

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

JASON PEREZ,	:	
	:	
v.	:	
	:	
JULIE L. JONES,	:	(Chief Judge Steven Merryday)
FLORIDA DEPARTMENT	:	
OF CORRECTIONS	:	
Defendant.	:	

**DEFENDANT’S MEMORANDUM OF LAW REGARDING
THE PETITION UNDER 28 U.S.C. § 2254 WRIT OF HABEAS CORPUS
FOR A PERSON IN STATE CUSTODY**

COMES NOW, Defendant Jason Perez, by and through undersigned counsel, and respectfully submits the following Memorandum of Law supporting his previously filed [Petition for Writ of Habeas Corpus](#) for a person in state custody under the Antiterrorism and Effective Death Penalty Act (AEDPA), as codified in 28 U.S.C. § 2254.

BACKGROUND

Following a trial in the Sixth Judicial Circuit in and for Pinellas County, Florida, Mr. Perez was convicted on two counts of attempted murder on October 16, 2013. Mr. Perez received a life sentence for the first count and a twenty-year sentence for the second count. To determine sentencing, the trial court used a score sheet. The court erroneously concluded that the total number of points equated to a

sentence of life imprisonment, even though the total points attributed to Mr. Perez's convictions were less than half of the amount necessary to impose such a sentence.

Mr. Perez appealed the convictions to the Second District Court of Appeals for Florida, arguing the court erred in denying his Motion in Limine to exclude any testimony relating to his alleged and unproven drug activity. On September 30, 2015, the court affirmed the convictions per curium. Mr. Perez also filed a Motion for Post Conviction Relief to the trial court on January 26, 2016. The trial court dismissed the motion on March 31, 2016.

Mr. Perez filed a state petition for writ of habeas corpus based on ineffective assistance of appellate counsel on five grounds. His petition for writ was denied on October 13, 2017. The petition this memorandum supports followed.

DISCUSSION

Mr. Perez filed a petition to this Court to challenge his state sentence under 28 U.S.C. § 2254 on March 5, 2018. *See* Pet. Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, *Perez v. Jones*, 8:18-cv-00520-CEH-SPF. Pursuant to 28 U.S.C. § 2254, Mr. Perez has exhausted all of the applicable state remedies, including direct appeals as well as writs for post-conviction relief and state habeas corpus. *Id.* He now seeks relief on thirteen grounds. *Id.* In addition to the grounds raised in the petition, Mr. Perez also raises issues of law regarding

the ineffective assistance of trial and appellate counsel, both of which constitute *Strickland* violations.

A. Petitioner has exhausted all available state remedies relating to the thirteen grounds for habeas corpus he raised, and now respectfully requests this Court grant relief from state conviction based on each.

In his petition in support of a writ of habeas corpus under 28 U.S.C. § 2254, Mr. Perez raised thirteen grounds on which the trial court erred in its judgment. *See* Pet. Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, *Perez v. Jones*, 8:18-cv-00520-CEH-SPF. Pursuant to 28 U.S.C. § 2254, Mr. Perez exhausted all state avenues for relief before bringing the petition underlying this memorandum. *Id.* Specifically, the AEDPA precludes any federal court, absent exceptional circumstances, from granting relief under habeas corpus unless the petitioner has exhausted all available relief under state law. *See* 28 U.S.C. § 2254(b)(1); *see also O’Sullovan v. Boerckel*, 526 U.S. 838, 842–44 (1999).

To exhaust all available state remedies, the petitioner must “fairly present federal claims to the state courts in order to give the State the opportunity to pass upon and correct alleged violations of its prisoners’ federal rights.” *Duncan v. Henry*, 513 U.S. 364, 365 (1995). Here, Mr. Perez filed a direct appeal, a motion for post-conviction relief, and a state petition for writ of habeas corpus. All three remedies sought resulted in erroneous and unfavorable decisions. The thirteen

grounds Mr. Perez raised in his 28 U.S.C. § 2254 petition were all addressed by one or more of the exhausted state remedies he sought prior to the petition.

Having exhausted available state remedies for all thirteen grounds raised in his petition for writ of habeas corpus, Mr. Perez now respectfully requests this Court grant him relief from his state conviction. *See* Pet. Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, *Perez v. Jones*, 8:18-cv-00520-CEH-SPF. In addition to the grounds mentioned above, Mr. Perez also requests this Court take notice of the *Strickland* violations resulting from ineffective assistance of trial and appellate counsel.

B. Even under the AEDPA’s strict requirements for habeas relief, Petitioner’s ineffective assistance of trial and appellate counsel claims are sufficient to warrant this Court’s grant of his petition for writ of habeas corpus under *Strickland v. Washington*.

Under the AEDPA, a federal court may not grant habeas relief for a state court conviction unless the conviction “resulted in a decision that was contrary to, or involved an unreasonable application or, clearly established Federal law . . . or resulted in a decision that was based on unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d). Clearly established federal law has been interpreted to only include United States Supreme Court holdings “as of the time of the relevant state-court decision.” *Williams v. Taylor*, 529 U.S. 362, 412 (2000).

Ineffective assistance of counsel under the *Strickland* regime was a clearly established federal law by the time of Mr. Perez's conviction. *See Williams*, 529 U.S. at 391; *see also Strickland v. Washington*, 466 U.S. 668 (1984). Therefore, a petitioner must be granted habeas relief if the state supreme court's denial of his ineffective assistance claims was "contrary to, or involved in an unreasonable application of" the *Strickland* doctrine. 28 U.S.C. § 2254(d).

Violation of the right to effective assistance of counsel under *Strickland* has two key components. *See Strickland*, 466 U.S. at 687. First, a petitioner must establish that their "counsel's performance was deficient." *Id.* This specifically requires the petitioner to show that their counsel's errors were to such a degree that their performance did not satisfy the fundamental guarantee to counsel under the Sixth Amendment. *See id.*; *see also* U.S. Const. Amend. VI. Second, the petitioner must show that their counsel's performance "prejudiced the defense." *Strickland*, 466 U.S. at 687. This requires a showing 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. Reasonable probability is characterized in *Strickland* as a probability "sufficient to undermine the confidence in the outcome." *Id.*

i. Trial counsel's ineffective assistance in as characterized eight distinct instances in totality constitute a *Strickland* violation by which this Court should grant habeas relief.

As iterated in Mr. Perez's 28 U.S.C. § 2254 petition, his trial counsel erred on eight distinct instances. Specifically, the petition notes the following errors:

- Failure to properly investigate, refute, and seek exclusion of the collateral crimes raised as issues during the Motion in Limine (*Williams*) hearing;
- Failure to properly investigate and introduce alternative defense evidence to rebut the untrustworthy testimonies of Michael Jason Haynes and Titus Verts;
- Failure to question, seek out, speak to, or depose four potential witnesses to corroborate defense's claims that the testimony of Michael Jason Haynes and Titus Verts were untrustworthy;
- Failure to properly investigate perjury relating to state's witnesses denial of perks for testifying against Mr. Perez;
- Failure to address conflict of interest regarding counsel's own biases against Mr. Perez;
- Failure to adequately prepare for trial;
- Failure to object to state's factually incorrect assertion in its closing statement that Mr. Perez had a prior cocaine conviction; and

- Failure to object to the introduction of the inflammatory and prejudicial photos of a weapon that was not the weapon used to commit the crimes.

See Pet. Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, *Perez v. Jones*, 8:18-cv-00520-CEH-SPF, at 7–16.

In *Williams*, the United States Supreme Court addressed an AEDPA-based habeas petition that involved the *Strickland* doctrine. *Williams*, 529 U.S. at 390–399. There, the petitioner, Williams, argued that his trial counsel failed to discover or offer mitigating evidence to the jury. *Id.* In his opinion for the Court, Justice Stevens characterized these failures as a clear demonstration that Williams’s “counsel did not fulfill their ethical obligation to conduct a thorough investigation” *Id.* at 364.

Here, like in *Williams*, Mr. Perez’s trial counsel failed to fulfill their ethical obligation to conduct a thorough investigation that would have constituted effective counsel under *Strickland*. In their totality, Mr. Perez’s trial counsel provided ineffective assistance because their failure to address the eight issues outlined above constitutes deficient performance to a degree that violates Mr. Perez’s guarantees of counsel under the Sixth Amendment. See *Strickland*, 466 U.S. at 687. Furthermore, there is more than a reasonable probability that, in their totality, the eight failures outlined above prejudiced Mr. Perez’s defense. See *id.* It is not a far stretch to

conclude that the eight failures constituted unprofessional errors, and that but for these errors, there may have been a different outcome.

Because Mr. Perez's trial counsel was both deficient in performance and prejudiced his defense, it rose to the level of ineffective counsel under *Strickland*. As such, Mr. Perez requests that this Court grant his petition for habeas relief under 28 U.S.C § 2254.

ii. Appellate counsel's failure to raise five additional issues relating to Petitioner's initial trial constitutes a *Strickland* violation by which this Court should grant habeas relief.

In addition to the errors made by Mr. Perez's public defense counsel, his public appellate counsel failed to raise five additional issues of relevance on appeal. While courts must generally presume that appellate counsel's performance is sufficient, this presumption may be rebutted if it outside the range of reasonable professional assistance. *See Strickland*, 466 U.S. at 689. Appellate counsel's presumption of effectiveness will be overcome where the "ignored issues are clearly stronger than those presented." *Smith v. Robbins*, 528 U.S. 259, 288 (2000) (quoting *Gray v. Greer*, 800 F.2d 644, 646 (7th Cir. 1986)).

The only issue raised by Mr. Perez's appellate counsel in the brief before the District Court of Appeal for the Second District of Florida was regarding the denial of Mr. Perez's Motion in Limine by the trial court judge. *See* Initial Brf. for Appellant, *Perez v. Florida*, 2D13-5393. Mr. Perez's appellate counsel failed to raise

appeal on issues relating to inculpatory evidence transferred between counts, the insufficient evidence presented at trial, as well as three instances of incorrect or omitted jury instructions. *See id*; Pet. Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, *Perez v. Jones*, 8:18-cv-00520-CEH-SPF.

While the issue appellate counsel raised was certainly a strong one, Mr. Perez urges this Court to consider the effect of failing to any, let alone all, of these additional issues for appeal had no strategic basis and therefore rendered appellate counsel ineffective. *See Burger v. Kemp*, 483 U.S. 776, 784 (1987) (finding no ineffective assistance of appellate counsel where the decision to not raise a particular issue had a “sound strategic basis”).

Furthermore, appellate counsel’s deficient performance rose to the level of prejudice. Specifically, but for appellate counsel’s deficient performance, there is reasonable probability that the outcome of Mr. Perez’s appeal would have been different. *See Strickland*, 446 U.S. at 694; *see also Harrington v. Richter*, 562 U.S. 86, 104 (2011). Furthermore, the bases for reversal omitted by appellate counsel were far from mediocre. *See Overstreet v. Warden*, 811 F.3d 1283, 1287 (11th Cir. 2016) (noting that failure to identify mediocre bases for reversal did not rise to the level of a *Strickland* violation).

Because Mr. Perez’s trial counsel was both deficient in performance and prejudiced his defense, it rose to the level of ineffective counsel under *Strickland*.

As such, Mr. Perez requests that this Court grant his petition for habeas relief under 28 U.S.C § 2254.

CONCLUSION

Given the aforementioned petition for writ of habeas corpus under 28 U.S.C. § 2254 and the additional *Strickland* violations outlined above, Mr. Perez respectfully requests that this Court review and approve his writ and require relief from his state conviction pursuant to and appropriate under the AEDPA. *See* 28 U.S.C. § 2254.

Respectfully submitted this 10th day of December, 2019.

(counsel signature)