jury selection. (Doc. 9-5 at 24). The fourth amended information was then filed, and jury selection commenced. (Doc. 9-5 at 24-27).

5. Respondent's argument would in effect render the *Apprendi/Alleyne* requirement that enhancements of the sentencing floor or ceiling be charged in the information a nullity. Eleventh hour notice to a non-citizen with limited understanding of United States justice represented by stand-in counsel was not the notice contemplated by due process or the Supreme Court.

6. In promulgating the requirement that any fact elevating the sentencing maximum must be first charged in the information, the Supreme Court traced the roots of the procedural protection as safeguards against tyranny and surprise so a defendant may predict the judgment and sentence from the face of the charging document with certainty. *Apprendi*, 530 U.S. at 478-79. Since the country's founding and common law roots, a proper charging document must allege all elements of the crime including the basis for punishment. *Id.* at 499-501 (Scalia, J., concurring). "This, in turn, allows the defendant to prepare an appropriate defense." *U.S. v. Ford*, 839 F.3d 94, 104 (1st Cir. 2016). The charging requirement rationale was based in part on the premise that the charging information should alert the defendant of what exactly he is facing in order that he may prepare his defense accordingly. *Id.* at 478. Applied here, the spirit of *Apprendi/Alleyne* is defeated when notice of the enhancement is given

immediately before trial with stand-in counsel and no further opportunity to prepare.

7. Respondent's argument that the jury's verdict rendered the error harmless is misplaced. By this logic, any charging information may omit sentencing enhancement elements in violation of *Apprendi/Alleyne* as long as the jury's ultimate verdict reflects such a finding. The *Apprendi/Alleyne* charging requirement would be rendered hollow if the prosecution only needed to later satisfy the uncharged enhancement elements through evidence presented at trial and the jury's verdict.

8. Respondent misinterprets the standard relevant to Petitioner's case. To demonstrate prejudice and show the error was not harmless, there must be a reasonable probability that the error contributed to *the sentence*. *Mason v. Allen*, 605 F.3d 1114, 1123 (11th Cir. 2010) (quoting *Horsley v. State of Ala.*, 45 F.3d 1486, 1493 (11th Cir. 1995)). In *Simmons v. Inch*, 2021 U.S. Dist. LEXIS 129314 (N.D. Fla. February 24, 2021), this Court found prejudice satisfied and the error harmful where the violation of *Alleyne* "subjected Simmons to a ten-year mandatory minimum sentence that he otherwise would not have been subjected to." *Id.* at *37. In this case, the violation of *Apprendi/Alleyne* subjected Petitioner to a fifty (50) year minimum mandatory sentence that he would not otherwise be subjected to. Therefore, the error was not harmless and resulting prejudice is satisfied.

9. Respondent's attempt to distinguish *Gault v. Lewis*, 489 F.3d 993 (9th Cir. 2007), is also misplaced. Therein, the Ninth Circuit held that a violation of *Apprendi* based on a failure to inform of the enhancement in a charging document was not cured

by a later jury finding. *Id.* at 1006-14. Further, like Petitioner, Gautt found out about his sentencing enhancement as his trial progressed and not before. *Id.* at 1000-01.

10. In sum, the state court denial of relief was an unreasonable application of *Apprendi*, *Alleyne*, and *Strickland v. Washington*, 446 U.S. 668 (1984). This Court should grant habeas relief and remand for resentencing.

CLAIM TWO

11. Claim Two concerned the state court denial of Grounds One and Two of Petitioner's motion for postconviction relief. (Doc. 1-2 at 10-18).

12. In response to Ground One, Respondent argued the unpresented photos were immaterial, related to a collateral matter, and related to an evidentiary determination beyond this Court's review. (Doc. 8 at 31-33). Respondent argued the state court's determination depended on the admissibility of the photos and this Court is prohibited from reexamining state court evidentiary decisions. (Doc. 8 at 33-36). Alternatively, Respondent argued the probative value of the photos was outweighed by the substantial likelihood for unfair prejudice. (Doc. 8 at 36-38).

13. In response to Ground Two, Respondent argued trial counsel presented a reasoned, rational theme which satisfied the minimal constitutional guarantees. (Doc. 8 at 38-40). Respondent further argued Petitioner's assertion of prejudice was too speculative. (Doc. 8 at 40-41).

14. Respondent misinterprets the state court's determination regarding Ground One. The state court

denial of Ground One did not rely on admissibility. (Doc. 9-26 at 100-06). Rather, the state court simply made a judgment call on deficient performance and prejudice based on what it characterized as “overwhelming” evidence showing lack of consent, which was in turn T.R.’s own testimony paired with other witnesses repeating what T.R. said. Therefore, Petitioner respectfully disagrees with Respondent’s attempt to shoehorn his claim into an area beyond this Court’s purview.

15. Further, the cases relied upon by Respondent are either distinguishable or stand for broad propositions in law which are not dispositive to Petitioner’s claim. The claim at issue in *Taylor v. Sec’y, Fla. Dep’t of Corr.*, 760 F.3d 1284 (11th Cir. 2014), concerned an appellate issue on the admissibility of testimony and did not address whether counsel was ineffective for failing to present evidence. *Id.* at 1294-95.

16. Respondent further misunderstands the nature of the evidence. T.R. presented a narrative that Petitioner dressed himself in all black, waited for her in the dark, had sex with her against her will, and squeezed her throat until she passed out. Petitioner testified on his own behalf, conceded having sex with T.R., and said the sex was consensual and consistent with a long-term clandestine relationship. Petitioner said T.R.’s motive to fabricate the allegations against him was his breaking off their clandestine relationship and refusing to give her money for a morning-after pill.

17. Notably, T.R. denied going out with Petitioner, insisted they were just friends, and denied previously having consensual sex with him, flirting, or sending him nude photos. (Doc. 9-7 at 83, 94-96). The unpre-

sented nude photos in Petitioner's possession would have been relevant and material to his only defense of consent because they tended to show an ongoing relationship. Considering Petitioner's inconsistent statements to police, trial counsel should have sought all evidence confirming his consent theory of defense.

18. Respondent overstates the threshold of satisfying prejudice. "*Strickland* asks whether it is 'reasonably likely' the result would have been different." *Harrington v. Richter*, 562 U.S. 86, 111 (2011). Petitioner need not show the omission of the photos "more likely than not altered the outcome." *Strickland*, 466 U.S. at 693. Rather, the "level of certainty is something less than a preponderance." *Young v. Catoe*, 205 F.3d 750, 759 (4th Cir. 2000). Petitioner need only demonstrate "a probability sufficient to undermine confidence in the outcome." *Id.* (quoting *Strickland*, 466 U.S. at 693). This Court should find that the additional corroborative evidence would have shifted the evidentiary balance enough to undermine confidence in the result, especially paired with incredible allegations from T.R. including her living with Petitioner following alleged previous rapes, the absence of black clothes in Petitioner's belongings, and Petitioner's alleged performance of oral sex while simultaneously strangling T.R.

19. Regarding Ground Two, the cases relied upon by Respondent are distinguishable. *Bell v. Cone*, 535 U.S. 685 (2002), *Allen v. Lawhorn*, 562 U.S. 1118 (2010), *Gilliam v. Sec'y for the Dep't of Corr.*, 480 F.3d 1027 (11th Cir. 2007), *Grossman v. McDonough*, 466 F.3d 1325 (11th Cir. 2006), and *Chander v. U.S.*, 218 F.3d 1305 (11th Cir. 2000), all involved capital defendants sentenced to death and attorneys' various con-

cerns in the penalty phase. As the Supreme Court has noted, “death is different.” *Harmelin v. Mich.*, 501 U.S. 957, 994 (1991).

20. Regarding prejudice, Petitioner reiterates his previous argument that Respondent is overstating the threshold of prejudice. Had counsel argued the myriad inconsistent points of T.R.’s narrative as outlined in his motion, there is a reasonable possibility that the results of the trial would have been different.

21. Petitioner has met his burden of demonstrating the state court’s denial of Grounds One and Two of his motion for postconviction relief resulted in an unreasonable application of *Strickland*. Alternatively, the state court’s denial was based on an unreasonable determination of the facts because the denial was premised upon an objectively reasonable fact-finding that the evidence against Petitioner was “overwhelming.” This Court should hold an evidentiary hearing on Claim Two as requested in the petition.

Respectfully submitted,

The Law Office of
ROBERT DAVID MALOVE, P.A.
The Malove Law Building
200 SE 9th Street
Fort Lauderdale, Florida 33316
Telephone: (954) 861-0384
e-filing@robertmalovelaw.com

By: /s/ Robert David Malove
Robert David Malove, Esq.
FL. Bar No.: 407283

**PETITION UNDER 28 U.S.C. § 2254
FOR WRIT OF HABEAS CORPUS BY
A PERSON IN STATE CUSTODY
(AUGUST 22, 2023)**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

Name (under which you were convicted):

Segwayne K. Goldson

Docket or Case No.: 5:23-cv-225

Place of Confinement:

Century C.I., 400 Tedder Rd., Century, FL 32535-3659

Prisoner No.: Q32388

Petitioner (include the name under which you were convicted)

Segwayne K. Goldson

v.

Respondent (authorized person having custody of petitioner)

Ricky Dixon, Sec'y, Fla. Dep't of Corr.

The Attorney General of the State of: Florida

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Circuit Court of the Fourteenth Judicial Circuit
in and for Bay County, Florida

(b) Criminal docket or case number (if you know):

2016-CF-2683

2. (a) Date of the judgment of conviction (if you know): 06/30/2016

(b) Date of sentencing: 11/10/2016

3. Length of sentence: 50 (fifty) years

4. In this case, were you convicted on more than one count or of more than one crime? ☒ yes

5. Identify all crimes of which you were convicted and sentenced in this case: Count Two - sexual battery using physical force likely to cause serious bodily injury; Count Three - sexual battery

6. (a) What was your plea? (Check one)

☒ (1) Not guilty

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

☒ Jury

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

☒ yes

8. Did you appeal from the judgment of conviction?

☒ yes

9. If you did appeal, answer the following:

(a) Name of court: First District Court of Appeal

(b) Docket or case number (if you know):
1D16-5299

- (c) Result: Per curiam affirmed
- (d) Date of result (if you know): 02/20/2018
- (e) Citation to the case (if you know):
Goldson v. State, 241 So.3d 918 (Fla. 1st
DCA 2018)
- (f) Grounds raised:
 - (1) Whether the court erred by denying
Petitioner's motion to suppress state-
ments made by the Petitioner. (2)
 - 2. Whether the court erred by denying
Petitioner's motion to exclude evidence
of statements made by the victim and
finding the statements to be admissi-
ble as excited utterances or a spon-
taneous statement for the purpose of
§ 90.803(1) or (2), Florida Statutes. (3)
 - 3. Whether the court erred by denying
Petitioner's motion to exclude evi-
dence of a prior alleged sexual
battery upon the victim by Petitioner.
- (g) Did you seek further review by a higher
state court?
 - ☒ yes
- (h) Did you file a petition for certiorari in
the United States Supreme Court?
 - ☒ No

10. Other than the direct appeals listed above,
have you previously filed any other petitions, applica-
tions, or motions concerning this judgment of convic-
tion in any state court?

- ☒ yes

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

(a)

- (1) Name of court: First District Court of Appeal
- (2) Docket or case number (if you know): 1D18-3080
- (3) Date of filing (if you know): 07/24/2018
- (4) Nature of the proceeding: Ineffective assistance of appellate counsel 9.141 (d)
- (5) Grounds raised:
 1. Appellate counsel rendered ineffective assistance by failing to raise the meritorious issue that the trial court erred in imposing a mandatory minimum sentence of 50-years, pursuant to § 794.0115, Fla. Stat. (2016), which was not charged by the State in the fourth amended information for Count Two.
- (6) Did you receive a hearing where evidence was given on your petition, application, or motion?
☒ No
- (7) Result: Denied with opinion; discretionary review declined
- (8) Date of result (if you know): 08/04/2020

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

- (1) Name of court: Circuit Court of the Fourteenth Judicial Circuit in and for Bay County, FL
- (2) Docket or case number (if you know): 2016-CF-2683
- (3) Date of filing (if you know): 03/19/2020
- (4) Nature of the proceeding: Rule 3.850 motion for postconviction relief
- (5) Grounds raised: (1) Trial counsel rendered ineffective assistance of counsel by failing to investigate, obtain, and present photographic evidence received by the Petitioner from T.R. that directly contradicted T.R.'s trial testimony. (2) Trial counsel rendered ineffective assistance by failing to make an effective closing argument that pointed out the inconsistencies of the State's case and the inherent unbelievability of the victim's testimony. (3) Ineffective assistance of counsel by failing to investigate and present Kahmar Shaw at trial. (4) Ineffective assistance of counsel by failing to investigate and present Opal Harper-Smith at trial.
- (6) Did you receive a hearing where evidence was given on your petition, application, or motion?
☒ No
- (7) Result: Summarily denied
- (8) Date of result (if you know): 02/20/2022

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

(1) First petition: ☒ yes

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

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

GROUND ONE:

Ineffective assistance of appellate counsel - the state court denial of Petitioner's claim resulted in an unreasonable application of Strickland, Apprendi, Alleyne, and progeny.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE ATTACHED

(c) Direct Appeal of Ground One:

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

☒ No

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

The issue was omitted on direct appeal. However, Petitioner raised the issue in a petition for writ of habeas corpus alleging ineffective assistance of appellate counsel.

(d)Post-Conviction Proceedings:

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

☒ No

- (3) Did you receive a hearing on your motion or petition?

☒ No

(e)Other Remedies:

Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: Petitioner filed a petition for writ of habeas corpus alleging ineffective assistance of appellate counsel in the First District Court of Appeal. Petitioner thereafter sought discretionary review in the Florida Supreme Court. Thus, the issue is exhausted.

GROUND TWO: Ineffective assistance of trial counsel

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): SEE ATTACHED

(c) Direct Appeal of Ground Two:

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

☒ No

- (2) If you did not raise this issue in your direct appeal, explain why: Claims of ineffective assistance of trial counsel are not cognizable on direct appeal.

(d) Post-Conviction Proceedings:

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

☒ Yes

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Rule 3.850 motion for postconviction relief

Name and location of the court where the motion or petition was filed: Circuit Court of the Fourteenth Judicial Circuit in and for Bay County, Florida

Docket or case number (if you know): 2016-CF-2683

Date of the court's decision: 02/02/2022

- (3) Did you receive a hearing on your motion or petition?

☒ No

- (4) Did you appeal from the denial of your motion or petition?

☒ Yes

- (5) If your answer to Question (d)(4) is “Yes,” did you raise this issue in the appeal?

☒ Yes

- (6) If your answer to Question (d)(4) is “Yes,” state:

Name and location of the court where the appeal was filed: First District Court of Appeal, Tallahassee, Florida

Docket or case number (if you know): 1D22-0662

Date of the court’s decision: 10/13/2022

Result (attach a copy of the court’s opinion or order, if available): Per curiam affirmed

[. . .]

13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction?

☒ Yes

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: No

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition?

☒ No

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging?

☒ No

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

- (a) At preliminary hearing: Herman Laramore, 1229 Bar L Ranch Rd., Marianna, FL 32448-9240
- (b) At arraignment and plea: Herman Laramore, 1229 Bar L Ranch Rd., Marianna, FL 32448-9240
- (c) At trial: Laura McCarthy, 1520 Jenks Ave., Panama City, FL 32405-4646
- (d) At sentencing: Laura McCarthy, 1520 Jenks Ave. , Panama City, FL 32405-4646
- (e) On appeal: Jonathan W. Dingus, 415 N. Richard Jackson Blvd., Panama City Beach, FL 32407-3664
- (f) In any post-conviction proceeding: Robert David Malove, 200 SE 9th St., Fort Lauderdale, FL 33316
- (g) On appeal from any ruling against you in a post-conviction proceeding: Robert David

Malove, 200 SE 9th St., Fort Lauderdale, FL
33316

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?

☒ No

18. TIMELINESS OF PETITION:

If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition. *

* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

Petitioner's direct appeal was per curiam affirmed on 2-20-18. 154-days elapsed until Petitioner filed a petition for writ of habeas corpus alleging ineffective assistance of appellate counsel on 7-24-18. After the denial of rehearing with opinion, Petitioner sought discretionary review in the Florida Supreme Court. Meanwhile, Petitioner filed a motion for postconviction relief on 3-19-20. The Florida Supreme Court denied discretionary review on 8-4-20. Petitioner's motion for postconviction relief was denied, appealed, and the mandate issued 10-31-22.

Petitioner appealed followed the judgment and sentence of the lower court; therefore, Petitioner had 90-days in which to seek certiorari in the Supreme Court of the United States before the 1-year Anti-Terrorism and Effective Death Penalty ("AEDPA") began. Petitioner's "federal clock" under AEDPA ran from 2-20-18 through 7-24-18, and was tolled from 7-24-18 through 10-31-22. Accordingly, the instant petition is timely if filed on or before 8-28-23.

Therefore, petitioner asks that the Court grant the following relief: vacate the judgment and sentence,

-
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
 - (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

remand for resentencing, order a new trial, hold an evidentiary hearing,

/s/ Robert David Malove
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on 08/22/2023 (date).

/s/ Robert David Malove
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

Attorney for Petitioner

CLAIM ONE

THE STATE COURT'S DENIAL OF
PETITIONER'S PETITION FOR WRIT OF
HABEAS CORPUS ALLEGING INEFFECTIVE
ASSISTANCE OF APPELLATE COUNSEL
RESULTED IN A DECISION THAT WAS
CONTRARY TO OR INVOLVED AN
UNREASONABLE APPLICATION OF
CLEARLY ESTABLISHED FEDERAL LAW AS
DETERMINED BY THE SUPREME COURT

SUPPORTING FACTS

Petitioner was charged by fourth amended information with three (3) counts of sexual battery in violation of § 794.011(3), *Fla. Stat.* Count One alleged that Petitioner's mouth had union with T.R.'s vagina. Count Two alleged that Petitioner's penis penetrated or had union with T.R.'s vagina. Count Three alleged Petitioner penetrated T.R.'s vagina with his fingers. Each count alleged Petitioner "used actual physical force likely to cause serious personal injury" and cited to §§ 794.011(3) and 775.087(1), *Fla. Stat.* The Dangerous Sexual Felony Offender Act ("DSFO") statute, § 794.0115, *Fla. Stat.*, was not charged in the information.

Following trial, the jury rendered a verdict of not guilty on Count One, guilty as charged on Count Two, and guilty of the lesser-included-offense of sexual battery on Count Three. On Count Two, the jury made a special finding that Petitioner did cause serious personal injury to the victim. At sentencing, the State argued Petitioner was subject to DFSO enhancement and subject to a minimum mandatory of fifty (50) years prison. (ST.22). Defense counsel responded that

an enhanced penalty would be unconstitutional because no notice was given. (ST.23). The State responded that the defense was aware of the enhancement because the enhanced penalty was discussed at jury selection. (ST.23). The trial court thereafter sentenced Petitioner to fifty (50) years on Count Two and fifteen (15) years on Count Three.

Petitioner's sentence was not addressed in his direct appeal. Petitioner thereafter filed a petition for writ of habeas corpus alleging ineffective assistance of appellate counsel in Case No. 1D18-3080 raising the single issue that his enhanced sentence on Count Two was unconstitutional. Petitioner argued the failure to include either the substance or citation of the enhancing statute in the final fourth amended information rendered the enhanced sentence violative of Supreme Court precedent. (Pet.6-9). In answer, the State argued the jury made the necessary finding about serious personal injury and the DSFO language was not required to be included in the information. (Resp.4-6). Petitioner replied that the State's argument was contrary to established federal law. (Rep.2-5). The First District denied the petition on October 31, 2019.

After Petitioner moved for rehearing, the First District issued a written opinion denying relief on March 24, 2020. The court noted § 794.011(3), *Fla. Stat.*, contained the element of using physical force likely to cause serious personal injury and was charged in the information. The court found this language did not sufficiently put Petitioner on notice of the DSFO enhancement through § 794.0115(2)(a), *Fla. Stat.* However, the court found an on-record plea discussion prior to jury selection placed Petitioner on notice of his DSFO exposure. Petitioner sought discre-

tionary review in the Florida Supreme Court, which the Court ultimately denied.

CLAIM TWO

THE STATE COURT'S DENIAL OF
GROUNDS ONE AND TWO OF
PETITIONER'S AMENDED MOTION FOR
POSTCONVICTION RELIEF RESULTED
IN A DECISION THAT WAS CONTRARY
TO OR INVOLVED AN UNREASONABLE
DETERMINATION OF CLEARLY
ESTABLISHED FEDERAL LAW, AND/OR
BASED ON AN UNREASONABLE
DETERMINATION OF THE FACTS IN
LIGHT OF THE EVIDENCE PRESENTED
IN STATE COURT

SUPPORTING FACTS

Petitioner and T.R. are both from Jamaica. Petitioner has a son with T.R.'s sister. They were both living and working in Panama City, Florida, when the alleged events occurred.

T.R. accused Petitioner of following her on July 1, 2016, and sexually battering her. She told police that she was walking home from work when a man wearing all black grabbed her from behind and forced her to walk down a grassy path from a parking lot. T.R. said she recognized the man as Petitioner. T.R. reported that Petitioner forced her down, performed oral sex on her, and penetrated her vagina with his fingers and penis. Petitioner's semen was found in T.R.'s vagina. Petitioner initially denied having sex with T.R., but later said it was consensual and

occurred on his living room couch after being informed of the presence of semen.

The case proceeded to trial. T.R. testified she got off work around 11:00 p.m. on June 30, 2016, went to Sonic, and then began walking home through the area of an old Publix. Someone dressed in black came from behind a building, held a rag with some substance to her nose, and began squeezing her throat. T.R. fought back, knocked a hood off the assailant, and recognized the person as Petitioner. T.R. said Petitioner pulled her to the woods and forced her down. T.R. claimed Petitioner kept a hand on her throat while he performed oral sex on her, digitally penetrated her, took flash pictures with her phone, and had sexual intercourse with her. T.R. said she passed out, ran to a road, and flagged down a passing motorist.

T.R. testified previous incidents happened between herself and Petitioner. In January 2015, after a party in Jamaica, T.R. said Petitioner was drunk, grabbed her by the throat, and started to undo her belt before she fled. In February 2015, T.R. said Petitioner grabbed her by the throat, pushed her to the ground, and had sex with her. T.R. reported a third incident occurring in Walton County, Florida. None of these incidents were reported to law enforcement.

At trial, T.R. was shown a photo of herself with Petitioner where she was wearing a bikini.

Q. And you have stars, like a stars tattoo on your stomach?

A. Yes, I do.

(T. 94). T.R. admitted living with Petitioner after the dates of the alleged rapes. Specifically, Petitioner

slept above her on a bunk bed. They worked together. She denied sending nude photos to Petitioner.

T.R. reported her cell phone and debit card as missing after the encounter with Petitioner. Shoes and undergarments were found in the area where T.R. reported the incident happened. Law enforcement searched Petitioner's home for black clothes and the missing items but found nothing. Petitioner first denied that anything sexual happened. In a recorded statement played at trial, Petitioner told police that he and T.R. had sex in Jamaica 3-4 times and then once in Walton County, Florida.

Petitioner testified at trial. Petitioner initially lied to police because Jamaican police lock people up for remaining silent. T.R. and Petitioner had a clandestine relationship and did not want T.R.'s sister to find out. He maintained they had a consensual sexual relationship. On July 1, 2016, Petitioner encountered T.R., who said it was her birthday and asked what Petitioner had to give her. Petitioner offered some of his tips from the next day and sex. T.R. slept underneath Petitioner in a bunk bed with numerous roommates present in the residence; thus, they opted to have sex on a grass path. Petitioner denied performing oral sex or digitally penetrating T.R. Regarding motive, T.R. told Petitioner that she wanted a relationship with him. Petitioner declined because he had a son with T.R.'s sister.

Q. And was she mad about that?

A. Yeah, she was mad. When I was walking away she was like she can F me up, so I never know that this is the way she was going to do it.

(T. 232). T.R. was further angry because Petitioner refused to buy her a morning-after pill.

Petitioner was found not guilty on Count One, guilty as charged on Count Two, and guilty of the lesser charge of sexual battery on Count Three. He was sentenced to fifty (50) years prison. The First District affirmed his direct appeal and denied his petition alleging ineffective appellate counsel.

Petitioner thereafter filed a Rule 3.850 motion for postconviction relief in the trial court. In Ground One, Petitioner alleged trial counsel rendered ineffective assistance by failing to investigate, obtain, and present photographic evidence received by Petitioner from T.R. that directly contradicted her testimony. Petitioner filed photographs as exhibits to his motion. The photographs showed Petitioner in a nightclub with T.R. where her distinctive stomach stars tattoo was visible. In other photos, T.R. was nude with her stomach star tattoo visible. Petitioner stated he provided trial counsel with the location, passwords, and details of these photos. He told counsel that these photos would prove he was in a secret, ongoing, consensual relationship with T.R.

In Ground Two, Petitioner alleged trial counsel rendered ineffective assistance of counsel by failing to make an effective closing argument which outlined how T.R.'s allegations were anatomically impossible. Specifically, T.R. alleged that

Petitioner — a 5'10" man — kept her pinned to the ground with a hand on her throat while performing oral sex on her, digitally penetrating her, texting or taking pictures with a phone, and having sexual intercourse. Trial counsel's closing argument failed to

outline this physical impossibility and further failed to outline how the police never found black clothes, black gloves, a rag with chemicals, or items belonging to T.R. in Petitioner's residence.

The trial court ordered the State to respond to Ground One. The State responded the photos were cumulative. The State noted T.R. remembered seeing flashes of light and concluded that Petitioner had taken the pictures from T.R.'s phone during the alleged rape. Petitioner replied that the metadata associated with the phone showed the photos were created in his Google Drive on either January 23, 2016, or March 4, 2016. It would be impossible for Petitioner to steal the photos on July 1, 2016, and then modify the date of receipt on his device. Petitioner replied and outlined how the photos were not cumulative.

The trial court summarily denied all grounds without a hearing. Regarding Ground One, the court found Petitioner's phone was not available to counsel or the State. The court further found trial counsel did better to focus on other photos showing a clandestine relationship. The court thus found deficient performance lacking. The court further found prejudice lacking because of the "overwhelming" evidence showing lack of consent. The court detailed its view of overwhelming evidence which was based entirely on T.R.'s testimony and other witnesses' testimony recounting what T.R. told them.

Regarding Ground Two, the court found deficient performance was lacking because trial counsel pointed out a sufficient amount of inconsistencies in T.R.'s narrative and did not quibble with her choice of words. The court further found a lack of prejudice based on

the “overwhelming” evidence showing lack of consent as outlined in Ground One.

Petitioner appealed the summary denial to the First District Court of Appeal and the appellate court per curiam affirmed without opinion.

**PETITIONER'S MEMORANDUM OF LAW
IN SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS
(AUGUST 22, 2023)**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

SEGWAYNE GOLDSON,

Petitioner,

v.

SECRETARY, RICKY D. DIXON,

Respondent.

Case No. 5:23-cv-225

**PETITIONER'S MEMORANDUM OF LAW IN
SUPPORT OF PETITION FOR WRIT OF
HABEAS CORPUS**

The Petitioner, SEGWAYNE GOLDSON, by and through undersigned counsel, submits the following memorandum in support of his amended petition for writ of habeas corpus:

STANDARD OF REVIEW IN HABEAS CORPUS PROCEEDINGS

Federal courts may issue habeas corpus relief for persons in state custody pursuant to 28 U.S.C. § 2254, as amended by the Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”). § 2254(d) provides, in relevant part:

- (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.

28 U.S.C. § 2254(d).

Under the “contrary to” clause, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by this court on a question of law or if the state court decides a case differently than this Court has on a set of materially indistinguishable facts. Under the “unreasonable application” clause, a federal habeas

court may grant the writ if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts of the prisoner's case.

Williams v. Taylor, 529 U.S. 362, 412-13 (2000) (O'Connor, J., concurring).

An unreasonable determination of the facts may be present where the validity of the state court's ultimate conclusion is premised on unreasonable fact finding. *Gill v. Mecusker*, 633 F.3d 1272, 1292 (11th Cir. 2011). "The question . . . is not whether a federal court believes the state court's determination was incorrect but whether that determination was unreasonable." *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007). "The Supreme Court has found state factual findings unreasonable under § 2254(d)(2) when the direction of the evidence, viewed cumulatively, was "too powerful to conclude anything but [the petitioner's factual claim]," . . . and when a state court's finding was "clearly erroneous[.]" *Landers v. Warden*, 776 F.3d 1288, 1294 (11th Cir. 2015) (quoting *Miller-El v. Dretke*, 545 U.S. 231, 265 (2005), and *Wiggins v. Smith*, 539 U.S. 510, 528-29 (2003)).

Where the final state court to decide a petitioner's federal claim contains no explanation, federal courts must "look through' the unexplained decision to the last related state court decision that does provide a relevant rationale." *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018). The court should then presume the final state court reviewing the issue adopted the same reason. *Id.*

CLAIM ONE

THE STATE COURT'S DENIAL OF
PETITIONER'S PETITION FOR WRIT OF
HABEAS CORPUS ALLEGING INEFFECTIVE
ASSISTANCE OF APPELLATE COUNSEL
RESULTED IN A DECISION THAT WAS
CONTRARY TO OR INVOLVED AN
UNREASONABLE APPLICATION OF
CLEARLY ESTABLISHED FEDERAL LAW AS
DETERMINED BY THE SUPREME COURT

A defendant on direct appeal has a right under the Sixth and Fourteenth Amendments to the effective assistance of counsel. *Evitts v. Lucey*, 469 U.S. 387, 396-400 (1985). Claims of ineffective assistance of appellate counsel are governed by the two-prong *Strickland, infra*, standard of deficient performance and prejudice. *Philmore v. McNeil*, 575 F.3d 1251, 1264 (11th Cir. 2009). Deficient performance is satisfied where appellate counsel's performance was unreasonable under prevailing professional norms. *Heath v. Jones*, 941 F.2d 1126, 1130 (11th Cir. 1991). Prejudice is satisfied where the neglected claim would have a reasonable probability of success on appeal. *Tuomi v. Sec'y, Fla. Dep't of Corr.*, 980 F.3d 787, 795 (11th Cir. 2020).

In *Apprendi v. N.J.*, 530 U.S. 466 (2000), the Supreme Court held any fact other than a prior conviction that increases the penalty for a crime beyond the statutory maximum must be charged in an indictment or information, submitted to a jury, and proven beyond a reasonable doubt. *Id.* at 490-91. This holding has its roots in the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution. *Id.* at 476; *see also Jones v. U.S.*, 526 U.S. 227, 243 n.6

(1999) (“[U]nder the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt.”) Facts increasing the sentencing floor, such as facts requiring minimum mandatory punishments, are elements of the offense which must be charged in the indictment or information, submitted to the jury, and proven beyond a reasonable doubt. *Alleyne v. U.S.*, 570 U.S. 99, 103 (2013).

[T]he core crime and the fact triggering the mandatory minimum sentence together constitute a new, aggravated crime, each element of which must be submitted to the jury. Defining facts that increase a mandatory statutory minimum to be part of the substantive offense enables the defendant to predict the legally applicable penalty from the face of the indictment.

Id. at 113-14.

In this case, Petitioner was charged in Count Two by the final and fourth amended information with “sexual battery—physical force likely to cause serious personal injury.” The language of the information stated:

[Petitioner], on or between June 30, 2016 and July 1, 2016, in the County of Bay and State of Florida, did commit sexual battery upon T.R., a person 12 years of age or older, without that person’s consent, by committing the following actions, the [Petitioner’s] sexual

organ penetrated or had union with the vagina of T.R. and in the process thereof used actual physical force likely to cause serious personal injury, contrary to Florida Statute 794.011(3) and 775.087(1). (FL—L10)

Sexual battery is defined by § 794.011, *Fla. Stat.* Sexual battery “upon a person 12 years or older, without that person’s consent” with the use of “actual physical force likely to cause serious personal injury” is a life felony. § 794.011(3), *Fla. Stat.* The Dangerous Sexual Felony Offender Act (“DSFO”) provides enhanced penalties for sexual crimes including sexual battery under specific circumstances. § 794.0115(1)-(2), *Fla. Stat.* The DSFO requires a minimum mandatory sentence of at least fifty (50) years and up to life in prison where the defendant “[c]aused serious personal injury to the victim as a result of the commission of the offense.” § 794.0115(2)(a), *Fla. Stat.* Clearly, the language of the charging information failed to either trace the language of the DSFO enhancement in § 794.0115(2)(a), *Fla. Stat.*, or cite to the statute.

Sexual battery and the DSFO enhancement are different. Petitioner was charged with committing sexual battery through vaginal intercourse and using “actual physical force *likely* to cause serious personal injury.” The DSFO enhancement as found by special finding in the jury’s verdict requires *actually causing* serious personal injury to the victim.

In his petition alleging ineffective assistance of appellate counsel, Petitioner highlighted the difference between the information and enhancement. He argued his 50-year mandatory DSFO sentence violated *Apprendi* and *Alleyne* because the State failed to put

Petitioner on notice of the DSFO enhancement by charging it in the information. The First District Court of Appeal acknowledged the difference and found the charging information “did not . . . sufficiently put the defendant on notice of the ‘caused serious personal injury’ requirement for DSFO.” *Goldson v. State*, 293 So.3d 569, 571 (Fla. 1st DCA 2020). However, the court declined to grant relief because Petitioner’s attorney, the trial judge, and the State acknowledged Petitioner was facing a DSFO enhancement if convicted. *Id.* at 572. Citing *Bradley v. State*, 3 So.3d 1168, 1171 (Fla. 2009), wherein the Florida Supreme Court found the enter of a plea constituted an express waiver of a defective indictment which failed to charge a sentencing enhancement, the First District found “[b]ecause Petitioner had actual notice, the petition alleging ineffective assistance of appellate counsel is denied on the merits.” *Id.* Petitioner sought discretionary review, but the Florida Supreme Court declined jurisdiction. *Goldson v. State*, 2020 Fla. LEXIS 1327 (Fla. 2020).

The state court decisions denying relief on Petitioner’s claim of ineffective assistance of appellate counsel was contrary to or involved an unreasonable application of *Strickland*, *Apprendi*, and *Alleyne*. The final fourth amended information failed to place Petitioner on notice of DSFO enhancement. The fact that DSFO enhancement was noted for the first time just prior to the jury being sworn is irrelevant and did not cure the errors under *Apprendi* and *Alleyne*.

Though no Eleventh Circuit case has addressed an identical claim, other circuits have reversed under similar circumstances. In *Gault v. Lewis*, 489 F.3d 993 (9th Cir. 2007), the defendant was charged with

various crimes including a sentencing enhancement for personally using a firearm, which translates to a 10-year required sentence. *Id.* at 998-99. When instructing the jury, the court instructed according to a different enhancement for personally discharging a firearm, requiring a 25-to-life sentence, and the court ultimately imposed sentence based in part on the uncharged enhancement. *Id.* at 1000-01. Gautt exhausted his issue in state court and was denied federal habeas corpus relief. *Id.* at 1001. The Ninth Circuit noted as follows regarding Gautt's rights to an accurate charging information:

[F]or purposes of AEDPA's "clearly established Federal law" requirement, it is "clearly established" that a criminal defendant has a right, guaranteed by the Sixth Amendment and applied against the states through the Fourteenth Amendment, to be informed of any charges against him, and that a charging document, such as an information, is the means by which such notice is provided. To satisfy this constitutional guarantee, the charging document need not contain a citation to the specific statute at issue; the substance of the information, however, must in some appreciable way apprise the defendant of the charges against him so that he may prepare a defense accordingly.

Id. at 1004. The court found "personally used" did not put Gautt on notice of enhancement for "personally discharged." *Id.* at 1007. The court rejected the People's argument that evidence presented at the preliminary hearing should have alerted Gautt to the sentencing enhancement. *Id.* at 1010-11. As to a remedy, the court

remanded for Gautt to be resentenced according to the “personally used” enhancement which was alleged in his charging information. *Id.* at 1017-18.

In *Chase v. Macauley*, 971 F.3d 582 (6th Cir. 2020), the defendant was convicted of kidnapping and sexual assault under Michigan law and his sentencing range was increased based on variables which were not found by the jury. *Id.* at 586-87. *Alleyne* issued three days after Chase’s sentencing, but Chase’s appellate counsel did not raise such a claim. *Id.* at 588-89. Chase filed a petition alleging ineffective appellate counsel for the failure to raise a claim pursuant to *Alleyne*, which was denied. *Id.* at 590. His federal habeas petition was subsequently denied. *Id.* at 590-91. The Sixth Circuit found Chase’s sentence was achieved in violation of *Alleyne*, reversed the habeas corpus denial, and remanded for resentencing in compliance with the Constitution. *Id.* at 596.

This Court has also granted relief under similar circumstances. In *Simmons v. Inch*, 2021 U.S. Dist. 129314 (N.D. Fla. February 24, 2021), Simmons was charged with burglary of a structure armed with explosives or a dangerous weapon and dealing in stolen property. *Id.* at 2, 13. The trial court instructed the jury on the crimes as well as a special inquiry for an actual possession of a firearm enhancement per § 775.087, *Fla. Stat.*, and the jury returned guilty findings on all. *Id.* at 21-26. The court sentenced Simmons to 30-years prison with 10-years minimum mandatory. *Id.* at 25-26. Simmons sought correction of the minimum mandatory as violative of *Alleyne* and trial court ruled the amended information placed Simmons on notice of the enhancement. *Id.* at 26-27. The First District affirmed. *Id.* at 27. This Court found

the state court decision “was an unreasonable application of *Alleyne*.” *Id.* at 30. This Court further concluded the constitutional error prejudiced Simmons because it subjected him to a 10-year minimum mandatory that he otherwise would not have been subjected to. *Id.* at 37. This Court then remanded for removal of the 10-year minimum requirement. *Id.* at 37-38.

Though slightly different from Petitioner’s case, the foregoing cases show Petitioner is entitled to relief. The holding in *Gault* outlines how Petitioner was constitutionally entitled under *Apprendi* and *Alleyne* to a charging information which apprised him of sentencing enhancements. *Gault* and *Simmons* both show that a charging information’s failure to list the sentencing enhancement that a defendant will ultimately be subjected to is not cured by facts adduced at trial or a jury verdict. Thus, the state court finding that the discussion of DSFO cured the defect in the final information resulted in a decision that was contrary to or involved an unreasonable application of *Apprendi* and *Alleyne*. *Chase* shows that the petition alleging ineffective appellate counsel properly preserved Petitioner’s claim and warrants habeas relief. Regarding prejudice, Petitioner submits prejudice is easily shown because the 50-year minimum mandatory DSFO sentence on Count Two could not have been imposed absent the uncharged enhancement. Accordingly, the proper remedy is to remand for resentencing without the DSFO enhancement.

In sum, the state court’s decision denying relief on Petitioner’s habeas corpus petition was an unreasonable application of *Apprendi*, *Alleyne*, *Strickland*, and progeny. Deficient performance is satisfied because

appellate counsel's decision not to raise the foregoing claim, even after having additional issues suggested for briefing by the appellate court, fell below prevailing professional standards. The instant claim is backed by Supreme Court precedent and there can be no justification for failing to raise it. Prejudice is satisfied because there is a reasonable probability the claim would have been granted but for the appellate court's unreasonable application of Supreme Court case law and misapplication of state law. This Court should grant habeas relief and remand for resentencing.

CLAIM TWO

THE STATE COURT'S DENIAL OF GROUNDS ONE AND TWO OF PETITIONER'S AMENDED MOTION FOR POSTCONVICTION RELIEF RESULTED IN A DECISION THAT WAS CONTRARY TO OR INVOLVED AN UNREASONABLE DETERMINATION OF CLEARLY ESTABLISHED FEDERAL LAW, AND/OR BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN STATE COURT

Criminal defendants have a Sixth Amendment right to the effective assistance of counsel. *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003). To show a violation of this right, a petitioner must show both deficient performance and resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Deficient performance is satisfied when counsel's representation falls below an objective standard of reasonableness. *Id.* at 688. Prejudice is demonstrated when there is a reasonable probability that, but for counsel's unpro-

fessional errors, the result of the proceeding would have been different. *Id.* at 694.

Establishing an unreasonable application of *Strickland* requires a showing that the state court unreasonably applied the general ineffective-assistance-of-counsel claim standard to a petitioner's facts. *Knowles v. Mirzayance*, 556 U.S. 111, 122 (2009). The question is not whether counsel's actions were reasonable; rather, "[t]he question is whether there is any reasonable argument that counsel satisfied *Strickland's* deferential standard." *Harrington v. Richter*, 562 U.S. 86, 105 (2011).

3.850 GROUND ONE

Many facts were undisputed at trial. It was undisputed that Petitioner and T.R. had sex. Petitioner's DNA matched the DNA from the semen found in T.R. It was undisputed that Petitioner first denied sexual contact, gave a different statement of having consensual sex on the couch to police when confronted with the semen evidence, and ultimately testified to having consensual sex on the grass path at trial.

The narrow question explored at trial was whether the sex was consensual. Petitioner testified to an ongoing clandestine relationship with T.R. behind the back of her sister, with whom Petitioner had a child. Trial counsel's opening and closing arguments reflect advancing the theory that Petitioner and T.R. had consensual sex in keeping with their ongoing relationship and T.R. made the allegations after Petitioner refused to buy her a morning after pill, rejected her request for a formal relationship, and T.R. threatened him. (T. 55-56, 268-69).

Petitioner had evidence which would have supported the defense theory which trial counsel neither investigated nor presented at trial. In Ground One of his Rule 3.850 pleading, Petitioner alleged trial counsel rendered ineffective assistance by failing to investigate and present specific photos that T.R. had sent him. Many of these photos were nude or sensual and showed T.R.'s distinctive stars tattoo on her stomach. The photos were contained on Petitioner's Google Drive with creation dates on either January 23, 2016, or March 4, 2016, notably after T.R. alleged previous rapes. The photos would have impeached T.R.'s testimony denying that she ever sent him nude photos.

Ground One was summarily denied without a hearing. The court found deficient performance was not satisfied because the photos were headless, the jury would not have believed Petitioner based on the differing stories given to law enforcement, testimony substantiating a possible clandestine relationship was elicited, and it was better strategy to focus on the single beach photo. The court found prejudice was also not satisfied based on T.R.'s testimony, Petitioner's inconsistent statements to law enforcement, and the fact that the existence of a clandestine relationship was not dispositive on the question of consent.

The trial court's denial of Ground One and the appellate court's affirmance on appeal was an unreasonable application of *Strickland*. To begin, the evidence presented at trial was not overwhelming. The question at trial was simple: whether to believe T.R.'s narrative or Petitioner's narrative. Despite the state court's finding that T.R.'s narrative was beyond reproach, both T.R. and Petitioner had problems with credibility. Petitioner had his inconsistent statements

to the police. By contrast, T.R.'s allegations related to consent were uncorroborated. T.R.'s being followed by an alleged black-clad Petitioner who waited in the shadows for her on a path she did not regularly travel, her working with Petitioner, and living in a bunk bed under Petitioner after multiple alleged rapes raised many questions on her credibility. These facts do not present a case of overwhelming evidence. *See U.S. v. Vargas*, 792 Fed. Appx. 764, 773 (11th Cir. 2019) (describing a case of overwhelming evidence consisting of incontrovertible physical and testimonial evidence showing drug sales).

Next, deficient performance was satisfied because trial counsel failed to either investigate or present evidence in support of Petitioner's sole defense. Consent was not only the defense presented at trial; it was the only credible defense based on the evidence. The photographic evidence would have both discredited T.R. and supported Petitioner's testimony of an ongoing clandestine relationship with T.R. Trial counsel's failure to investigate and present evidence in support of Petitioner's only defense and the chosen defense for trial satisfies deficient performance because a reasonably effective attorney relying on the defense would have investigated available evidence and presented it at trial. *See Wiggins v. Smith*, 539 U.S. 510, 524 (2003) (finding deficient performance satisfied where counsel abandoned a mitigation investigation after cursory review of records); *Code v. Montgomery*, 799 F.2d 1481, 1483-84 (11th Cir. 1986) (finding deficient performance satisfied where an attorney relying on the only defense of alibi at trial failed to corroborate the alibi, did not subpoena an alibi witness, and did not investigate other potential alibi witnesses).

Prejudice is also satisfied because there is a reasonable probability that the presentation of the photographic evidence would have resulted in a different outcome at trial. Petitioner bears the burden to show only a “probability sufficient to undermine confidence in the outcome” that the uninvestigated and unrepresented photos would have led to a different outcome. *Strickland*, 466 U.S. at 694. Given the narrow nature of this case, there is a reasonable probability the photos would have shifted the balance of the evidence to Petitioner and shown that he was in an ongoing, consensual, clandestine sexual relationship with T.R. Accordingly, the state court’s finding on prejudice was unreasonable. *See Wiggins*, 539 U.S. at 535-36 (finding prejudice satisfied based on counsel’s failure to investigate and present available mitigating evidence); *Campbell v. State*, 247 So.3d 102, 109 (Fla. 2d DCA 2018) (noting prejudice is established where counsel fails to present evidence supporting the defense to the extent that confidence in the proceedings is undermined).

In sum, the state court’s denial of Ground One from Petitioner’s Rule 3.850 pleading resulted in an unreasonable application of *Strickland*. Alternatively, the state court denial of Ground One was based on an unreasonable determination of the facts because the state court denial rationale was premised upon clearly erroneous fact-finding that the evidence was “overwhelming” when it was far from overwhelming and based on T.R.’s words alone.

3.850 GROUND TWO

Trial counsel’s closing argument focused on inconsistencies and flaws in T.R.’s narrative. Counsel

further focused on the reasonableness of Petitioner's narrative. Unfortunately, counsel's closing argument omitted many notable and beneficial facts and inferences adduced at trial. In Ground Two of his Rule 3.850 pleading, Petitioner alleged trial counsel's failure to argue specific facts and inferences during closing argument constituted ineffective assistance of counsel. Specifically, Petitioner pointed to counsel's failure to remind the jury that a search of Petitioner's residence yielded no black outfit, rag with chemicals, or T.R.'s phone. Counsel's closing further omitted the inherent unbelievability of T.R.'s allegations to the alleged rape itself. T.R. alleged that Petitioner, a 5'10" man, maintained a forceful, incapacitating grip on her throat with one hand while performing oral sex, digitally penetrating her, texting and using a phone, and having vaginal intercourse with her against her will while she resisted. Petitioner argued counsel should have pointed to the physical impossibility and implausibility of T.R.'s testimony.

The trial court summarily denied Ground Two. The court found deficient performance was not satisfied because counsel pointed out other inconsistencies and chose not to quibble with T.R.'s choice of words because doing so could have backfired. The court found prejudice was also not satisfied based on the overwhelming nature of the evidence.

The trial court's denial of Ground Two and the appellate court's affirmance on appeal was an unreasonable application of *Strickland*. As previously noted, the evidence was not overwhelming; rather, the material component of the case was a classic credibility contest narrowed to the question of consent. Outlining evidence inconsistent with T.R.'s narrative was the

theory of defense advanced at trial. Deficient performance was satisfied because additional inconsistent facts were present and not argued to the jury in closing. Prejudice is further satisfied considering the credibility contest nature of the material allegations in this case. *See Kelly v. State*, 198 So.3d 1077, 1078 (Fla. 5th DCA 2016) (implying prejudice is more easily satisfied where the case boils down to a credibility contest).

In sum, the state court's denial of Ground Two from Petitioner's Rule 3.850 pleading resulted in an unreasonable application of *Strickland*. Alternatively, the state court denial of Ground Two was based on an unreasonable determination of the facts because the state court denial rationale was premised upon clearly erroneous fact-finding by characterizing the prosecution's evidence as "overwhelming" and defeating all claims.

REQUEST FOR AN EVIDENTIARY HEARING

This Court should hold an evidentiary hearing on the ineffective assistance of counsel claims. The state court denial on Grounds One and Two rested in part on improper assumptions of trial counsel strategy. Petitioner has not had the opportunity to fully explore the question of trial counsel's strategy. An evidentiary hearing would enable Petitioner "to prove the petition's factual allegations, which, if true, would entitle" Petitioner to a new trial. *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007). Petitioner diligently sought an evidentiary hearing in state court to develop the factual matters; accordingly, the state court denial of a hearing opportunity renders the instant claims undeveloped. *Pope v. Sec'y for the Dep't of Corr.*, 680 F.3d 1271, 1288 (11th Cir. 2012).

Respectfully submitted,

The Law Office of
ROBERT DAVID MALOVE, P.A.
The Malove Law Building
200 SE 9th Street
Fort Lauderdale, Florida 33316
e-filing@robertmalovelaw.com
Telephone: (954) 861-0384

By: /s/ Robert David Malove

Robert David Malove, Esq.

FL. Bar No.: 407283

**PETITIONER'S BRIEF ON JURISDICTION,
SUPREME COURT OF FLORIDA
(MAY 3, 2020)**

IN THE SUPREME COURT OF FLORIDA

SEGWAYNE GOLDSON,

Appellant/Petitioner,

v.

STATE OF FLORIDA,

Appellee/Respondent.

Case No. SC20-592

PETITIONER'S BRIEF ON JURISDICTION

On application for discretionary review of the decision of the First District Court of Appeal in *Segwayne Goldson v. State of Florida*, DCA Case No.: 1D18-3080.

Robert David Malove, Esq.
Attorney for Appellant/Petitioner

The Law Office of
Robert David Malove, P.A.
200 S. Andrews Avenue, Suite 100
Ft. Lauderdale, FL. 33301
Telephone: (954) 861-0384
FL. Bar No: 407283

[TOC, TOA Excluded]

STATEMENT OF THE CASE AND FACTS

Segwayne Goldson (“Petitioner”), was charged with three counts of sexual battery with the use of physical force likely to cause serious injury, in violation of § 794.011(3), *Fla. Stat.* (2016). The information did not charge, allege or otherwise make any reference whatsoever that the State would be seeking to have the Petitioner declared a Dangerous Sexual Felony Offender (DSFO) and sentenced to an enhanced, mandatory minimum term under § 794.0115, *Fla. Stat.* (2016) (App. 4).¹

After a trial by jury, Petitioner was acquitted of count 1, convicted of sexual battery with force in count 2, and convicted of the lesser included offense of sexual battery without force in count 3. As to count 2, the jury made a specific finding that Petitioner caused serious personal injury to the victim. (App. 4).

Notwithstanding the fact that the State never charged DSFO enhancement in the information, the State argued at sentencing that Petitioner was subject to a 50-year mandatory minimum sentence as a DSFO. The State reasoned that Petitioner had adequate notice of the State’s intent to seek the enhanced DSFO sentence because, prior to jury selection, the State threatened Petitioner with DSFO penalties if he did not accept a plea offer. The trial court agreed and, over defense counsel’s objection, sentenced Petitioner to the 50-year mandatory minimum term as a DSFO in

¹ Reference to the appendix accompanying this brief will be by the symbol “App.” followed by page number.

count 2. The court imposed a consecutive 15-year sentence as to count 3. (App. 4).

Petitioner appealed the judgment and sentence and the First District Court of Appeal affirmed on February 20, 2018. *See Goldson v. State*, 241 So.3d 918 (Fla. 1st DCA 2018). Petitioner thereafter filed a petition in the district court alleging ineffective assistance of appellate counsel pursuant to Rule 9.141(d), *Fla. R. App. P.* Petitioner alleged that the findings required for enhanced sentencing under the DSFO statute are elements which must be charged in the information. Petitioner argued that, because the information in this case did not allege the DSFO elements or otherwise make any reference to § 794.0115, his 50-year mandatory minimum sentence as a DSFO was unlawful. Petitioner argued that appellate counsel rendered ineffective assistance for failing to raise this preserved error on direct appeal. (App. 3).

In its written opinion², the district court agreed that the elements contained in the DSFO statute are different from the elements required to prove the underlying offense of sexual battery, and, therefore, the allegations in the charging information in this case were insufficient to put Petitioner on notice of any potential DSFO enhancement. (App. 6). The district court further acknowledged the well-established principle that the State must allege the elements necessary to implicate a sentencing enhancement in

² Initially, the First DCA denied the Rule 9.141(d) petition, without opinion. Thereafter, on March 24, 2020, the district court granted Petitioner's request for a written opinion and issued the decision which is the subject of this request for discretionary review. (App. 3-8).

the charging document in order to provide notice to the defendant that he may face the enhancement, citing *Arnett v. State*, 128 So.3d 87, 88 (Fla. 1st DCA 2013) (imposition of mandatory minimum under § 775.087(2)(a) was illegal because defendant was not charged with “actual possession” of a firearm); *Davis v. State*, 884 So.2d 1058, 1060-61 (Fla. 2d DCA 2004) (imposition of mandatory term under section 775.087(2)(a) was illegal because information did not charge death or great bodily harm); *Alfieri v. State*, 835 So.2d 1181, 1183 (Fla. 4th DCA 2002) (imposition of mandatory minimum under section 775.087(2)(a) was illegal because information did not charge defendant with having discharged a firearm, but only charged him with having “used” a firearm). (App. 5).

Nevertheless, the district court distinguished the instant case from the cited cases, finding that the State’s announcement that it would seek the DSFO sentencing enhancement if Petitioner declined to accept the plea offer prior to trial was sufficient to place Petitioner on actual notice that he faced a 50-year mandatory minimum sentence as a DSFO, and therefore Petitioner suffered no prejudice. (App. 6). Drawing from this Court’s decision in *Bradley v. State*, 3 So.3d 1168 (Fla. 2009), the district court wrote:

There is very little analysis in the case law whether the defendant must demonstrate prejudice. In *Bradley v. State*, 3 So.3d 1168, 1171 (Fla. 2009), the Florida Supreme Court held that a defendant, in making a nolo contendere plea, could waive a defective information that failed to charge him with discharging a firearm—the fact on which imposition of a mandatory minimum was

based. The Florida Supreme Court noted that Bradley's trial counsel clearly stated at the plea hearing that Bradley faced the mandatory minimum. *Id.* The Florida Supreme Court also noted that Bradley's plea agreement and the factual stipulation "reflects that he understood the nature and consequences of his plea, negating any notion that he was misled or prejudiced." *Id.* *Altieri* and the other similar cases cited above did not involve a prejudice analysis. While *Bradley* involved a plea and arguably actual acceptance of the defect, we see no reason not to apply a prejudice analysis in the context of the claim we have before us.

(App. 6-7).

The district court found that this case was "sufficiently similar" to the circumstances involving the plea in *Bradley* and concluded that because Petitioner had actual notice that he was facing a 50-year mandatory minimum sentence as a DSFO, the petition should be denied. (App. 7).

SUMMARY OF THE ARGUMENT

I. This Court should exercise its discretionary jurisdiction because the decision of the First District Court of Appeal in this case results from a misapplication of this Court's decision in *Bradley v. State*, 3 So.3d 1168 (Fla. 2009). Unlike *Bradley*, the Petitioner did not enter into a plea or otherwise admit the allegations against him. Contrarily, Petitioner disputed the allegations at a jury trial. There being no waiver of the error in this case by admission as in *Bradley*, the

district court misapplied *Bradley* and this Court should exercise jurisdiction to resolve the conflict.

II. The decision of the First District Court of Appeal in this case is in express and direct conflict with the decisions of this Court in *Price v. State*, 995 So.2d 401 (Fla. 2008), *M.F. v. State*, 583 So.2d 1383 (Fla. 1991), and *State v. Rodriguez*, 575 So.2d 1262 (Fla. 1991), as well as decisions from several district courts of appeal, all of which hold that for an information to sufficiently charge a crime it must follow the statute, clearly charge each of the essential elements, and sufficiently advise the accused of the specific crime with which he is charged.

JURISDICTIONAL STATEMENT

The misapplication of a decision of this Court is a basis for express and direct conflict jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution. *See Jaimes v. State*, 51 So.3d 445 (Fla. 2010); *Wallace v. Dean*, 3 So.3d 1035 (Fla. 2009). Moreover, this Court may exercise discretionary jurisdiction to resolve an express and direct conflict with decisions from this Court or another district court of appeal on the same point of law. Art. V, § 3(b)(3), *Fla. Const.*

ARGUMENT

I. The decision of the First District Court of Appeal in this case results from a misapplication of this Court's decision in *Bradley v. State*, 3 So.3d 1168 (Fla. 2009).

In *Bradley*, this Court held that a defendant's plea may constitute an express waiver of a defective charging document, where the defendant stipulates to

facts which include any missing element and voluntarily pleads to a sentence that incorporates the missing element. *Id.* at 1171. There, Bradley's explicit plea to the facts constituting discharge of a firearm constituted a waiver of the defective charging document that failed to allege the grounds for sentence enhancement pursuant to section 775.087(2), *Fla. Stat. Id.*

The holding in *Bradley* is inapplicable to the instant case. Unlike *Bradley*, the Petitioner did not enter into a plea or admit the allegations against him. Quite the contrary, Petitioner disputed any and all allegations and exercised his constitutional right to have the matter decided by a jury of his peers. *Bradley* is inapposite, and the district court erred when it misapplied *Bradley* to conclude that Petitioner somehow waived any argument relating to the State's complete and utter failure to charge the DSFO enhancement in this case. (App. 6-7).

II. The decision of the First District Court of Appeal in this case is in express and direct conflict with the decisions of this Court in *Price v. State*, 995 So.2d 401 (Fla. 2008); *M.F. v. State*, 583 So.2d 1383 (Fla. 1991); *State v. Rodriguez*, 575 So.2d 1262 (Fla. 1991), and a plethora of decisions from other district courts of appeal.

This Court has long recognized that a denial of due process occurs when there is a conviction on a charge not made in the information or indictment. *State v. Gray*, 435 So.2d 816, 818 (Fla. 1983). Therefore, "[for an information to sufficiently charge a crime it must follow the statute, clearly charge each of the essential elements, and sufficiently advise the accused

of the specific crime with which he is charged.” *Price v. State*, 995 So.2d 401, 404 (Fla. 2008). *See also M.F. v. State*, 583 So.2d 1383, 1385-86 (Fla. 1991) (“[D]ue process of law requires the state to allege every essential element when charging a violation of law, either in adult criminal or juvenile proceedings, to provide the accused with notice of the allegations.”); *State v. Rodriguez*, 575 So.2d 1262 (Fla. 1991) (“A charging document must provide adequate notice of the alleged essential facts the defendant must defend against.”).

Here, the charging information alleged three counts of sexual battery with the use of physical force likely to cause serious injury, in violation of § 794.011(3). Nowhere in the information did the State charge, allege or make any reference to the DSFO statute, § 794.0115.³ Because the State did not allege any elements of the DSFO enhancement or cite to the DSFO statute within the charging document, the State was precluded from seeking to have Petitioner sentenced to an enhanced DSFO sentence at sentencing. *See e.g. Weatherspoon v. State*, 214 So.3d 578, 584 (Fla. 2017) (“[A]n information is fundamentally defective where it fails to cite a specific section and totally omits an essential element of the crime.”).

³ The DSFO statute provides for the imposition of enhanced, minimum mandatory terms for those defendants who have been convicted of certain enumerated sexual offenses, and who otherwise meet the criteria for enhanced sentencing under the Act. § 794.0115(2)(a-e). Those factors to be considered for enhancement are thus “elements” of an aggravated crime which must be charged in the information with certainty and precision. *See Alleyne v. United States*, 570 U.S. 99, 133 S. Ct. 2151, 186 L.Ed.2d 314 (2013).

The district court acknowledged that the information was insufficient to charge the DSFO enhancement (App. 6), but found that Petitioner was put on actual notice when the State declared, prior to jury selection, that it would be seeking to have Petitioner declared and sentenced as a DSFO if Petitioner did not accept the State's plea offer. (App. 6-7). The problem with the district court's conclusion is it ignores that Petitioner was entitled to notice of the *specific* elements of the DSFO sentencing scheme the State would attempt to prove in order to have him declared a DSFO.

In order to qualify as a DSFO, the defendant must have been 18 years of age or older when the offense was committed, *and*:

- (a) Caused serious personal injury to the victim as a result of the commission of the offense;
- (b) Used or threatened to use a deadly weapon during the commission of the offense;
- (c) Victimized more than one person during the course of the criminal episode applicable to the offense;
- (d) Committed the offense while under the jurisdiction of a court for a felony offense under the laws of this state, for an offense that is a felony in another jurisdiction, or for an offense that would be a felony if that offense were committed in this state; or
- (e) Has previously been convicted of a violation of s. 787.025(2)(c); s. 794.011(2), (3), (4), (5), or (8); s. 800.04(4) or (5); s. 825.1025(2) or (3); s. 827.071(2), (3), or (4); s. 847.0145; of any

offense under a former statutory designation which is similar in elements to an offense described in this paragraph; or of any offense that is a felony in another jurisdiction, or would be a felony if that offense were committed in this state, and which is similar in elements to an offense described in this paragraph . . .

See § 794.0115(2)(a-e), *Fla. Stat.* (2016).

Because the statute provides for numerous ways in which a defendant can qualify for an enhanced DSFO sentence, a general reference to the DSFO statute (or, as in this case, a mere oral declaration at a pretrial hearing that the Petitioner qualifies as a DSFO), does not give adequate notice of the *specific* elements the State intends to prove at trial to achieve the DSFO enhancement. By concluding otherwise, the district court's decision in this case is in express and direct conflict with decisions of this Court in *Price, M.F.*, and *Rodriguez, supra*, as well as a plethora of decisions from other district courts of appeal⁴, all of which hold that due process requires a defendant be

⁴ See e.g. *Richards v. State*, 237 So.3d 426 (Fla. 2d DCA 2018) (the citing of the general statute is not sufficient where it does not put the defendant on notice of the elements that constitute the charged conduct); *Inmon v. State*, 932 So.2d 518 (Fla. 4th DCA 2006) (merely referring to section 775.087(2) is not sufficient notice that the accused is being charged with discharging a firearm for purposes of its minimum mandatory sentence enhancement); *Leonetti v. State*, 418 So.2d 1192 (Fla. 5th DCA 1982) (in order for an information to charge a crime sufficiently it must follow the statute, and charge each of the essential elements and sufficiently advise the accused of the specific crime with which he is charged).

given specific notice of all elements for which he must defend against.

CONCLUSION

The First District Court of Appeal's decision in this case sets a dangerous tone by relieving the State of its burden to allege, with specificity, the elements of a mandatory minimum sentencing enhancement within the charging document. Merely declaring in open court that Petitioner qualified for sentencing as a DSFO, without giving notice of the specific elements the State intended to prove to achieve the DSFO designation, did not satisfy this burden.

The district court's misapplication of this Court's decision in *Bradley*, and the express and direct conflict with decisions of this Court in *Price*, *MF.*, and *Rodriguez*, as well as other district courts of appeal, warrants review. This Honorable Court should exercise its discretionary jurisdiction to resolve the various conflicts.

Respectfully submitted,

The Law Office of
ROBERT DAVID MALOVE, PA.
200 S. Andrews Avenue, Suite 100
Ft. Lauderdale, Florida 33301
rdm@robertmalovelaw.com
(954) 861-0384

By: /s/ Robert David Malove
Robert David Malove, Esq.
Florida Bar No.: 407283

**NOTICE TO INVOKE DISCRETIONARY
JURISDICTION, FIRST DISTRICT COURT
OF APPEAL, STATE OF FLORIDA
(APRIL 23, 2020)**

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

SEGWAYNE GOLDSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No.: 1D18-3080

**NOTICE TO INVOKE
DISCRETIONARY JURISDICTION**

NOTICE IS GIVEN that the Appellant, SEGWAYNE GOLDSON, by and through undersigned counsel and pursuant to Rule 9.120, Fla. R. App. P., hereby invokes the discretionary jurisdiction of the Florida Supreme Court to review the decision of this Court issued on March 24, 2020. The decision sought to be reviewed expressly and directly conflicts with decisions of the Florida Supreme Court and other district courts of appeal on the same question of law. Rule 9.030(a)(2)(A)(iv).

Respectfully submitted,

The Law Office of
ROBERT DAVID MALOVE, P.A.
200 S. Andrews Avenue, Suite 100
Ft. Lauderdale, Florida 33301
rdm@robertmalovelaw.com
Telephone: (954) 861-0384
By: /s/ Robert David Malove
Robert David Malove, Esq.
FL. Bar No.: 407283

**PETITIONER'S MOTION FOR REHEARING,
CERTIFICATION, AND/OR ISSUANCE OF A
WRITTEN OPINION, FIRST DISTRICT COURT
OF APPEAL STATE OF FLORIDA
(NOVEMBER 7, 2019)**

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

SEGWAYNE GOLDSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No.: 1D18-3080

**PETITIONER'S MOTION FOR REHEARING,
CERTIFICATION, AND/OR ISSUANCE
OF A WRITTEN OPINION**

COMES NOW the Petitioner, Segwayne Goldson, by and through undersigned counsel and pursuant to Florida Rule of Appellate Procedure 9.330, and hereby moves this Court for rehearing, certification, and/or issuance of a written opinion. In support, Petitioner respectfully submits that this Court has overlooked prior panel decisions of this Court and decisions of other district courts of appeal which hold that a jury finding cannot support a mandatory minimum sentence

that was never charged in the information. Petitioner shows:

1. On October 10, 2016, the State proceeded to trial on the fourth amended information charging Petitioner with three counts of sexual battery, in violation of § 794.011(3), *Fla. Stat.* (2016). (App. 3).¹

2. Count II alleged that on or between June 30, 2016 and July 1, 2016, Petitioner did commit sexual battery upon T.R., a person 12 years of age or older, without that person's consent, when Petitioner's sexual organ penetrated or had union with the vagina of T.R., "and in the process thereof used actual physical force likely to cause serious personal injury, contrary to *Fla. Stat.* 794.011(3) and 775.087(1)." ² (App. 3) (emphasis added).

3. The jury returned a verdict acquitting Petitioner of Count I and finding Petitioner guilty of a lesser included offense as to Count III. Insofar as Count II, the jury found Petitioner guilty of Sexual Battery-Physical Force Likely to Cause Serious Personal Injury, as charged in the information. The jury further found, in a special interrogatory, that Petitioner "did cause serious personal injury to the victim." (App. 4-5) (emphasis added).

¹ Reference to the Appendix to Petition for Writ of Habeas Corpus Alleging Ineffective Assistance of Appellate Counsel will be by the symbol "App." followed by page number.

² Although the State referenced the weapons reclassification statute, § 775.087(1), *Fla. Stat.*, in the charging document, no evidence was ever introduced at trial that Petitioner used a weapon during commission of the offense.

4. On November 10, 2016, a sentencing hearing was held wherein the State advised the trial court that, because the jury made a specific finding that Petitioner actually caused serious personal injury to the victim, he was facing a 50-year mandatory minimum sentence on Count II under the Dangerous Sexual Felony Offender Act (DSFO), § 794.0115, *Fla. Stat.* The State asked that Petitioner to be sentenced to Life in prison with a 50-year mandatory minimum as to Count II, and a consecutive term of 15-years as to Count III.

5. Sentencing counsel³ objected to Petitioner being subject to the imposition of an enhanced mandatory minimum sentence of 50-years for Count II. Sentencing counsel's specific argument was, "[T]he enhanced penalty the State is seeking is unconstitutional because no notice was given to prior counsel prior to the time that would normally be applicable for the habitual offender (sic) enhancement." (App. 29).

6. The State responded to sentencing counsel's objection by stating, "[I] did make the defense aware of this. If you recall, even back at jury selection we went back and forth and back and forth about a 50-year minimum mandatory that he would be facing, actually on all three counts. So he was well aware of what was going on and what the possibility was prior to deciding to move forward to jury trial." (App. 29).

7. The trial court agreed with the State and sentenced Petitioner to a 50-year mandatory minimum

³ During trial Petitioner was represented by A.P.D. Laura McCarthy. For the sentencing hearing and the subsequent appeal, Petitioner's family retained attorney Jonathan W. Dingus.

sentence as a DSFO. In imposing sentence, the trial court stated:

In view of the fact that the, that the jury found that he, as a separate appende (*sic*), *factual finding that he caused serious personal injury to the victim.* He's hereby sentenced as a dangerous sexual felony offender under Section 794.0115 Florida Statutes. He is committed the Department of Corrections for a period of 50 years. This sentence is minimum, is a minimum mandatory sentence, so during that 50 years, you will receive no gain time.

(App. 30).

8. On direct appeal, appellate counsel did not raise the issue that the factors required to invoke a mandatory minimum sentence under the DSFO Act were never charged in the information, notwithstanding the fact that the jury made the requisite findings.

9. In *Williams v State*, 189 So.3d 288 (Fla. 1st DCA 2016), *approved* 232 So.3d 933 (Fla. 2017), this Court applied case law construing the similar 10/20/Life statute, § 775.087(2), *Fla. Stat.*, in interpreting the mandatory minimum requirements of DSFO Act.⁴

10. It is well settled that, as a prerequisite to the State seeking a mandatory minimum sentence under the 10/20/Life statute, the State *must allege* the grounds for enhancement (*i.e.* actual possession, dis-

⁴ Indeed, in approving this Court's decision in *Williams*, the Supreme Court noted that the DSFO Act and the 10/20/Life statute were "strikingly similar." *Williams v. State*, 232 So.3d 933, 938 (Fla. 2017).

charge, and/or death or great bodily harm) within the charging document. *Lane v. State*, 996 So.2d 226, 227 (Fla. 4th DCA 2008). The failure to do so prohibits the trial court from imposing the enhanced sentence and constitutes fundamental error. *Gibbs v. State*, 623 So.2d 551, 555 (Fla. 4th DCA 1993) (“[T]he enhancement of convictions for use of a firearm when the information does not charge use of a firearm is fundamental error”); *see also Helnick v. State*, 569 So.2d 869, 870 (Fla. 2d DCA 1990); *Cox v. State*, 530 So.2d 464 (Fla. 5th DCA 1988).

11. The same reasoning applies to factors that trigger the enhanced, mandatory minimum sentence under the DSFO Act.⁵ *Williams, supra*.

12. *Sub judice*, the Petitioner was charged in Count II with sexual battery and in the process thereof used actual physical force likely to cause serious personal injury to the victim. The information did *not* allege that Petitioner actually caused serious personal injury. This is a distinction of paramount importance. *See, Britten v. State*, 181 So.3d 1215, 1217 (Fla. 1st DCA 2015) (“The problem [] is that the finding implicit in the verdict is not sufficient to support Appellant’s designation as a dangerous sexual felony offender. The designation requires a finding that the defendant actually ‘caused’ serious personal injury to the victim, *see* § 794.0115(2)(a), Fla. Stat., but the verdict only established that Appellant’s use of force was ‘likely to cause’ serious personal injury to

⁵ In fact, the standard jury instruction for § 794.011(3), it specifically instructs to: “See Instruction 11.16 or 11.16(a) if the State charged that the defendant qualified as a Dangerous Sexual Felony Offender, pursuant to § 794.0115, Fla. Stat.” (Emphasis added).

the victim”); *Espinoza-Montes v. State*, 113 So.3d 847, 848 n.1 (Fla. 2d DCA 2011) (“Enhanced sentencing is required under section 794.0115(2)(a) if the defendant ‘[c]aused serious personal injury to the victim as a result of the commission of the offense.’ For the purpose of a conviction under section 794.011(3), the physical force element does not require a finding that the defendant caused serious personal injury to the victim, only that the defendant used ‘actual physical force *likely* to cause serious personal injury.’”) (emphasis in original).

13. Because the information in this case did not charge that Petitioner actually caused personal injury, the State was precluded from seeking enhanced sentencing under the DSFO Act. Moreover, the fact that the jury made factual findings to support the 50-year mandatory minimum sentence under the DSFO Act did not cure the fact that the State never charged the elements necessary for the enhanced DSFO sentence in the information. This is because the State’s failure to allege grounds for the enhancement in the charging document cannot be cured by a jury’s factual findings. See, *Altieri v. State*, 835 So.2d 1181, 1183 (Fla. 4th DCA 2002).

14. On August 13, 2019, The Honorable Judge Rowe, who was on the panel in this case, was on the panel in *Davis v. State*, 277 So.3d 1111 (Fla. 1st DCA 2019). In *Davis*, this Court reversed and remanded with instructions to “strike the mandatory minimum term of his life sentence for attempted first-degree premeditated murder because the allegations in the charging document were not sufficient to place him on notice that he was subject to an enhanced sentence under section 775.087(2)(a)(3), *Fla. Stat.* (providing

for the imposition of a twenty-five-year mandatory minimum when a defendant inflicts death or great bodily harm through the discharge of a firearm). As authority, the *Davis* panel relied on *Bienaime v. State*, 213 So.3d 927, 929 (Fla. 4th DCA 2017) wherein the Fourth DCA held the State must “allege grounds for enhancement in the charging document” to pursue an enhanced mandatory sentence under the 10/20/Life statute. *Id.*

15. Based upon the foregoing facts and controlling case law, Petitioner submits that appellate counsel was ineffective for failing to argue on direct appeal that the trial court erred when it imposed a mandatory minimum sentence of 50-years, pursuant to § 794.0115, *Fla. Stat.*, which was never charged by the State in the information. Petitioner respectfully asks that this Honorable Court reconsider its decision denying the petition. Alternatively, this Court should certify the issue to the Florida Supreme Court as a question of great public importance.

16. Moreover, undersigned counsel expresses a belief, based upon a reasoned and studied professional judgment, that a written opinion will provide a legitimate basis for Supreme Court review because the Court has previously construed provisions of the DSFO Act consistently with precedent interpreting the 10/20/Life statute. *Williams, supra.*

App.223a

Respectfully submitted,

/s/ Robert David Malove

Robert David Malove, Esq.

The Law Office of
ROBERT DAVID MALOVE, P.A.
200 S. Andrews Avenue, Suite 100
Ft. Lauderdale, FL. 33301
Telephone: (954) 861-0384
rdm@robertmalovelaw.com
FL. Bar No: 407283

**PETITION FOR WRIT OF HABEAS CORPUS
ALLEGING INEFFECTIVE ASSISTANCE OF
APPELLATE COUNSEL
(JULY 24, 2018)**

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

SEGWAYNE GOLDSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No.: _____

LT. CASE NO.: 16-002683CF

**PETITION FOR WRIT OF HABEAS CORPUS
ALLEGING INEFFECTIVE ASSISTANCE
OF APPELLATE COUNSEL**

COMES NOW, the Petitioner, Segwayne Goldson, by and through the undersigned counsel and pursuant to *Fla. R. App. P.* 9.141 (d), and petitions this Court for the issuance of a writ of habeas corpus granting a new appeal in *Segwayne Goldson v. State of Florida*, Case No.: 1D16-5299, based upon the ineffective assistance of appellate counsel. In support thereof, Petitioner submits the following:

I. JURISDICTION

Habeas petitions are the proper vehicle to advance claims of ineffective assistance of appellate counsel. *See, Mack v State*, 955 So.2d 51 (Fla. Pt DCA 2007); Rule 9.141(d), *Fla. R. App. P.* This Court has jurisdiction to issue writs of Habeas corpus pursuant to Article V, Section 4(b)(3) of the Florida Constitution. *See also*, Rule 9.030(b)(30), *Fla. R. App. P.*

II. STATEMENT OF CASE AND FACTS

1. On October 10, 2016, the State proceeded to trial on the fourth amended information charging Petitioner with three counts of sexual battery, in violation of § 794.011(3), *Fla. Stat.* (2016). (App. 3).

2. Counts II alleged that on or between June 30, 2016 and July 1, 2016, Petitioner did commit sexual battery upon T.R., a person 12 years of age or older, without that person's consent, when Petitioner's sexual organ penetrated or had union with the vagina of T.R., and in the process thereof used actual physical force likely to cause serious personal injury, contrary to *Fla. Stat.* 794.011 (3) and 775.087(1)¹.

3. On October 11, 2016, the jury found Petitioner guilty on Count II and by special verdict found that he caused serious personal injury to the accused.

¹ Petitioner was charged with three-counts of sexual battery with force likely to cause serious personal injury, however, the argument contained herein only applies to count II. Petitioner was found not guilty as to count I, and guilty of a lesser included on count III. Notably, the jury found Petitioner did not cause serious injury on counts I and III.

4. On November 10, 2016, a sentencing hearing was held wherein the State advised the Honorable Michael Overstreet that Petitioner was facing a 50-year mandatory minimum sentence on Count II under the Dangerous Sexual Felony Offender Act (DSFO). The State asked for Petitioner to be sentenced to Life in prison on Count II, with a 50-year mandatory minimum, and 15-years on Count III, and asked for the court to impose the sentences consecutive. (App. 28).

5. Sentencing counsel² objected to Petitioner being subject to the imposition of an enhanced mandatory minimum sentence of 50-years for Count II. Sentencing Counsel's specific argument was, "[T]he enhance penalty the State is seeking is unconstitutional because no notice was given to prior counsel prior to the time that would normally be applicable for the habitual offender enhancement." (App. 29).

6. The State responded to sentencing counsel's objection by stating, "[I] did make the defense aware of this. If you recall, even back at jury selection we went back and forth and back and forth about a 50-year minimum mandatory that he would be facing, actually on all three counts. So he was well aware of what was going on and what the possibility was prior to deciding to move forward to jury trial.³" (App. 29).

² During trial Petitioner was represented by A.P.D. Laura McCarthy. For sentencing and appeal Petitioner's family hired attorney Jonathan W. Dingus.

³ The conversation the State is referring to was made prior to jury selection and during a plea offer that was made on the record. (App. 36-49).

7. The trial court responded by stating, “Again, we have bluelman (digital) to bear that out. I do remember having some very candid conversations with, with the defendant about the exposure that he was facing, because obviously, it was significant. And I think, elected, after hearing his options, to go to trial, and now we’re here.” (App. 29).

8. The trial court then sentenced Petitioner on Count II to a 50-year mandatory minimum sentence in the Florida Department of Corrections (DOC) as a DSFO under § 794.0115, Fla. Stat., and on Count III the trial court sentenced Petitioner to 15-years in DOC. The sentences were order to run consecutive. (App. 30).

9. Petitioner appealed the judgment and sentence to this Court. *See, Segwayne Golsdson v. State*, Case No.: 1D16-5299. Attorney Dingus initially filed an *Anders* brier.⁴ (App. 146-162).

10. On August 10, 2017, this Court issued an order stating in relevant part that,

“Because the record on appeal appears to reflect that the trial court rendered a definitive ruling on the motion to suppress and the motions in limine seeking admission of hearsay and *Williams* Rule evidence, counsel is directed to file a supplemental brief addressing these matters . . . ”

“Counsel is reminded of his duty to ‘master the trial record, thoroughly research the law,

⁴ *See Anders v. California*, 386 U.S. 738 (1967), and *In re Order of First Dist. Court of Appeal regarding Brief filed in Forrester v. State*, 556 So.2d 1114 (Fla. 1990).

and exercise judgment in identifying the arguments that may be advanced on appeal.’ *Neal v. State*, 142 So.3d 883, 886 (Fla. 1st DCA 2014) (quoting *McCoy v. Court of Appeals v. Wis.*, 486 U.S. 429, 438 (1988)).”

(App. 163-64).

11. As a result of the foregoing order, attorney Dingus filed a supplemental brief and on February 20, 2018, this Court affirmed Petitioner’s appeal. (App. 165-166). The mandate issued on March 20, 2018.

12. No other motions, petitions or appeals are currently pending before this Court or any other court in relation to this case. This petition is timely filed in accordance with Rule 9.141 (d) (5), *Fla. R. App. P.*

III. NATURE OF RELIEF SOUGHT

Petitioner asks that this Court exercise its habeas jurisdiction, and enter a ruling finding that appellate counsel rendered ineffective assistance in *Segwayne Goldson v. State of Florida, Case No.: 1D16-5299*, as described herein and grant Petitioner a new appeal. *See, Anderson v. State*, 988 So.2d 144, 146 (Fla. 1st DCA 2008) ([W]here a second appeal would be redundant or unnecessary, it is appropriate to simply grant petitioner relief to which he would have been entitled had the issue been raised in the original appeal”).

IV. ARGUMENT IN SUPPORT OF RELIEF

A. Standard of Review.

In *Rutherford v. Moore*, 774 So.2d 637, 643 (Fla. 2000), the Florida Supreme Court explained that the standard for proving ineffective assistance of appellate

counsel mirrors the standard for proving ineffective assistance of trial counsel established in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). First, appellate counsel’s performance must be *deficient*, and second, the appellant must suffer prejudice resulting from that deficiency. In the appellate context, the *prejudice* prong of *Strickland* requires a showing that appellate counsel’s deficiency “compromised the appellate process to such a degree as to undermine confidence in the correctness of the result.” *Rutherford*, 774 So.2d 643 (quoting *Thompson v. State*, 759 So.2d 650, 660 (Fla. 2000)).

b. Argument.

Petitioner argues that appellate counsel rendered ineffective assistance by failing to raise on direct appeal, that the trial court erred when it imposed a mandatory minimum sentence of 50-years, pursuant to § 794.0115, Fla. Stat., (2016), which wasn’t charged by the State in the fourth amended information for Count II.

“There is a difference between an information that completely fails to charge a crime and one where the charging allegations are incomplete or imprecise. The former is fundamentally defective . . .” *State v. Wimberly*, 459 So.2d 456, 58-59 (Fla. 5th DCA 1984).

In *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L.Ed.2d 435 (2000), the United States Supreme Court explained that “Where a statute annexes a higher degree of punishment to a common-law felony, if committed under particular circumstances, *an indictment for the offence, in order to bring the defendant within that higher degree of punishment, must expressly charge it to have been*

committed under those circumstances, and must state the circumstances with certainty and precision.’ Id. at 480. (citations omitted) (emphasis added). In holding to these long-established principles, the Court noted “facts that expose a defendant to a punishment greater than that otherwise legally prescribed were by definition ‘elements’ of a separate legal offense.” Id. at 483 n.10.

The United States Supreme Court has extended the rationale of *Apprendi* to those factors which increase a sentencing floor. In *Alleyne v. United States*, 570 U.S. 99, 133 S. Ct. 2151, 186 L.Ed.2d 314 (2013), the Court held that “*Apprendi’s* definition of ‘elements’ necessarily includes not only facts that increase the ceiling, but also those that increase the floor. Both kinds of facts alter the prescribed range of sentences to which a defendant is exposed and do so in a manner that aggravates the punishment.” *Alleyne*, 570 U.S. at 108. The Court explained that “*the core crime and the fact triggering the mandatory minimum sentence together constitute a new, aggravated crime, each element of which must be submitted to the jury. Defining facts that increase a mandatory statutory minimum to be part of the substantive offense enables the defendant to predict the legally applicable penalty from the face of the indictment.*” *Id.* at 113-14. (emphasis added).

With respect to the case at bar, Petitioner was charged by fourth amended information for Count II with sexual battery-physical force likely to cause serious personal injury, in violation of § 794.011, *Fla. Stat.* (2016). The information, however, *did not* charge by statute or allege in the body § 794.0115, *Fla. Stat.* (2016). Notwithstanding, the State argued, and the

trial court agreed that, because the State orally advised Petitioner during a plea offer that if he didn't accept the plea he would be subject to a 50-year mandatory minimum as a DSFO, this was sufficient to impose a 50-year mandatory minimum sentence under the DSFO Act. Petitioner asserts that this was error and contrary to well-established law that a defendant cannot be convicted and/or sentenced for a crime not charged in the information. Under *Alleyne* the DSFO is a new substantive offense that must be charged in the information. The fact that Petitioner was orally advised or threatened with being subject to a 50-year mandatory minimum during plea negotiations does not take the place of filing an information alleging Petitioner violated § 794.011 and § 794.0115⁵.

Despite specifically objecting to the imposition of an enhanced 50-year mandatory minimum sentence on the basis that Petitioner wasn't charged under the DSFO Act, attorney Dingus filed an *Anders* brief. Moreover, even after this Court ordered attorney Dingus to file a supplemental brief and reminded him of "his duty to master the trial record, thoroughly research the law and exercise judgment in identifying the arguments that may be advanced on appeal." Attorney Dingus' supplemental brief failed to raise this meritorious issue.

Petitioner submits that attorney Dingus' failure to raise this meritorious issue on direct appeal to this Court amounts to deficient performance under

⁵ Under the comments section for the jury instruction for 794.011(3) it states: "See Instruction 11.16 or 11.16(a) *if the state charged* that the defendant qualified as a Dangerous Sexual Offender, pursuant to § 794.0115, *Fla. Stat.*" (Emphasis Added).

Strickland. As a result of this issue not being raised Petitioner suffered prejudice, where a reasonable probability exists that this Court would have reversed and remanded with instructions to vacate the 50-year mandatory minimum sentence as a DSFO, as the enhancement wasn't charged in the information, and order Petitioner to be re-sentenced without any mandatory minimum consideration. Accordingly, the appellate process was "undermined to such a degree as to undermine the confidence in the correctness of the result." *Rutherford, supra*.

WHEREFORE, the undersigned requests that this Court grant habeas corpus relief based on the ineffective assistance of appellate counsel and remand for the lower court with instructions to re-sentence the Petitioner.

App.233a

Respectfully submitted,

/s/ Robert David Malove

Robert David Malove, Esq.

The Law Office of
ROBERT DAVID MALOVE, P.A.
200 S. Andrews Avenue, Suite 100
Ft. Lauderdale, FL. 33301
Telephone: (954) 861-0384
rdm@robertmalovelaw.com
FL. Bar No: 407283

**PETITIONER'S
REPLY TO STATE'S RESPONSE
(NOVEMBER 13, 2018)**

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

SEGWAYNE GOLDSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No.: 1D18-3080

**PETITIONER'S
REPLY TO STATE'S RESPONSE**

COMES NOW, the Petitioner, Segwayne Goldson, by and through undersigned counsel, and replies to the State's Response to this Court's Order to Show Cause, filed on September 24, 2018 as follows:

1. This cause is before the Court on Petitioner's Petition for Writ of Habeas Corpus Alleging Ineffective Assistance of Appellate Counsel, filed pursuant to Rule 9.141 (d), *Fla. R. App. P.* In that petition, Petitioner alleged that appellate counsel rendered ineffective assistance by failing to raise a meritorious issue on direct appeal that the trial court erred when it

imposed a mandatory minimum sentence of 50-years, pursuant to § 794.0115, *Fla. Stat.* (2016), which wasn't charged by the State in the fourth amended information for Count II. Notably, this issue was specifically objected to at sentencing prior to the imposition of the 50-year mandatory minimum sentence.

2. On September 24, 2018, this Court issued an Order requiring the State to show cause why the petition should not be granted. The Order allows Petitioner 20-days thereafter to file a reply.

3. The State filed its response on October 24, 2018. Within the Response the State argues: (1) that there is no requirement that the Designated Sexual Felony Offender (DSFO) be charged in the information; (2) the DSFO is a sentencing enhancement and only a judge must decide whether the criteria requires that the Petitioner be sentenced as a DSFO; (3) given that the jury made the necessary finding about serious personal injury appellate counsel was not ineffective for failing to raise a meritless issue.

4. Respectfully, the State's argument must fail. At bar Petitioner was charged in Count II with sexual Battery-physical force *likely* to cause serious person injury, in violation of § 794.011(3), *Fla. Stat.* (2016). The information *did not* reference the DSFO statute or allege in the body of Count II that Petitioner *caused* serious personal injury to the victim.

5. With regard to the State's first and second assertions-that (1) there is no requirement that the DSFO be charged in the information, and (2) the DSFO is a sentencing enhancement-these arguments are contrary *Alleyne v. United States*, 133 S. Ct. 2151 (2013) and its progeny.

6. In *Alleyne*¹ the United States Supreme Court made the following three things very clear:

- A. Any fact that increases the mandatory minimum is an element that must be submitted to a jury.
- B. The core crime and the fact triggering the mandatory minimum sentence together constitute a new, aggravated crime, each element of which must be submitted to the jury.
- C. Since the aggravating fact is an element it must be *charged in the indictment or information* and submitted to the jury.

7. When the holding in *Alleyne* is applied to the facts of Petitioner's case, there can be no dispute that the core offense in Count II for sexual Battery-physical force *likely* to cause serious personal injury, *does not* carry a mandatory minimum sentence, and it *only* requires the jury to find that Petitioner used physical force *likely* to cause serious personal injury. The DSFO, on the other hand, carries a 50-year mandatory minimum and requires the jury to find an additional fact-that Petitioner actually *caused* serious personal injury to the victim. Thus, the core crime of sexual battery-physical force *likely* to cause serious personal injury, and the fact triggering the mandatory minimum sentence that Petitioner actually *caused* serious personal injury, constitute a *new aggravated*

¹ In *Alleyne* the Supreme Court extended the logic of *Apprendi v. New Jersey*, 530 U.S. 466 (2000) (holding that any fact that raises a statutory maximum must be charged in an indictment and proved to a jury beyond a reasonable doubt).

crime. Applying *Alleyne* to the above facts in Petitioner's case, the State's argument that there is no requirement that the DSFO be charged in the information is contrary *Alleyne*.

8. With regards to the State's third assertion-given that the jury made the necessary finding about serious personal injury, appellate counsel was not ineffective for failing to raise a meritless issue-this argument is contrary to well-settled law and logic. Essentially, the State's position is that even though Petitioner *was not* charged as being a DSFO, the fact that the jury made a finding by special verdict that Petitioner *caused* serious personal injury to the victim, this finding cured the State's failure to allege the DSFO in the information and there was no prejudice to Petitioner.

9. The State's assertion overlooks the fact that the law is well-settled that the State must allege the grounds for enhancement in the charging document, and the jury must make factual findings regarding those grounds. *See, Lane v. State*, 996 So.2d 226, 227 (Fla. 4th DCA 2008). Furthermore, the State's failure to allege grounds for enhancement in the charging document *cannot* be cured by a jury's factual findings. *See, Altieri v. State*, 835 So.2d 1181, 1183 (Fla. 4th DCA 2002).

10. The issue at hand is whether appellate counsel was ineffective for failing to raise a preserved, meritorious issue that the trial court erred when it imposed a mandatory minimum sentence of 50-years, pursuant to the DSFO which wasn't charged in the fourth amended information. The cases cited by the State

with regard to the DSFO are entirely inapplicable to the issue at hand.²

11. Combining Petitioner's initial petition and this reply, Petitioner avers that appellate counsel's failure to raise this meritorious issue on direct appeal amounted to deficient performance. As a result of this issue not being raised, Petitioner suffered prejudice, as there is a reasonable probability that this Court would have reversed and remanded with instructions to vacate the 50-year mandatory minimum DSFO sentence and order Petitioner to be re-sentenced without any mandatory minimum consideration.

Respectfully submitted,

The Law Office of
ROBERT DAVID MALOVE, P.A.
200 S. Andrews Avenue, Suite 100
Ft. Lauderdale, FL. 33301

By /s/ Robert David Malove

Robert David Malove

Telephone: (954) 861-0384

FL. Bar No: 407283

² In *Britten v. State*, 181 So.3d 1215, 1217 (Fla. *Pt* DCA 2015), the issue was whether the trial court erred by making the findings required to support the DSFO designation when the jury did not make the necessary finding that the appellant caused serious personal injury to the victim. In *Bruce v. State*, 988 So.2d 715 (Fla. 1st DCA 2008), the issue was whether the trial court erred by ruling the appellant did not qualify as a DSFO because he did not have a qualifying prior conviction when the State sought DSFO sentencing because the appellant used a deadly weapon.

**RESPONSE TO ORDER TO SHOW CAUSE
(OCTOBER 24, 2018)**

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

SEGWAYNE GOLDSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No.: 1D18-3080

RESPONSE TO ORDER TO SHOW CAUSE

The Respondent, the State of Florida (“State”) responds to the Court’s Order to Show Cause and states the following:

1. On 1 July 2016, Petitioner was arrested for sexual battery. (RA-3).
2. On 16 July 2016, Petitioner was charged by information with a violation of Section 794.011(3), Florida Statutes, a life felony. (RA-4).
3. On 10 October 2016, Petitioner’s case proceeded to trial. (RA-5). Petitioner was tried on three counts of sexual battery with physical force likely to cause serious personal injury. (RA-8).

- a. With respect to count one, Petitioner was acquitted. (RA-9).
- b. With respect to count two, Petitioner was found guilty as charged. (RA-9). Further, with respect to count two, the jury made a special finding that Petitioner did cause serious personal injury to the victim. (RA-9).
- c. Finally, with respect to count 3, Petitioner was found guilty of the lesser-included offense of sexual battery. (RA-10).

4. On 10 November 2016, Petitioner was sentenced to fifty years (a mandatory-minimum sentence) in the Department of Corrections on count two and to a consecutive fifteen-year sentence on count three. (RA-12-15).

5. On 23 November 2016, Jonathan Dingus, Esq. filed a Notice of Appeal on behalf of Petitioner. (RA-16).

6. On 1 March 2017, Mr. Dingus filed an Anders Brief. (RA-17-32).

7. On 10 August 2017, this Honorable Court reminded Mr. Dingus of his duty to master the record and research the law, and Mr. Dingus was given twenty days in which to file a Supplemental Initial Brief. (RA-33-34).

8. On 28 September 2017, Mr. Dingus filed the Supplemental Initial Brief. (RA-35-53).

9. On 20 February 2018, this Honorable Court affirmed and issued an Order to Show Cause in which it directed Mr. Dingus to show cause as to why he should not be sanctioned. (RA-54-57). One month

later, this Honorable Court issued its Mandate, considered the response of Mr. Dingus, and discharged its Order to Show Cause. (RA-58).

10. On 24 July 2018, Goldson filed a Petition for Writ of Habeas Corpus in which he alleged ineffective assistance of counsel.

11. The State's response timely follows.

Argument

1. In evaluating an ineffectiveness claim, the court must determine (a) whether the alleged omissions are of such magnitude as to constitute a serious error or substantial deficiency falling measurably outside the range of professionally acceptable performance and (b) whether the deficiency in performance compromised the appellate process to such a degree as to undermine confidence in the correctness of the result. *Pope v. Wainwright*, 496 So.2d 798, 800 (Fla. 1986).

2. Under Section 794.0115(2), Florida Statutes, one qualifies as a dangerous sexual felony offender (DSFO) if he or she is over eighteen years of age and causes serious personal injury as the result of the commission of a sexual battery. The DSFO designation requires a finding that the defendant actually caused serious personal injury to the victim. *Britten v. State*, 181 So.3d 1215, 1217 (Fla. 1st DCA 2015). Where the defendant causes serious personal injury and the offense was committed on or after 1 October 2014, the offender "must be sentenced to a mandatory minimum term of 50 years imprisonment up to, and including, life imprisonment." § Fla. Stat. 794.0115(2) (2014).

3. The Sixth Amendment provides that those accused of a crime have the right to a trial “by an impartial jury”; this right, in conjunction with the Due Process Clause, requires that each element of a crime be proven to the jury beyond a reasonable doubt. *United States v. Gaudin*, 515 U.S. 506, 510, (1995); *In re Winship*, 397 U.S. 358, 364 (1970).

4. Any fact that increases the mandatory-minimum sentence must be submitted to the jury. *Alleyne v. United States*, 570 U.S. 99, 103 (2013). Any finding that the defendant caused serious personal injury (which leads to an increased mandatory minimum term in the Department of Corrections) must be made by a jury. *Britten v. State*, 181 So.3d 1215, 1217 (Fla. 1st DCA 2015).

5. Appellant points out “Where a statute annexes a higher degree of punishment to a common-law felony, if committed under particular circumstances, an indictment for the offence, in order to bring the defendant within that higher degree of punishment, must expressly charge it to have been committed under those circumstances, and must state the circumstances with certainty and precision.” *Alleyne*, 570 U.S. at 480. (citations omitted) (Petitioner’s Writ-6-7).

6. However, the State did expressly charge Appellant with sexual battery (with the use of physical force likely to cause serious personal injury). (RA-8). Likewise, the State did specify the circumstances with certainty and precision by detailing three separate and different sexual batteries, each of which was committed with the use of physical force likely to cause serious personal injury. (RA-8).

- a. With respect to count 2, the State charged Appellant with penile-vaginal sexual battery likely to cause serious personal injury. (RA-8). After trial, the jury found Appellant guilty as charged and made a special finding: “This Defendant did cause serious personal injury to the victim.” (RA-9).

7. Since the determination immediately above was made by the jury, appellate counsel was not ineffective for failing to object. *Bruce v. State*, 988 So.2d 715 (Fla. 1st DCA 2008) (the mandatory-minimum sentence as a DSFO is required where the jury finds that at least one of the five subsections of the DSFO Act has been sufficiently proven); *Cf. Cartagena v. State*, 237 So.3d 417, 419 (Fla. 4th DCA 2018) (the trial court committed an *Alleyne* error where: (a) the trial court applied a sentencing multiplier for domestic violence in the presence of a related child; (b) *the jury was never presented with an interrogatory regarding the child’s presence during the commission of the offense; and (c) the jury’s verdict did not reflect any finding that the battery by strangulation was committed while the child was in the room*).

8. Appellant stresses that he can be neither convicted of nor sentenced for a crime that is not charged in the information, but he has suffered no such harm. After all, Section 794.0115, Florida Statutes, does not create a proscription but establishes a sentencing enhancement for particularly serious sexual crimes.

9. Appellant emphasizes that the information “*did not charge by statute or allege in the body § 794.0115, Fla. Stat. (2016)*” and maintains “this was error and contrary to well-established law that a defendant cannot be convicted and/or sentenced for a

crime not charged in the information.” (Petitioner’s Writ-8). Notably though, Appellant was never convicted of an uncharged crime: the Fourth Amended Information alleged three counts of sexual battery likely to cause serious personal injury; Appellant was acquitted on the first, found guilty as charged on the second, and convicted of a lesser-included offense on the third. Further, although Appellant seems to argue that the information was “fundamentally defective,” the charging document fully and fairly apprised him of the accusations; accordingly, it was not defective in any sense.

10. Notably, there is no requirement that the DSFO language appear in the information. *Brown v. State*, 21 So.3d 108, 110 (Fla. 4th DCA 2009) (not every fact with a bearing on sentencing must be alleged in the charging document; instead, the charged facts only need to make the defendant aware of the heaviest punishment he may face). Importantly, the information properly listed the offenses as life felonies. (RA-8).

11. The purpose of an information is to fairly apprise the defendant of the offense(s) with which he is charged. *Leeman v. State*, 357 So.2d 703, 705 (Fla. 1978). And, in order to be valid, an information need only allege each of the essential elements. *State v. Dye*, 346 So.2d 538, 541 (Fla. 1977).

12. Not only is there no requirement that the DSFO language appear in the information, a defendant is not even entitled to written notice of any kind for such an enhancement. *Abrams v. State*, 971 So.2d 1033, 1036 (Fla. 4th DCA 2008). The judge must decide only whether the statutory criteria require that he or she sentence a defendant as a DSFO, not

entirely unlike a judge determining whether a particular offender qualifies as a habitual felony offender or whether another qualifies as a prison releasee reoffender. *State v. Geohagen*, 633 So.2d 22, 23 (Fla. 1st DCA 1993); *State v. Fortson*, 828 So.2d 1048, 1049 (Fla. 1st DCA 2002).

13. Given (a) that the jury made the necessary finding about serious personal injury and (b) that the DSFO language did not have to appear in the information, appellate counsel properly decided not to raise a meritless issue; accordingly, his performance cannot have fallen outside the permissible range of professional conduct.

**SIGNATURE OF ATTORNEY AND
CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing response has been furnished by email to Mr. Robert D. Malove, Esq. at rdm@robertmalovelaw.com on this 24th day of October 2018.

Respectfully submitted and served,
PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Steve Woods

By: Steven E. Woods

Attorney for State of Florida

Assistant Attorney General

Office of the Attorney General

P1-01, the Capitol

Tallahassee, FL 32399-1050

(850)-414-3300 Ext. 4595

(850)-922-6674 (Fax)

Florida Bar No. 0092613

**VERDICT, CIRCUIT COURT FOURTEENTH
JUDICIAL CIRCUIT, BAY COUNTY, FLORIDA
(OCTOBER 11, 2016)**

IN THE CIRCUIT COURT, FOURTEENTH
JUDICIAL CIRCUIT IN AND FOR
BAY COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

SEGWAYNE KIRK ANTHONY GOLDSON,

Defendant.

Case No: 16-2683

VERDICT

COUNT I: WE, the jury, find as follows as to the Defendant, SEGWAYNE KIRK ANTHONY GOLDSON, in this case.

☒ 4. The Defendant is not guilty.

COUNT II: WE, the jury, find as follows as to the Defendant, SEGWAYNE KIRK ANTHONY GOLDSON, in this case.

☒ 1. The Defendant is guilty of Sexual Battery — Physical Force Likely to Cause Serious Personal Injury, as charged.

COUNT III: WE, the jury, find as follows as to the Defendant, SEGWAYNE KIRK ANTHONY GOLDSON, in this case.

- ☒ 2. The Defendant is guilty of Sexual Battery.

FURTHER FINDINGS

AS TO COUNT I: If you have found the Defendant guilty of Sexual Battery-Physical Force Likely to Cause Serious Personal Injury, answer the following question:

- ☒ 2. This Defendant did not cause serious personal injury to the victim.

AS TO COUNT II: If you have found the Defendant guilty of Sexual Battery—Physical Force Likely to Cause Serious Personal Injury, answer the following question:

- ☒ 1. This Defendant did cause serious personal injury to the victim.

AS TO COUNT III: If you have found the Defendant guilty of Sexual Battery—Physical Force Likely to Cause Serious Personal Injury, answer the following question:

- ☒ 2. This Defendant did not cause serious personal injury to the victim.

SO SAY WE ALL.

DATED this 11th day of October, 2016.

{signature not legible}
FOREPERSON

**FOURTH AMENDED INFORMATION,
CIRCUIT COURT FOURTEENTH JUDICIAL
CIRCUIT, BAY COUNTY, FLORIDA
(OCTOBER 10, 2016)**

IN THE CIRCUIT COURT, FOURTEENTH
JUDICIAL CIRCUIT IN AND FOR
BAY COUNTY, FLORIDA

STATE OF FLORIDA

v.

SEGWAYNE KIRK ANTHONY GOLDSON
B/M DOB: 02/09/1987
185 White Cap Way
Panama City Beach, FL 32407

Case Number: 032016CF02683A

Charges: I) SEXUAL BATTERY – PHYSICAL FORCE
LIKELY TO CAUSE SERIOUS PERSONAL INJURY

II) SEXUAL BATTERY – PHYSICAL FORCE
LIKELY TO CAUSE SERIOUS PERSONAL INJURY

III) SEXUAL BATTERY – PHYSICAL FORCE
LIKELY TO CAUSE SERIOUS PERSONAL INJURY

FOURTH AMENDED INFORMATION

Barbara F. Beasley, Assistant State Attorney for
the Fourteenth Judicial Circuit of Florida, duly
appointed and designated to sign Informations on
behalf of Glenn Hess, State Attorney, prosecuting for

said State of Florida, in the name and by the authority of the State of Florida, in the County of Bay, under oath informs the Court that:

COUNT I: Segwayne Kirk Anthony Goldson, on or between June 30, 2016 and July 1, 2016, in the County of Bay and State of Florida, did commit sexual battery upon ■■■■■■■■■■, a person 12 years of age or older, without that person's consent, by committing the following actions, the sexual organ of ■■■■■■■■, had union with the mouth of the Defendant, and in the process thereof used actual physical force likely to cause serious personal injury, contrary to Florida Statute 794.011(3) and 775.087(1). (FL - L10)

COUNT II: Segwayne Kirk Anthony Goldson, on or between June 30, 2016 and July 1, 2016, in the County of Bay and State of Florida, did commit sexual battery upon ■■■■■■■■■■, a person 12 years of age or older, without that person's consent, by committing the following actions, the Defendant's sexual organ penetrated or had union with the vagina of ■■■■■■■■, and in the process thereof used actual physical force likely to cause serious personal injury, contrary to Florida Statute 794.011(3) and 775.087(1). (FL - L10)

COUNT III: Segwayne Kirk Anthony Goldson, on or between June 30, 2016 and July 1, 2016, in the County of Bay and State of Florida, did commit sexual battery upon ■■■■■■■■■■, a person 12 years of age or older, without that person's consent, by committing the following actions, the Defendant's finger(s) penetrated the vagina of ■■■■■■■■, and in the process thereof used actual physical force likely to cause serious personal

injury, contrary to Florida Statute 794.011(3) and 775.087(1). (FL - L10)

Barbara F. Beasley, as Assistant State Attorney for the Fourteenth Judicial Circuit of Florida, under oath, states that the allegations set forth in this Information are based on facts that have been sworn to as true, under oath by material witness(es), and which, if true, would constitute the offense therein charged, and this Information is filed in good faith.

Glenn Hess
State Attorney, 14th Circuit

By: /s/ Barbara F. Beasley
Barbara F. Beasley
Assistant State Attorney
Florida Bar Number: 631728
Post Office Box 1040
Panama City, FL 32402
(850) 872-4473
(850) 747-5863 FAX
barbara.beasley@sa14.fl.gov

The foregoing instrument was acknowledged before me this 10th day of October, 2016, by Barbara F. Beasley, who is personally known to me and did take an oath.

/s/ Jenny Barnes
Deputy Clerk

**FIRST INFORMATION, CIRCUIT COURT
FOURTEENTH JUDICIAL CIRCUIT,
BAY COUNTY, FLORIDA
(JULY 16, 2016)**

IN THE CIRCUIT COURT, FOURTEENTH
JUDICIAL CIRCUIT IN AND FOR
BAY COUNTY, FLORIDA

STATE OF FLORIDA

v.

SEGWAYNE KIRK ANTHONY GOLDSON
B/M DOB: 02/09/1987
185 White Cap Way
Panama City Beach, FL 32407

Case Number: 032016CF02683A

Charges: SEXUAL BATTERY

INFORMATION

Barbara F. Beasley, Assistant State Attorney for the Fourteenth Judicial Circuit of Florida, duly appointed and designated to sign Informations on behalf of Glenn Hess, State Attorney, prosecuting for said State of Florida, in the name and by the authority of the State of Florida, in the County of Bay, under oath informs the Court that:

Segwayne Kirk Anthony Goldson, on or between June 30, 2016, in the County of

Bay and State of Florida, did commit sexual battery upon ■■■■■■■■, a person 12 years of age or older, without that person's consent, by the following actions, the Defendant's penis penetrated or had union with the vagina of ■■■■■■■■ and/or the Defendant's finger penetrated the vagina of ■■■■■■■■, and in the process thereof used or threatened to use a deadly weapon and/or used actual physical force likely to cause serious personal injury, contrary to Florida Statute 794.011(3) and 775.087(1). (FL-L10)

Barbara F. Beasley, as Assistant State Attorney for the Fourteenth Judicial Circuit of Florida, under oath, states that the allegations set forth in this Information are based on facts that have been sworn to as true, under oath by material witness(es), and which, if true, would constitute the offense therein charged, and this Information is filed in good faith.

Glenn Hess
State Attorney, 14th Circuit

By: /s/ Barbara F. Beasley
Barbara F. Beasley
Assistant State Attorney
Florida Bar Number: 631728
Post Office Box 1040
Panama City, FL 32402
(850) 872-4473
(850) 747-5863 FAX
barbara.beasley@sa14.fl.gov

App.254a

The foregoing instrument was acknowledged before me this 16th day of July, 2016, by Barbara F. Beasley, who is personally known to me and did take an oath.

/s/ Linda Holloway

Notary Public

Commission # FF 235219

Expires May 27, 2019