

FIRST DISTRICT COURT OF APPEAL

Case#.: (T.B.A.)
1st DCA, Dir.App.#.: 1D19-4005;
L.T.#.: 2016-CF-1581A
2018-CF-496

SIGFREDO GARCIA
Petitioner
V.
STATE OF FLORIDA
Respondent

PROVIDED TO
HOLMES CI
MAY 19 2022
FOR MAILING
95

PETITIONER ALLEGING
INEFFECTIVE ASSISTANCE
OF APPELLATE COUNSEL

ON APPEAL FROM THE CIRCUIT
COURT SECOND JUDICIAL CIRCUIT
LEON COUNTY, FLORIDA

THE HONORABLE JAMES HANKINSON
PRESIDED

FILED
2022 MAY 25 AM 10:15
KRISTINA SAMUELS
CLERK, DISTRICT COURT OF APPEAL
FIRST DISTRICT

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JURISDICTION

This Honorable Court has jurisdiction under the FLA. Const. Art. V sec. 4(b); FLA. R. App. P. 9.141(d); 9.100 (a); 9.030(b)(3).

PREAMBLE

Petitioner files several exhibits attached hereto:

'A'- App. Counsel correspondence 1-12-22 '1' p.;

'B'- App. Counsel correspondence 10-29-21 '1' p.;

'C'- App. Counsel correspondence 'multiple,' dating

From 1-20-2 – 12-16-21, 12 separate letters.

STATEMENT OF THE CASE AND FACTS

Petitioner was charged of First-Degree premeditated murder, and conspiracy and solicitation to commit murder.

Petitioner adopts and incorporates the statement of case and facts from the direct appeal brief into this petition, to the extent that it is the only record cited petitioner's has as appellate counsel has not sent the petitioner a usable record on appeal, see direct app. Brief p.'s 5-26.

Appellant/Petitioner's direct appeal was affirmed with a written opinion on 9-29-21, mandate issuing shortly thereafter.

During the course of the appellate counsel took on the posture of a 'trial defense counsel' actively attempting to facilitate a deal between the petitioner and the STATE attorney's and police/law enforcement, see exhibit/appendix 'C', moreover throughout these correspondence, appellate counsel Baya Harrison based on his prior representation of STATE witness 'Amy Manka', see exhibit/appendix 'B'.

Further and finally, as a result of the above stated, appellate counsel refuses to send the petitioner's a usable record on appeal (R.O.A.) to utilize any and all post-conviction litigation that is possible which includes a Federal Habeas 28 U.S.C. 2254; 2244 (d)(1), see exhibit/appendix 'A'.

This petition follows.

Preliminary Statement

Petition brings to this court '1' issue addressed in (3) subsections (a)(b)(c) each base on a conflict with appellate counsel.

ISSUE (1)

Petitioner received Ineffective Assistance of Appellate Counsel Due to Conflicts of Interests

The standard of review for ineffective assistance of appellate counsel is verbalized in Heath v. Jones 941 F.2d 1126, 1130-32 (11th Cir. 1991) outlining a two prong test: Under the performance prong counsel's strategy must be insufficient, particular decisions must be directly assessed for reasonableness in light of all the circumstances, a review of the entire record is to be conducted in its entirety.

Under the prejudice prong, the court must review the merits of the omitted claims if the court finds that the neglected claim would've had a reasonable probability of success on appeal, then according to Cross it is necessary to find appellate counsel's performance prejudicial because it affected the outcome of the appeal (citing) Cross.

The above standards intent, purpose, and resulting determinate judicial factors thereof goes directly to the heart of sub claims (a): see exhibit/appendix -'A'; (a): Appellate counsel has not given the petitioner his copy of the record on appeal (R.O.A.) to proceed with any and all possible post-conviction litigation, such as, Fla. R. Crim. P. 3.850 2yr. time limitation, Federal Habeas Corpus 28 U.S.C. 2244 2254, 1 yr. time limitations 28 U.S.C. 2244 (d)(1),

and this instant petition at bar as petitioner has no R.O.A. to review for any meritorious omitted claims.

Petitioner's appeal time limitation under the equitable tolling doctrine is running out with no recourse to stop the Federal Habeas time limitation except this petition, especially in light of the fact that petitioner cannot file a 3.850 for lack of R.O.A. compounded by the fact that the filing of a Fla. R. Crim. P. 3.800 illegal sentence does not toll 3.850 time limitation.

Moreover, this action puts the petitioner in danger of being barred from Federal Habeas review procedurally and under the 1yr. time limitation, especially in light of the fact that any Federal issue must be addressed in any and all STATE courts to be properly presented to the federal forum, see O'Sullivan v. Boerckel 119 S.Ct. 1728 (1999), see also Baldwin v. Reese 541 U.S. 27 (2004) appellate counsel not citing to any holding U.S. Supreme Court case in its direct appeal brief, which would also procedurally bar any U.S. District Court Habeas review of the claims made therein, meaning that without a R.O.A. petitioner cannot make any legally sufficient ineffective assistance of counsel claims addressing STATE or Federal issues under Strickland v. Washington 466 U.S. 668 (1984).

As a additional avenue to address this issue, petitioner has a pending mandamus in Jefferson County arguing entitled to a copy of direct appeal record that is not chargeable to the petitioner under Thompson v. Unterberger 577 So.2d 684 (Fla. 2d DCA 1991).

This subsection 'A,' is directly related to and inextricably intertwined with sub sections 'B' and 'C' as argued below, see also Laflower v. STATE 924 So.2d 54, 58 (Fla. 5th DCA 2006), subsection 'B.'

Appellate counsel verbally expressed his belief in the petitioner's guilt of this/these crimes of conviction throughout the entire appellate process in several of his correspondence, see exhibit/appendix 'C,' (all).

Under the holding in U.S. v. Cronin 466 U.S. 648, 654 (1984) a criminal defendant must receive actual assistance, a "per se ineffective assistance of counsel claim." Under Cronin, no prejudice needs to be shown under Strickland, see Cronin at 659, when/if counsel entirely fails to subject the prosecution's case to "meaningful adversarial testing," see, Bryant v. Sec. Dept. Corr. 2012 U.S. Dist. Lexis 43988 @ 21 (11th Cir.)(citing) Hunter v. Moore 304 F.3d 1066, 1069 (11th Cir. 2002).

The holding made by the Florida Supreme Court in Harvey v. STATE 2003 Fla. Lexis 1140 (Fla. S.Ct.) (citing) Cronic supra clearly takes issue with the posture of a defense advocate operating under the belief of guilt of his/her client, and the resulting per se ineffectiveness.

Petitioner contends that there is no difference in counsel conceding to his client's guilt 'in court', as opposed to conducting himself from and with that belief from behind closed doors, with the exception of secretly working to his clients determinant, (e.g.) Not federalizing any/all appeal claims, refusing to turn over a usable record on appeal, actively working with the STATE police and state attorneys to make a deal to testify against alleged uncharged co-conspirators to receive some light at the end of tunnel or relief from a conviction and sentence that was and has been previously pronounced.

The mere fact that appellate counsel made that statement implies the fact that petitioner's appeal was being held hostage by his own appellate lawyer in exchange for cooperating with the STATE.

This appellate counsel's review of the R.O.A. and the issue addressed in direct appeal are not above reproach, they are uncredible, petitioner's contending that as the direct appeal was conducted under such circumstances, he is entitled to a completely new direct appeal with a different attorney new briefs being written and considered, the conflict in representation is unmistakably evident and could only have pronounced a per se ineffective advocacy.

Subsection 'C':

Appellate counsel and petitioner's were in conflict concerning representation as Attorney Harrison previously represented a witness/interested party in this present case(s) 'Amy Manka' whom a deal with the STATE was made, see exhibit/appendix 'B', see Cotto v. STATE 829 So.2d 959 (Fla. 4th DCA 2002) "a serious potential conflict must be shown," see also Barclay v. Wainwright 444 So.2d 956, 958 (Fla. S.Ct. 1984).

The/this representation by counsel could only have produced the obtaining of confidential information that undoubtedly shaped Attorney Harrison's passionate belief of petitioner's alleged guilt, contrary to the decision in Rodriguez v. STATE 767 So.2d 621(Fla.

4th DCA 2000), also instilling the conflict of representing the petitioner's interests as opposed to Attorney Harrison's clear alignment with cooperating with the STATE'S agenda as had been done with Amy Manka previously.

The representation by Mr. Harrison was suffered under clear conflict(s).

CONCLUSION

Under the above argued conflicts it is clear that petitioner's interests were compromised, see Cooper v. STATE 856 So.2d 969, 974 (Fla. S.Ct. 2003).

Appellate counsel Harrison was in contact with Ass. STATE Cappleman in attempt to make a deal to undue a life sentence that had already been handed down, the fraudulent offer of light at the end of tunnel that was bricked off.

Prior representation of a STATE witness in petitioner's actual case and Att. Harrison's stated belief in his client's guilt are all conflicts that cannot be overlooked.

Compounded by the facts that Att. Harrison's ineffective conflicts reach beyond the direct appeal itself in his refusal and intentional subversion of all post-conviction proceedings by refusing

to give the petitioner a usable physical (paper) record on Appeal (R.O.A.) which is under mandamus review in Jefferson County court case 2022 CA 36, the appeal of which will also come before this court in its profile nature of this case and all it entails must be above reproach, the appearance of impropriety is very evident as issued above, see STATE V. Miller 288 So.3d 1281, 1282-5 (Fla. 5th DCA 2022).

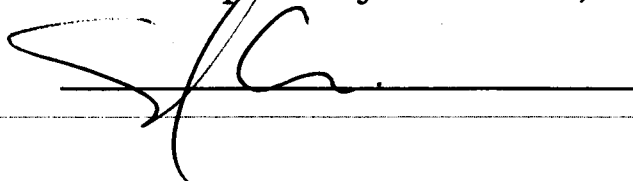
RELEIF SOUGHT

Wherefore, the petitioner moves this Honorable Court to find a conflict set aside its direct appeal decision, and appoint different counsel for a new complete direct appeal proceeding, moreover order that petitioner be given a complete copy of his/the record on appeal instead of thumb drives and C.D.'s that petitioner cannot have or utilize in Fla. D.O.C., which is well known by Att. Harrison, and any other relief this court deems just.

OATH – F.S. 92.525

Under penalties of perjury, the petitioner swears the above is true and correct, also signed under 28 U.S.C. 1746.

Respectfully submitted,




Sign

Pro se Sigfredo Garcia DC# M25867
Holmes Correctional Institution
3242 Thomas Drive
Bonifay, FL 32425

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this document and exhibits/appendix was sent by first class U.S. Mail to: Clerk of Court 2000 Drayton Dr. Tallahassee FL 32399, and Attorney General's Office The Capitol PL-01 Tallahassee. Fl 32399 on 10
May 2022.



Pro se Sigfredo Garcia DC# M25867 Sign
Holmes Correctional Institution
3242 Thomas Drive
Bonifay, FL 32425

FIRST DISTRICT COURT OF APPEAL

Case#.: (T.B.A.)
1st DCA, Dir.App.#.: 1D19-4005;
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SIGFREDO GARCIA
Petitioner

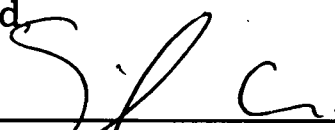
V.
STATE OF FLORIDA
Respondent

EXHIBITS/APPENDIX

Comes Now the petitioner filing exhibits/appendix for Ineffective Appellate counsel petition as follows:

'A'- App. Correspondence 1-12-22 '1' p.;
'B'- App. Counsel Correspondence 10-29-21 '1'p.;
'C'- App. Counsel Correspondence 'multiple', dating
From 1-20-20 - 12-16-21, /2 letters.

Respectfully submitted,



Pro se Sigfredo Garcia DC# M25867
Holmes Correctional Institution
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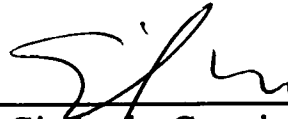
Sign

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this document and exhibits/appendix was sent by first class U.S. Mail to: Clerk of Court 2000 Drayton Dr. Tallahassee FL 32399, and Attorney

General's Office The Capitol PL-01 Tallahassee. Fl 32399 on 10

May 2022.



Sign

Pro se Sigfredo Garcia DC# M25867
Holmes Correctional Institution
3242 Thomas Drive
Bonifay, FL 32425

LAW OFFICE OF BAYA HARRISON

850-997-5554
Bayalaw@aol.com

Post Office Box 102
Monticello, FL 32344

January 12, 2022

Mr. Sigfredo Garcia
DC No. M25867
Holmes C.I.
3142 Thomas Drive
Bonifay, FL 32425

Dear Mr. Garcia,

We received your undated letter yesterday repeating that you demand your ROA. You complain that I am the one sending the letter.

You can check at your end to verify that Holmes will not allow thumb drives mailed to inmates. You say we can't send it to your mother because she has moved out of state. I don't see how that has any bearing on that matter.

So you have created a stalemate.

I will check to see how long we are required to hang on to this thumb drive. I am sure I have sent you all of our work products. One thing you mentioned was the DCA order ending your appeal. Again, I was sure I mailed it to you, but it is only 4 pages so I include it again here.

Sincerely yours,

Barbara Harrison
Office Manager

EXHIBIT
B

Baya Harrison, Attorney
PO Box 102
Monticello, FL 32344

tel: 850/997-5554
bayalaw@aol.com

Memorandum.

October 29, 2021

To: Mr. Sigfredo Garcia, Mayo CI
Re: Garcia v. State, First DCA Case No. 1D19-4005
From: Baya Harrison

I have your most recent letter in which you confirm that you received my letter of 9/30/21 informing you that the DCA affirmed your judgment and life sentence. There was no basis for reconsideration.

Your statement to the effect that there was not enough evidence to convict you is in clear contradiction of the record. The murder was poorly carried out leaving evidence of your direct involvement apparent to any reasonable person. Your insistence that there were other valid appellate issues to raise on direct appeal is without merit. We looked at everything.

Your suggestion that I had a conflict of interest because at some point in time I represented Amy Manka is also meritless. Of course, you are more than free to raise any of these issues in a post conviction claim of ineffective assistance of appellate counsel against me. There is no factual or legal basis for them.

I will agree with you that I have been wasting my time offering you what I believe to be some possible relief from your life sentence but you would have to tell the whole truth about what you obviously know especially as it relates to those people down south who initiated this horrible crime. But you have been had by these people and there is little else to say.

Sincerely,


Baya Harrison

Witness against my case.
Direct from Manka in interest

Baya Harrison
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PO Box 102
Monticello, FL 32344

email:

Tel: 850/997-5554
Fla. Bar No. 099568

January 20, 2020

Confidential Legal Mail

Mr. Sigfredo Garcia
DC No. M25867
Taylor Correctional Institution
8501 Hampton Springs Road
Perry, Florida 32348

Re: Garcia v. State, First DCA Case No. 1D19-4005

Dear Mr. Garcia:

Thank you for your letter of 1/13/20 in response to my initial letter to you. I have already begun the work of representing you regarding challenging the judgment and sentence rendered against you in Leon County Circuit Court Case No. 2016-CF-1581A. As stated, my goal is to do all in my power to get you a new trial by finding errors in the trial record and convincing the First District Court of Appeal that those errors justify a new trial for you.

You request that I send you the record on appeal. Of course, I will get that to you at some point but it is going to take awhile. Let me explain:


First of all, normally the trial lawyer gets the record on appeal up to the district court of appeal. Your trial lawyer took certain steps to get that started but it is far from being complete. The trial was lengthy and all of that testimony has to be transcribed by the court reporters. Also, all the pleadings and orders that were generated during the course of the trial proceedings have to be gathered up by the clerk of the circuit court and sent, along with the trial transcript (once it is transcribed) to the appellate court.

Mr. Sigredo Garcia, DC No. M25867, Taylor Correctional Institution
8501 Hampton Springs Road, Perry, Florida 32348
Page Two, January 20, 2020

I am currently involved in that process. Once I get all that prepared and up to the appellate court, then I have to analyze that record and write the initial brief of appellant. The State then submits an Answer Brief. I then have the right to prepare a Reply Brief for you. We may also seek oral argument in the appeals court.

So to be clear, as we go along, I will share everything with you in real time so that you are involved in the effort from beginning to end. But just be patient with me because the record is going to be voluminous and I have to go over it very carefully. This takes time and energy. As I stated before, I have some great help. But you will be a part of that help and I will involve you probably more than you might like or think. It is your life that is being wasted in prison and you have every right to be a part of this effort. So just hang in there with me as we go forward. I told you that I plan to visit you very soon in person. I encourage you to write me often. I will answer all your correspondence and keep you informed of the progress I make.

I told you that I have already contacted the office of your trial attorney, Mr. Saam Zangeneh. I need him to advise me of any appellate issues that he feels I should present to the appellate court. He has not gotten back to me. If you are still in touch with him I ask that you write him and encourage him to interact with me. By copy of this letter to your mother, Mrs. Susana Garcia, I ask that she contact Mr. Zangeneh as well and encourage him to answer my email to him. I am especially interested in knowing what appellate issues he feels I should raise in the district court. I also asked you to do that. In other words, when you write me, please set out what errors you feel the judge made that denied you a fair trial. Please do this right away.

Sincerely,

Baya Harrison

cc Mrs. Susana Garcia, 3600 N. Ocean Drive, Unit 123, Riviera Beach,
FL 33404

Baya Harrison
Attorney At Law
P.O. Box 102
Monticello, FL 32345

email: bayalaw@aol.com
Tel: (850) 997-5554
Fla. Bar No. 099568

February 28, 2020

Confidential Legal Mail

Mr. Sigfredo Garcia
DC No. M25867
Taylor Correctional Institution
8501 Hampton Springs Road
Perry, Florida 32348

Re: Garcia v. State, First DCA Case No. 1D19-4005

Dear Mr. Garcia:

This is my second letter to you today. I sent your mother a copy of the first one. I want to share this with you only.

The Direct Appeal

I told you earlier, by letter and when we met at the prison, that I have already begun the work of representing you regarding challenging in the First District Court of Appeal the judgment and sentence rendered against you in Leon County Circuit Court Case No. 2016-CF-1581A. My goal is to try to find errors in the trial record possibly made by the trial judge, and convincing the appellate court that those errors justify a new trial for you. This is called the direct appeal. It is not a claim that your attorney made mistakes, but that the trial judge did.

Apparently, a controversy has come up regarding documents that you want at this time. I have to answer this request in the context of my work on the direct appeal.

Mr. Sigredo Garcia, DC No. M25867, Taylor Correctional Institution
8501 Hampton Springs Road, Perry, Florida 32348
Page Two, February 28, 2020

You requested that I send you the record on appeal. I don't even have it yet. I explained that I will get that to you at some point, but it is going to take several months. I will then have to use the record to complete the appeal.

The record on appeal will contain all of the relevant pleadings and orders filed in the trial court, plus the trial transcripts. This is what the appellate court will review. Preparing the record on appeal in your case is an enormous task given the size of the record.

I told you that normally the trial lawyer is tasked with getting the record on appeal up to the district court of appeal. Your trial lawyer took certain steps to get that started (by filing a notice of appeal) but it is far from being completed. As I said, the trial was lengthy and all of that testimony has to be transcribed by the court reporters and made a part of the record.

It was my understanding in this regard from Mr. Zangeneh when we first spoke that he had filed, in addition to the notice of appeal, the designations to the court reporter to get the trial transcripts prepared. However, I went to the court reporter's office and was advised that he had not done this. That is not the end of the world. I will do this. I am currently involved in that process.

Once I get the record prepared and filed in the appellate court, then I have to analyze the record and write the Initial Brief of Appellant. The State then submits an Answer Brief. I then have the right to prepare a Reply Brief for you. We may also seek oral argument in the appeals court. So again, I need the record on appeal to do my work. We only get one copy.

I will share with you my efforts as I write the appellate briefs, seeking your input before I file the briefs. Once the briefs are written and the appellate court resolves the appeal, I can send you the record on appeal so you can do your postconviction work (if necessary).

Mr. Sigredo Garcia, DC No. M25867, Taylor Correctional Institution
8501 Hampton Springs Road, Perry, Florida 32348
Page Three, January 28, 2020

I have already spoken with Mr. Zangeneh, your trial attorney. I asked him to advise me of any appellate issues that he feels I should present to the appellate court. He has not provided me with this information yet, but I am sure that he will soon. I will take care of that. In this regard, please note that Mr. Zangeneh has filed a motion to withdraw from your case inasmuch as I am now appointed as your appellate counsel.

Your Request for the Discovery Material

Now I will discuss further the matter of your request for the discovery material that Mr. Zangeneh has in his possession. First of all, there is a difference between the material in the record on appeal and the discovery material. They are two different things, although much of the same material is included in each.

I have explained to you what the record on appeal consists of. It consists of the pleadings and orders filed in the trial court, along with the trial transcripts (and sometimes) the evidence introduced at trial. The discovery material is different -- it consists of those things that the state attorney had to turn over to your defense counsel prior to trial so that you would know what evidence the state had against you. Mr. Zangeneh says that this consists mostly of audio and video recordings. I don't know if the prison will let you have these or have the facilities to play the recordings. In any event, Mr. Zangeneh is going to send this discovery material to me. I will check with the prison and see if I can send it to you. I have no problem with doing that.

I explained in my other letter written to you today that there may have been a misunderstanding about what I told Mr. Zangeneh in terms of the discovery material. I think I told him to send it to me. Your mother has made it sound like I was telling Mr. Zangeneh not to give it to you, but I did not recall that you had requested it from Mr. Zangeneh. You may have, I just do not recall. In any event, it is ridiculous for you to get angry at Mr.

Mr. Sigredo Garcia, DC No. M25867, Taylor Correctional Institution
8501 Hampton Springs Road, Perry, Florida 32348
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Zangeneh and threaten him with a bar complaint. There is no reason for you do that. I need his help and ask that you not alienate him.

In this regard, in the future, please write me directly instead of sending messages via your mother. She was not courteous when she spoke to my wife. There is no need for that.

Other Possibilities

There is one other thing that needs to be discussed. You might want to try to help yourself by providing the prosecution with information about the case in order to try to get your sentence reduced. In other words, the prosecutors might want you to provide information and testimony about other people, to include your co-defendant and anyone else who planned, funded or helped in the homicide. From what I can tell, the prosecutors feel that the Adelsons planned and funded the murder, but they are having difficulty proving it. Apparently, your co-defendant thinks she can beat the case and still not give up the Adelsons. That is a very dangerous assumption for her to make.

I am sure that you have considered this possible avenue of getting out of prison early. But from what I can tell, you are not interested in pursuing it. We have not really discussed the issue. That is your call.

I will tell you this, however:

1. The chances of winning the case either by direct appeal or, if that does not work, by later attacking your trial attorney and claiming ineffective assistance of counsel, are not high. Judge Hankinson is one of the most respected, experienced judges in the state. It is not likely that he made mistakes that would warrant a new trial. I don't know yet whether there are mistakes in the record sufficient to get you a new trial on direct appeal. If there are mistakes, I will find them. I will certainly look for them and I will pursue them hard. But it is going to be a challenge. And since

Mr. Sigredo Garcia, DC No. M25867, Taylor Correctional Institution
8501 Hampton Springs Road, Perry, Florida 32348
Page Five, January 28, 2020

your attorney filed much of what your co-defendant's attorney filed, and otherwise made what appears to be a significant effort on your behalf, a court will be reluctant to find him ineffective. It is very difficult to win an ineffective assistance of counsel claim. And even if you get a new trial, you could still be tried again and re-convicted.

2. Time is running out. The retrial of your co-defendant re: the Markel murder is coming up soon. Once that trial is held, it is doubtful that the State would be willing to work with you. She really cannot help the State because she already testified, denied any wrongdoing by the Adelsons, and covered for them. Her testimony would not have any weight against them.

3. I can't read your mind, and I don't know what you have been told by the Adelsons (if anything) or anyone else. But if you think that anyone – I mean anyone – is going to suddenly one day show up and provide you with a way out of this, financially or otherwise, you are fooling yourself. I do not think either your co-defendant or the Adelsons are going to come to your aid as far as getting you out of prison. You are going to end up taking the rap for others.

4. I appreciate your belief that your children are being cared for – and that you are willing in exchange to spend the rest of your life behind bars, but I don't think you have to make that choice. I am sure that your children would be cared for somehow even if you agreed to provide information about and testify against anyone who had anything to do with this murder. In this regard, you indicated that you were doing all right in prison, and that is good. But I assure you, in a few more years, when all opportunities for you to get out early are gone, you are going to regret your decision.

5. So think about this and if you want me to come down and talk to you in person about this, write and tell me. I just ask you to understand that I think you are a very intelligent man who knows who did what – and by the same token, you would be well served to understand that I believe I know what really happened, including who did what.

Mr. Sigredo Garcia, DC No. M25867, Taylor Correctional Institution
8501 Hampton Springs Road, Perry, Florida 32348
Page Six, January 28, 2020

I look forward to your response.

Sincerely,

Baya Harrison

Baya Harrison
Attorney At Law
PO Box 102
Monticello, FL 32344

email: bayalaw@aol.com
Tel: 850/997-5554
Fla. Bar No. 099568

Confidential Legal Mail

July 20, 2020

Mr. Sigfredo Garcia, DC No. M25867
Taylor Correctional Institution
8501 Hampton Springs Road
Perry, Florida 32348

Re: Garcia v. State, First DCA Case No. 1D19-4005


Dear Mr. Garcia:

Thank you for your kind letter. We are working on the appeal. I will keep you posted. I had contact with one of the prosecutors recently. I feel that they are still open to you cooperating with them. But time is running out, as I said before. I quote from my last letter to you when I suggested that you tell the prosecutors all you know about this case:

I reiterate that I do not recommend for a second that you lie, that you make up a story to help yourself. But if you think for a moment that the people who financed and arranged for the murder of the professor -- and those who were involved but have not yet been brought to justice -- give a damn about you and some day are going to waive a magic wand and you are going to walk out of that prison -- you are fooling yourself. Furthermore, time is running out. You know exactly what I mean.

I reaffirm this only because I like you -- and I want what is best for you. I think you understand that. So let me know if you change your mind.

Sincerely,


/s/ Baya Harrison

cc Mrs. Susana Garcia, 3600 North Ocean Drive, Unit 123, Riviera Beach, FL
33404

Baya Harrison
Attorney At Law
PO Box 102
Monticello, FL 32344

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Confidential Legal Mail

September 14, 2020

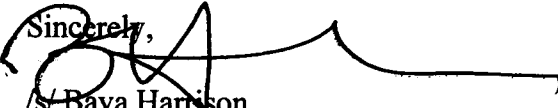
Mr. Sigfredo Garcia, DC No. M25867
Taylor Correctional Institution
8501 Hampton Springs Road
Perry, Florida 32348

Re: Garcia v. State, First DCA Case No. 1D19-4005

Dear Siegfredo:

We are continuing to work on the appeal. I will keep you posted. I feel that the prosecutors are still open to you cooperating with them. But I also understand that you are not interested. I wish you would reconsider but I am not going to harp on it. I want what is best for you. Will keep you advised and share the brief with you before we file it to get your input.

Sincerely,


/s/ Baya Harrison

cc Mrs. Susana Garcia, 3600 North Ocean Drive, Unit 123, Riviera Beach, FL
33404

Baya Harrison
Attorney At Law
PO Box 102
Monticello, FL 32344

email: bayalaw@aol.com
Tel: 850/997-5554
Fla. Bar No. 099568

Confidential Legal Mail

October 18, 2020

Mr. Sigfredo Garcia, DC No. M25867
Mayo Correctional Institution
8784 US Hiway 27 West
Mayo, Florida 32066

Re: Garcia v. State, First DCA Case No. 1D19-4005

Dear Sigfredo:

Thanks for your letter, I did not know they moved you to Mayo. We are continuing to work on the appeal.

I am not sure I fully understand your position re. the case against you. Are you saying that you were not in the Prius that came up to Tallahassee and appears on all the videos and contained the person or persons who killed the law professor? Or are you saying something else? Please write and tell me specifically why you say you are not guilty. Please give me the details.

Now we are continuing to study the trial transcript. it is incredibly voluminous and we have to read it with great detail and care. That is absolutely necessary because it is going to be very hard to find error to get the judgment and sentenced reversed and get you a new trial. From what I have read thus far, there appears to be a lot of evidence at least to the effect that you were at all times in that vehicle. Where am I wrong? Rest assured that once we have completed our work we will get you the record we have.

I assume that you are still taking the position that you will not provide information to the SAO in order for me to try to get your sentence reduced. You know I believe you are making a terrible mistake in this regard. Sorry for the streaks but there is something wrong with my printer.

Sincerely,


Baya Harrison

Baya Harrison, III, Esq.
P.O. Box 102
Monticello, Florida 32345

Sigfredo Garcia, DC# M25867
Mayo Correctional Inst. Annex
8784 U.S. Hwy 27 West
Mayo, Florida 32066-3458

February 12, 2021

Re: Your response to my initial brief of appellant re. The appeal of your judgment and sentence in Leon County, Florida Circuit Court

Dear Mr. Garcia:

I read your letter and write to address your concerns about your direct appeal not presenting federal constitutional claims or, as you note, not "federalizing" the state claims presented.

As a general rule, a federal court in a habeas corpus case will not review the trial court's actions concerning the admissibility of evidence (which is the basis of our attack on the judgment and sentence rendered against you). *Alderman v. Zant*, 22 F. 3d 1541, 1555 (11th Cir. 1994). The manner in which a state court conducts trial proceedings regarding alleged discovery violations is a matter of state law not cognizable in a writ of habeas corpus unless the hearing and ultimate ruling rendered the trial fundamentally unfair. *Thompson v. Jones*, 2017 WL 11461015 (S.D. Fla. 2017). In the absence of anything in the record to support a claim of denial of due process (and there is no such evidence; we looked long and hard), the issue of the prosecution's failure to comply with state discovery provisions does not state a constitutional violation upon which federal habeas corpus relief could be granted. *King v. Wainwright*, 489 F. Supp. 587 (S.D. Fla. 1980).

In your case, the State's failure to disclose the expert's change in testimony did not render the trial fundamentally unfair. The testimony went only to identifying who was the shooter, not to guilt or innocence. Both you and Mr. Rivera could have been convicted of murder as principals

regardless of which one was the shooter. The State had strong evidence that you were at the scene of the shooting, including car rental contracts, cell phone records, video surveillance, ATM records, and Mr. Rivera's testimony. The court also allowed your attorney to retake the expert's deposition before allowing him to testify in front of the jury, which is one of the accepted remedies for a discovery violation. It's simply not possible to meet the fundamental unfairness standard in your case.

The key difference between raising a state law discovery violation and a federal due process violation is in the burden of proof. To prevail in state court on a claimed discovery violation, we only have to prove procedural prejudice. Procedural prejudice means that your attorney would have prepared for trial differently had he known about the expert's changed testimony. In your case, we alleged that he would have retained a bullet trajectory expert to challenge the state expert's opinion that the shooter was your height rather than Mr. Rivera's height.

However, on a due process challenge raised in a petition for habeas corpus in federal court, you would have to prove substantive prejudice, which means a likelihood that you would not have been convicted of murder but for the error. That is a much higher standard that you simply can't meet given the volume of evidence against you.

By raising this issue as a violation of state discovery law rather than a due process violation, it prevents the State from using the strength of the evidence against you as a way of proving the error was harmless. In my judgment, the only hope of success is to rely on the procedural prejudice standard, which only applies to discovery violations under state law. Any other type of claim is subject to the harmless error rule, under which I believe you would have no chance of prevailing whatsoever. Therefore, I think it would hurt your appeal to make the change you requested, and I just cannot in good faith and fairness to you do so.

If you think you can prove substantive prejudice, you are welcome to file a Rule 9.141 petition after the appeal is over. You can also file a Rule 3.850 motion to allege that your trial attorney was ineffective for failing to

retain a defense expert on bullet trajectories. You will have the burden of proving substantive prejudice under either option.

A federal due process claim based on the trial court's answers to the jury questions would be equally difficult to prove. Federal law places an "especially heavy burden" on state court defendants who seek to show constitutional error from a jury instruction on state law. Even if there is some ambiguity, inconsistency or deficiency in the instructions, that does not necessarily constitute a due process violation. Before a federal court will grant habeas relief, the defendant must show that the state court decision was not only erroneous, but objectively unreasonable, "a substantially higher threshold." *Waddington v. Sarausad*, 129 S. Ct. 823 (2009).

In this case, the jury instructions accurately defined the law of principals and the independent act doctrine. The trial court also referred the jury back to those definitions several times. Only the answer to the final jury question created an inconsistency with the independent act instruction by stating there are no exceptions to the law of principals. Convincing the appellate court that this answer was erroneous is difficult enough, but if we succeed the burden shifts to the State to prove that the error was harmless beyond a reasonable doubt. On federal habeas, you would have the burden of proving prejudice.

I understand you want to "federalize" your claims in order to keep your options open for later. Sometimes it's a good idea to do that on direct appeal, but not here. Not only is it unethical for an attorney to allege something he can't prove, it also loses credibility with the court. If you want to raise federal claims, I suggest you do it during your state postconviction proceeding (if they become necessary) when you'll have the burden of proving prejudice anyway.

Therefore, I think it best to leave the appeal as written.

On a different subject, I am sure that you are aware of the news stories appearing in various newspapers where a jail inmate, Walter

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Rayborn, claims that Mr. Rivera recanted much of his trial testimony. I am sure that some of the people who you think are supporting you will tell you that the individual can help you. I assure you, he cannot, he has no credibility whatsoever.

Out of respect for you, I have not belabored the point of trying to get you to come completely clean with me so that I can encourage the prosecutors to meet with us so that the information that I believe you have can be transmitted by you to them — in an effort to obtain a reduction of your life sentence. So far, you have made it clear that you are not interested. I feel that this is a terrible mistake on your part. If you continue to live under the assumption that somehow all of this (your life sentence) is just going to go away, you are living in a dream world.

In conclusion, I am having trouble with my computer/printer and there may be some glitches/smearing in the letter. I am working on that.

Please continue to share your thoughts with me.

Sincerely,

A handwritten signature in black ink, appearing to be 'Baya Harrison', written over the word 'Sincerely'.

Baya Harrison

Baya Harrison
Attorney At Law
PO Box 102
Monticello, FL 32344

email: bayalaw@aol.com
Tel: 850/997-5554
Fla. Bar No. 099568

March 5, 2021

Mr. Sigfredo Garcia
DC No. M25867
Mayo Correctional Institution
Mayo, FL 32066

Re: Garcia v. State, 1D19-4005

Dear Sigfredo:

In looking back over the correspondence I have sent you, I thought I wrcte you on February 12, 2021. Did you get that letter? In it I said that I had your letter of 2/5/21 in which you expressed your concerns about the contents of the initial brief of appellant.

I pointed out that one of the reasons I came down to see you months ago is that I wanted you to understand that I take seriously your right to be involved in your defense. I try to be a good listener. I listened to you then and I am carefully considering what you say now.

You pointed out that I did not "federalize" the claims raised in the brief. You felt that this will bar you from federal court review down the road if you do not prevail in state court. You want me to amend the IB accordingly and include some boiler plate language that you feel will resolve the matter (that is, the language will "federalize" the claim).

As stated, I believe that you are wrong in your analysis. The claims we raised in the brief are not federal claims, they are evidentiary in nature. When we include boilerplate language in briefs, it only hurts our credibility.

Page Two

Two days ago, I spoke to one of the prosecutors. I was advised that they still want to talk to you about all you know about other persons involved in the murder of the law professor. We have been over this several times.

You have been adamant that you do not want to cooperate with law enforcement in this regard. I have expressed to you in all sincerity that I feel you are making a terrible mistake because, if you don't, you could spend the rest of your life in prison. The prosecutor said that any cooperation you provided would be a basis to help Ms. Magbanua as well, the prosecutor emphasized that point. Please advise.

Sincerely,


Baya Harrison

Baya Harrison
Attorney At Law
PO Box 102
Monticello, FL 32344

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Tel: 850/997-5554
Fla. Bar No. 099568

March 27, 2021

Mr. Sigfredo Garcia
DC No. M25867
Mayo Correctional Institution
Mayo, FL 32066

Re: Garcia v. State, 1D19-4005

Dear Sigfredo:

I have your last letter. You criticize me for not accepting your innocence claim. It is not my job to do that. It is my job to help you even if you don't like what I say. But in the end, it is your life and I think you are making a terrible mistake by not cooperating with law enforcement and telling them the truth and the whole truth. Time is running out.

I will let you know just as soon as the state files an Answer Brief and I will send you a copy. I do not have a paper copy of the record on appeal. I don't have the discovery stuff from the trial court. Your trial attorney has that.

Sincerely,


Baya Harrison

April 19, 2021

Memorandum

To: Mr. Sigfredo Garcia
Mayo Ci

Date: 6/5/21

Dear Sigfredo:

Your complaint about not receiving a copy of the state's answer brief for some 11 days is misplaced and rude. I have obtained an extension of time to file the reply brief. We will take your suggestions under consideration.

When you suggest that the evidence against you was weak you are living in a dream world. I think you are being played by those people down in Miami but it is what it is. I will do the best I can with what I have to work with but you made every mistake in the book in this matter. More to follow.

Sincerely,


Baya Harrison

Baya Harrison, Attorney
POB 102
Monticello, FL 32344
850/997-5554

Memorandum

To: Mr. Sigfredo Garcia, Mayo CI
From: BH
Date: 6/13/21
Re: Garcia v. State, 1D19-2019, status report

We are working on the reply brief, we have time to complete it as I got an extension to do so.

While at the courthouse, I ran into ASA Cappleman who said that they were gearing up for the retrial of Ms. Magbanua. She also asked me to pass on to you the following:

1. She still seeks your truthful testimony but apparently not against Ms. Magbanua. She added that any deal her office might make with you could, if you and Ms. Magbanua agree, could include her as well. In other words, Ms. Magbanua would benefit with any deal made with you so long as everyone is truthful.
2. She wants your truthful testimony as to the Adelsons, especially Charles.
3. Now I have concentrated on your appeal and probably do not understand all of the nuances of the matter, but you do I am sure. Ms. Cappleman said that she would be willing to meet with you at Mayo if you would agree.

I went back and looked at some of the comments made by your former counsel (to the effect that your conviction meant that you would spend the rest of your life in prison and that effectively it was over). I think that this claim, as painful as it is, is pretty close to the mark as far as the courts are concerned. We have spent months pouring over the trial record and, in my opinion, while we have a few good points to argue, they are not strong.

enough to get a reversal. In other words, it is doubtful that you are going to get any relief from this life sentence from the courts.

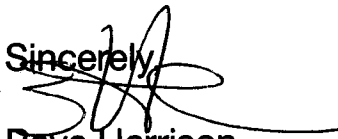
But despite all of this, you insist that you do not have evidence to present against the Adelsons, that you are innocent and that this is the end of any discussion. You criticize me for not believing you. And, candidly, I don't believe you. A defense lawyer should be loyal but not stupid. And I am not stupid. The evidence against you was just overwhelming and you are living in a dream world if you do not accept that.

(For the sake of clarity, please understand that a jury found your co-defendant credible when he testified against you. So that means that there is direct eye witness testimony of your guilt, of your participation in the murder. So when you say that there was no evidence of guilt, that is wrong. And of course there was plenty more evidence against you as you certainly should realize. This crime was done in a pretty sloppy manner.)

At any rate, I need you to get back to me ASAP. The question is: will you agree to meet with Ms. Cappleman? I can be there too and we can make arrangements so that nothing you said could be used against you.

Now if you are sticking to what you have said before, and a meeting would be a waste of everyone's time, tell me that. I strongly recommend that you agree to meet with Ms. Cappleman.

Write me right back please. I might try to call down there as well.

Sincerely,

Baya Harrison

Baya Harrison, Attorney
PO Box 102
Monticello, FL 32344

tel: 850/997-5554
bayalaw@aol.com

September 19, 2021

Memorandum

To: Mr. Sigfredo Garcia
Mayo Ci

Date: 4/19/21

Re: Garcia v. State, First DCA Case No. 1D19-4005 and related matters

From: Baya Harrison

Dear Sigfredo:

This is in response to your request for a status report re. your case. You are certainly entitled to that.

The appeal is pending. The district court of appeal has the briefs and the record on appeal and has not yet ruled. I do not know when that court will rule but it should be fairly soon. I will of course advise you when that happens.

I have discussed with my research aide your request to supplement the briefs. We have concluded that there is no basis for doing so. We gave the briefs the best effort we could. We do not feel that there are any other issues we can raise on direct appeal.

As far as my efforts to try to help you get out of prison another way, by cooperating with the prosecutors in the Magbanua/Adelson matter. You have rebuffed my suggestion that you cooperate with law enforcement by telling them the full story of all who were involved in the planning of the murder. You know who they are and you know exactly what I am talking about.

The latest information I have about that is on an audio jail recording between Ms. Magbanua and another woman. It appears that the two are planning marriage once they are free. I cannot positively say that all the voices are authentic but I think they are and you probably know whether they are.

The Magbanua trial is in very early October so you have only a few days to advise me whether you have changed your mind and will provide truthful testimony to the prosecutor. I have tried my best to understand you but I don't think I am able to. You just seem too far into the zone where you are easily fooled by those who in my opinion are using you for their own advantage. Again, you know what mean.

Write me if you will and if you do, write immediately before it is too late.

Sincerely,


Baya Harrison

Baya Harrison, III
736 Silver Lake Rd.
Monticello, Florida 32344

Mr. Sigfredo Garcia, DC# M25867
Mayo Correctional Institution Annex
8784 U.S. Hwy 27 West
Mayo, Florida 32066-3458

December 16, 2021

RE: Your request for additional appeals

Dear Mr. Garcia:

Before you could seek certiorari in the United States Supreme Court, you would have first had to seek discretionary review in the Florida Supreme Court, see *O'Sullivan v. Boerckel*, 119 S. Ct. 1728 (1999), and the time for doing so has expired. As a result, your direct appeal is over, and you should move on to collateral attack.

I did not see a basis for seeking further review in the Supreme Court because both of the issues raised in your appeal were rejected for lack of preservation, not on the merits. Simply put, your trial attorney did not take the necessary steps to preserve those issues for review, even though those were the only issues I saw that had potential merit in light of the strength of the evidence against you. I tried to raise them as fundamental error, but that is a much higher standard to meet. There was simply no basis for me to challenge the First District's finding that the issues were not preserved for appeal by your trial attorney. If you choose, you can litigate the preservation issue in the trial court in a motion for postconviction relief.

I still have the thumbnail drive containing your records. Please let me know where you'd like me to send it.

Sincerely,

/s/ Baya Harrison
Baya Harrison, III

Sigfredo Garcia #m25867
Almes Correctional Institution
242 Thomas Drive
Bonifay, FL. 32425



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FROM
THE
POSTAL
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2000 Drayton Dr.
Tallahassee, FL. 32390

