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IN THE SUPREME COURT OF FLORIDA

NO. \_\_\_\_\_

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HAROLD BLAKE,

Petitioner,

v.

MICHAEL D. CREWS,  
Secretary, Florida Department of Corrections,

Respondent.

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PETITION FOR WRIT OF HABEAS CORPUS

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**PRELIMINARY STATEMENT**

This is Petitioner's first habeas corpus petition in this Court. Article 1, Section 13 of the Florida Constitution provides: "The writ of habeas corpus shall be grantable of right, freely and without cost." This petition for habeas corpus relief is being filed to address substantial claims of error, which demonstrate Mr. Blake was deprived of fair and reliable trial proceedings.

Citations shall be as follows: The record on appeal is referred to as "R." followed by the appropriate page number. The transcripts from trial are referred to as "T." followed by the appropriate page number. The record on appeal from co-defendant Green's conviction is referred to as "PC-R." followed by the appropriate page number. All other references will be self-explanatory or otherwise explained herein.

## INTRODUCTION

Significant errors which occurred at Mr. Blake's capital trial and sentencing were not presented to this Court on direct appeal due to the ineffective assistance of appellate counsel.

Appellate counsel's failure to present the meritorious issues discussed in this petition demonstrates that his representation of Mr. Blake involved "serious and substantial" deficiencies. Fitzgerald v. Wainwright, 490 So. 2d 938, 940 (Fla. 1986). The issues which appellate counsel neglected to raise demonstrate that his performance was deficient and the deficiencies prejudiced Mr. Blake. "[E]xtant legal principle[s]... provided a clear basis for... compelling appellate argument[s]," which should have been raised in Mr. Blake's appeal. Fitzpatrick, 490 So. 2d at 940. Neglecting to raise such fundamental issues, as those discussed herein, "is far below the range of acceptable appellate performance and must undermine confidence in the fairness and correctness of the outcome." Wilson v. Wainwright, 474 So. 2d 1162, 1164 (Fla. 1985).

Had counsel presented these issues, Mr. Blake would have received a new trial. Individually and "cumulatively," Barclay v. Wainwright, 444 So. 2d 956, 969 (Fla. 1984), the claims omitted by appellate counsel establish that "confidence in the correctness and fairness of the result has been undermined."

Wilson, 474 So. 2d at 1165 (emphasis in original).

Mr. Blake is entitled to relief.

**REQUEST FOR ORAL ARGUMENT**

Due to the seriousness of the issues involved, Mr. Blake respectfully requests oral argument.

**JURISDICTION TO ENTERTAIN PETITION  
AND GRANT HABEAS CORPUS RELIEF**

This is an original action under Fla. R. App. P. 9.100(a). See Art. 1, Sec. 13, Fla. Const. This Court has original jurisdiction pursuant to Fla. R. App. 9.030(a)(3) and Article V, sec. 3(b)(9), Fla. Const. The petition presents issues which directly concern the constitutionality of Mr. Blake's conviction and sentence of death.

Jurisdiction in this action lies in the Court, see, e.g., Smith v. State, 400 So. 2d 956, 960 (Fla. 1981), for the fundamental constitutional errors challenged herein arise in the context of a capital case in which this Court heard and denied Mr. Blake's direct appeal. See Wilson, 474 So. 2d at 1163; Baggett v. Wainwright, 229 So. 2d 239, 243 (Fla. 1969). The Court's exercise of its habeas corpus jurisdiction, and of Its authority to correct constitutional errors such as those herein pled, is warranted in this action.

**GROUND FOR HABEAS CORPUS RELIEF**

By his petition for a writ of habeas corpus, Mr. Blake asserts that his capital conviction was obtained and then affirmed, by this Court, in violation of his rights guaranteed by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the Florida Constitution.

**CLAIM I**

**JUROR RHODES' SEATING ON MR. BLAKE'S JURY DENIED HIM A FAIR TRIAL IN VIOLATION OF THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, WHERE JUROR RHODES COULD NOT HAVE BEEN IMPARTIAL AND WAS NOT IMPARTIAL. THE FAILURE OF TRIAL COUNSEL TO REMOVE JUROR RHODES WAS INEFFECTIVE AND THE TRIAL COURT ERRED IN FAILING TO REMOVE HER SUA SPONTE. APPELLATE COUNSEL'S FAILURE TO RAISE PROPER OBJECTIONS WAS DEFICIENT PERFORMANCE WHICH DENIED MR. BLAKE EFFECTIVE ASSISTANCE OF COUNSEL.**

Mr. Blake did not receive a trial by an impartial jury in violation of the constitutional guarantee of due process and the fourteenth amendment. During voir dire, prospective juror Pamela Rhodes explained that her husband was murdered in a manner very similar to the present case. Inexplicably, none of the parties explored Juror Rhodes' ability to render an impartial verdict in any meaningful way and Juror Rhodes was ultimately selected to sit on Mr. Blake's jury (T. 393).

Juror Pamela Rhodes was a teacher at private schools in Florida and public schools in Ohio. She taught mostly sixth

grade. Her current husband was a retired minister and her son was likewise a minister (T. 245). During the prosecutor's questioning of Juror Rhodes during voir dire, she revealed information demonstrating that she could not possibly qualify as an impartial juror in this case in the following exchange:

MR. CASTILLO: I apologize. The copy I have is really faded and it's hard to -  
Apparently there was some type of litigation in '88, and, I'm sorry, I can't read what it says but something about a man who murdered -

PROSPECTIVE JUROR RHODES: Yeah, my first husband was murdered in Seminole County.

MR. CASTILLO: How long ago was that? In '88?

PROSPECTIVE JUROR RHODES: 1988.

MR. CASTILLO: Do you feel comfortable talking about it?

PROSPECTIVE JUROR RHODES: Yes.

MR. CASTILLO: Can you tell me a little bit about the circumstances of how that happened.

PROSPECTIVE JUROR RHODES: He was also a minister. He was making a house call to someone he did not know and he had called for directions to their house. He got the wrong house. And the man came out and shot him.

MR. CASTILLO: Was it a total stranger to him or not? Anybody that he knew?

PROSPECTIVE JUROR RHODES: Correct.

MR. CASTILLO: Was - I assume there was an investigation by law enforcement personnel?

PROSPECTIVE JUROR RHODES: Yes, sir.

MR. CASTILLO: Was any type of motive or

reason for the killing developed through the investigation?

PROSPECTIVE JUROR RHODES: The only thing he said was he didn't like Bible thumping preachers. And I don't know - I have no idea what happened. I wasn't there.

MR. CASTILLO: You mentioned this was in Seminole County.

PROSPECTIVE JUROR RHODES: Yes.

MR. CASTILLO: What happened to the case?

PROSPECTIVE JUROR RHODES: The case - naturally he was prosecuted. He served three years. He was sentenced to five. He was tried for second-degree murder.

MR. CASTILLO: Was there - did it go to a jury trial?

PROSPECTIVE JUROR RHODES: Yes.

MR. CASTILLO: And he was found guilty of second degree murder?

PROSPECTIVE JUROR RHODES: Uh-huh. He actually had three charges against him: Second-degree murder, obstructing justice, and tampering with evidence. He was found guilty of two charges and not guilty of tampering with evidence.

MR. CASTILLO: Was there a long period of time between the time that the incident occurred and the trial took place?

PROSPECTIVE JUROR RHODES: No.

MR. CASTILLO: Did the sentence that was imposed by the judge, did it seem inadequate to you?

PROSPECTIVE JUROR RHODES: You know, to be perfectly honest with you, at the time I don't think it sunk into me what the actual sentence was. I was not permitted in the courtroom, so I

didn't hear any of the evidence. I didn't hear any of the witnesses. And I think all I heard was guilty at the time and the sentence and I think that's all I heard.

So to be perfectly honest with you, at the time I didn't consider the length of time. I think I was still in shock because it all took place pretty close to the time that it all happened.

MR. CASTILLO: How do you feel about it now?

PROSPECTIVE JUROR RHODES: How do I feel about it now?

MR. CASTILLO: Uh-huh.

PROSPECTIVE JUROR RHODES: I don't think about that aspect of it.

MR. CASTILLO: Is there anything about the way that case resulted that you think would affect your judgment in this case?

PROSPECTIVE JUROR RHODES: No, I don't.

(T. 246-50).

The prosecutor and Rhodes then went on to discuss two people that Ms. Rhodes knew who used to work for law enforcement. The first was either named "Stepson" or was Juror Rhodes' step-son. He at one time worked for the Knox County Sheriff's Department and in the County jail. Also a "Mr. Hart" who was married to Ms. Rhodes' cousin and was retired from the Hillsborough County Sheriff's Department (T. 250). The information that Juror Rhodes revealed to the prosecutor during voir dire was never mentioned again by any of the parties.

"Due process requires that the accused receive a trial by an

impartial jury free from outside influences." Shepard v. Maxwell, 384 U.S. 333, 362-363 (1966). Jurors who cannot render a verdict "solely upon the evidence presented and the instructions on the law given by the court" are not impartial from outside influences and therefore not "competent" to serve. Turner v. State, 645 So. 2d 444, 447 (Fla. 1994) (citations omitted). A juror should be excused if there is any reasonable doubt about the juror's ability to render an impartial verdict. "If there is a basis for any reasonable doubt as to any juror's possession that state of mind which will enable him to render an impartial verdict based solely on the evidence submitted and the law announced at the trial he should be excused on motion of a party, or by the court on its own motion." Gill v. State, 683 So. 2d 158 (Fla. 3d DCA 1996).

Juror Rhodes service on Mr. Blake's jury created fundamental error given the information that she revealed to the prosecutor. Juror Rhodes' husband's murder was similar to Mr. Patel's murder- both victims were doing their jobs when they were shot by strangers. The man who shot Juror Rhodes' husband only served three years of a five year sentence. The prosecutor's follow-up questions did not delve into how this tragic event effected Juror Rhodes and her ability to be an impartial juror in this case. Defense counsel failed to question Juror Rhodes further about her impartiality and more importantly, defense counsel was

ineffective for failing to challenge Juror Rhodes for cause. Further, defense counsel could also have used a peremptory challenge against Juror Rhodes, yet failed to do so. The trial court likewise bears the burden of ensuring an impartial jury that is free from outside influences. See Shepard v. Maxwell, 384 U.S. 333, 362-363 (1966). In Shepard, the United States Supreme Court held that the trial judge should take action sua sponte to ensure a trial that is free of outside influences. Id. (stating that where there was a great deal of publicity surrounding the trial, the trial judge should have taken 'such steps by rule and regulation that will protect their processes from prejudicial outside interferences').

The failure of trial counsel and the trial judge to remove Juror Rhodes is inexplicable. Further, allowing Juror Rhodes to sit on Mr. Blake's jury is a due process violation that obviates the requirement of a contemporaneous objection. Wood v. State, 544 So. 2d 1004 (Fla. 1989). "Harmful due process violations are fundamental error, which need not be preserved for review." U.S.C.A. Const. Amend 14; West's F.S.A. Const. Art 1, § 9; see also Del Valle v. State, 80 So. 3d 999 (Fla. 2012). Appellate counsel was ineffective for failing to raise this issue on direct appeal. Relief is warranted.

## CLAIM II

**MR. BLAKE WAS DENIED A FAIR TRIAL IN VIOLATION OF THE FIFTH, SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, BECAUSE THE PROSECUTOR'S ARGUMENTS PRESENTED IMPERMISSIBLE CONSIDERATIONS TO THE JURY, MISSTATED THE LAW AND FACTS, AND WERE INFLAMMATORY AND IMPROPER. APPELLATE COUNSEL'S FAILURE TO RAISE THE ISSUE DENIED MR. BLAKE THE EFFECTIVE ASSISTANCE OF COUNSEL.**

The prosecutor's statements throughout Mr. Blake's trial unfairly prejudiced him from receiving a fair trial. "Under our law, the prosecutor has a duty to be fair, honorable and just. ... [T]he prosecuting attorney 'may prosecute with earnestness and vigor-indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones.'" Boatwright v. State, 452 So. 2d 666, 667 (Fla. 4th DCA 1984), citing, Berger v. United States, 55 S. Ct. 629 (1935). The prosecutor's actions throughout Mr. Blake's trial exceeded all bounds of zealous advocacy and resulted in several instances of prosecutorial misconduct.

During the State's case-in-chief, the prosecutor presented the testimony of Teresa Jones. Jones was afflicted with credibility problems due to her shifting statements about Mr. Blake's involvement in the crimes. On direct examination, the prosecutor elicited testimony about Jones' fear of Mr. Blake and his family to explain why she committed perjury before the grand jury as to the fact that Mr. Blake had been the one who removed

two guns from the car (R. 605). Again, on redirect examination, in order to explain Jones' shifting stories about Mr. Blake's actions, the State brought up the fact that Jones had concerns for her safety (R. 873-4). There was absolutely no evidence that Jones had been threatened or feared Mr. Blake or his family. In fact, in the trial of Mr. Green, the prosecutor told the jury that Jones' excuse that she feared Mr. Blake was fabricated. The prosecutor's actions were extremely improper.

In addition, during his cross-examination of Mr. Blake, the trial prosecutor elicited improper bad character evidence when he inquired about Mr. Blake's business of "stealing property and selling it," (R. 995). Later, the prosecutor began badgering Mr. Blake and was told to lower his voice (R. 1065).

At one point, Mr. Blake explained that he was crying on tape because, "when I get real mad, I cry," allowing the prosecutor to assert his theme of lack of remorse, and Mr. Blake to acknowledge, that he wasn't "crying because you felt bad about what happened to Mr. Patel" (R. 1068-9).

In his closing argument, the prosecutor pointed out the fact that the arrest of Mr. Blake was serious and the officers had to be "extremely careful with [Mr. Blake]" (R. 1151-2). Indeed, the officer wore bullet proof vests and it took an hour and a half for Mr. Blake to surrender (R. 1152). The prosecutor also focused on Mr. Blake's testimony and told the jury in closing

argument, to consider Mr. Blake's demeanor on the stand: "You had an opportunity to see Mr. Blake in this case when he testified. Mr. Blake, I would suggest to you, he is incapable, incapable, of being told what to do. He had anger in his tone. He was combative with the questions that I was asking. He was not responsive to the things I was -- that I was trying to get from him. He accused me of behaving like the detectives did" (R. 1172). The prosecutor also ridiculed the apparent emotional state of Mr. Blake on the video of his statement, and then played it again (R. 1176-95), for the third time. The prosecutor played it again the following morning, for a fourth time.

The prosecutor's conduct was contrary to the law and prejudiced the jury's consideration of the evidence in violation of the Constitution. This Court has held that when improper conduct by the prosecutor "permeates" a case, relief is proper. Garcia v. State, So. 2d 1325 (Fla. 1993); Nowitzke v. State, 572 So. 2d 1346 (Fla. 1990).

Appellate counsel's failure to raise this claim constitutes a specific, serious error that deviated from the norm and fell outside the range of professionally acceptable performance, and that deficient performance prejudiced Mr. Blake's appeal to the extent that confidence in the fairness and correctness of the outcome is undermined. See Wyatt v. State, 71 So. 3d 86 (Fla. 2011).

Here, the Prosecutor violated his ethical and professional obligations; trial counsel failed to object; and appellate counsel failed to raise this issue on direct appeal. Mr. Blake was prejudiced because the jury was urged to set aside a logical analysis of the evidence and instead decide the case based on an emotional response to the crime and to Mr. Blake. Relief is warranted.

### CLAIM III

**THE STATE VIOLATED MR. BLAKE'S RIGHT TO DUE PROCESS BY UTILIZING INCONSISTENT THEORIES OF THE ROLES OF THE CO-DEFENDANTS IN THE CRIME FOR WHICH MR. BLAKE WAS CONVICTED. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THIS AT TRIAL AND APPELLATE COUNSEL WAS LIKEWISE INEFFECTIVE FOR FAILING TO RAISE THE ISSUE OF THE STATE'S INCONSISTENT ARGUMENTS AS TO BLAKE AND GREEN'S RELATIVE CULPABILITY ON APPEAL AS THIS DUE PROCESS VIOLATION CREATED FUNDAMENTAL ERROR.**

The State's use of inconsistent theories at Mr. Blake's and his co-defendant's trial violated Mr. Blake's right to due process. See Bradshaw v. Stumpf, 545 U.S. 175, 187-88 (2005) (case remanded for consideration of the impact that the prosecutor's inconsistent theories had on Stumpf's sentence and to determine whether the death penalty violated due process).

Green's trial, for the first degree murder of Patel, occurred a few months before Mr. Blake's trial. At Green's trial, the State presented evidence that demonstrated that Green was equally, if not more culpable than Mr. Blake in planning the attempted robbery of Patel. And, that Green had gotten out of

the car to rob Patel. Indeed, at Green's trial, the State presented the testimony of Angela Parker, who testified that Green had discussed the murder with Teresa Jones in her presence (PC-R. 5079). Parker testified that Green made statements that placed him in such close proximity to the victim that he saw where he was shot, suggesting that he was the shooter (PC-R. 5083). During his closing argument, the prosecutor in Green's case stated:

Listen to the testimony of Mr. Green. ... He himself confirms Ms. Parker. Ms. Parker had no way of knowing what type of injury Mr. Patel had if it were not from the lips of the defendant. If you'll recall, what happened was, and she explained this when she testified, what prompted the response on the part of the defendant [Green] was that they overheard the detectives or the officer saying that this was a murder case, and upon hearing that is when the defendant said it's not a murder case, the police are lying. It wasn't the conversation between the two of them, he was responding to what the officers were telling the people that were conversing among themselves about it being a homicide case or a murder case, because he was only shot in the arm. That's the only way she [Parker] would know that. And the only way she would know that there were two guns, as Ms. Jones admitted to after she was questioned specifically about those guns in the grand jury room, and admitted that there was a gray one and there was a brown one, and she said that they had - that Mr. Green had told her that they had guns, and that he tried to lock the door, and Mr. Green confirms that as well. The source of information that Ms. Parker has is indeed Mr. Green. He is admitting to being an accomplice. Ms. Parker has no other source of that information.

(PC-R. 5536-7).

Demetrious Jones also testified that Green had told him that both he and Blake had plans on how to commit the robbery - Green

wanted to rush Patel at the door as he entered the store. It is clear from Jones' testimony that Green exited the car and approached the store in order to rob Patel. None of this evidence from Parker or Jones was heard by Mr. Blake's jury. However, it was clear that the prosecutor attempted to implicate Green in the murder to a greater extent in his trial than in Mr. Blake's. This violated Mr. Blake's due process rights.

Additionally, the State also violated Mr. Blake's right to due process when it presented the testimony of Teresa Jones during Mr. Blake's capital murder trial. Indeed, the State elicited testimony that Jones' shifting statements and testimony was due to the fact that she feared Mr. Blake's family (R. 605; 873-4). However, in Green's trial, the State actually took the position that Jones had no fear of Mr. Blake or his family. In Green's trial the prosecutor argued:

If fear was her motive, if fear was her motive she would have left out [Harold] Blake, or Blade as she knew him, that's who would have been left out. That wasn't her motive. Her motive was to protect Mr. Green, and that's who she leaves out of her initial conversation with the police.

So you see, it's not true about fear. This is about protection, protecting someone that was close to her, and that would have been Mr. Green.

(PC-R. 5538-9).

Thus, the prosecutor in Green's trial admitted that Jones had no fear of Mr. Blake and her shifting statements were not due to any fear of him. Her motive was trying to protect Green. The

State's conflicting positions was improper and violated Mr. Blake's right to due process.

The inconsistent evidence and minimization of Green's role in the attempted robbery of Mr. Patel was used against Mr. Blake at his trial. The prosecutor's improper actions deprived Mr. Blake of his right to due process; trial counsel's failure to object was ineffective as was appellate counsel's failure to raise this argument on direct appeal.

As Justice Souter explained in his concurring opinion in Bradshaw v. Stumpf:

Stumpf's position was anticipated by Justice STEVENS's observation 10 years ago that "serious questions are raised when the sovereign itself takes inconsistent positions in two separate criminal proceedings against two of its citizens," and that "[t]he heightened need for reliability in capital cases only underscores the gravity of those questions . . . ." Jacobs v. Scott, 513 U.S. 1067, 1070, 115 S.Ct. 711, 130 L.Ed.2d 618 (1995) (citations and internal quotation marks omitted). Justice STEVENS's statement in turn echoed the more general one expressed by Justice Sutherland in Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935), that **the State's interest in winning some point in a given case is transcended by its interest "that justice shall be done."**

Bradshaw v. Stumpf, 545 U.S. 175, 189-90 (2005) (Souter, J. concurring, joined by Ginsburg, J.) (emphasis added).

Green's record was readily available for review at the time of Mr. Blake's trial and for his direct appeal. Nowhere in Mr. Blake's direct appeal brief did appellate counsel reference Green's record on appeal. Green's trial transcripts should have

been made part of Mr. Blake's record as it establishes that the State argued inconsistent theories as to Mr. Blake's and Green's roles in the crimes. The theory relied on by the State in obtaining a first degree murder conviction against Mr. Blake is contradicted by the theory that It relied on obtaining Mr. Green's conviction.

Appellate counsel was ineffective. Habeas relief is warranted.

#### CLAIM IV

**MR. BLAKE WAS DENIED HIS RIGHTS UNDER AKE V. OKLAHOMA AT HIS CAPITAL TRIAL, IN VIOLATION OF MR. BLAKE'S RIGHTS TO DUE PROCESS AND EQUAL PROTECTION UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AS WELL AS HIS RIGHTS UNDER THE FIFTH, SIXTH, AND EIGHTH AMENDMENTS. APPELLATE COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO RAISE THIS ISSUE ON DIRECT APPEAL.**

A criminal defendant is entitled to expert psychiatric assistance when the State makes his or her mental state relevant to the proceeding. Ake v. Oklahoma, 105 S. Ct. 1087 (1985). What is required is an "adequate psychiatric evaluation of [the defendant's] state of mind." Blake v. Kemp, 758 F.2d 523, 529 (11th Cir. 1985). In this regard, there exists a "particularly critical interrelation between expert psychiatric assistance and minimally effective representation of counsel." United States v. Fessel, 531 F.2d 1278, 1279 (5th Cir. 1979). When mental health is at issue, counsel has a duty to conduct proper investigation

into his or her client's mental health background, see O'Callaghan v. State, 461 So. 2d 1354 (Fla. 1984), and to assure that the client is not denied a **professional and professionally conducted** mental health evaluation. See Fessel; Cowley v. Stricklin, 929 F.2d 640 (11th Cir. 1991); Mason v. State, 489 So. 2d 734 (Fla. 1986).

The mental health expert must also protect the client's rights, and the expert violates these rights when he or she fails to provide adequate assistance. State v. Sireci, 502 So. 2d 1221, 1224 (Fla. 1987); Mason v. State. The expert also has the responsibility to properly evaluate and consider the client's mental health background. Mason, 489 So. 2d at 736-37. The United States Supreme Court has recognized the pivotal role that the mental health expert plays in criminal cases. Ake, 105 S. Ct. at 1095 (citation omitted).

Mr. Blake was entitled to an adequate mental health evaluation concerning the psychological issues that were germane to the issue regarding Mr. Blake's susceptibility to coercion and his understanding of his the circumstances surrounding the interrogation by law enforcement. This did not occur because no mental health expert was retained to even consider these issues. While direct appeal counsel raised the issue of the trial court's denial of Mr. Blake's motion to suppress, the appellate counsel failed to raise the effect of Mr. Blake's mental health as it

related to the confession. See Direct Appeal Brief at 44-53.

That due process requires that Ake be extended to non-psychological experts is reflected in the United State Supreme Court's opinion in Caldwell v. Mississippi, 472 U.S. 320, 323-4, n. 1 (1985). Here, Mr. Blake was totally denied his right to the assistance of an expert in false confessions. Had an expert been retained, he or she certainly would have assisted Mr. Blake in the presentation of the issues that make it clear that Mr. Blake's statement was not freely and voluntarily given and was in fact, false.

Mr. Blake was denied the effective assistance of counsel on direct appeal due to appellate counsel's failure to raise this issue. The circuit court denied this claim during Mr. Blake's 3.851 proceedings, holding that it was procedurally barred as it should have been raised on direct appeal. Thus, Mr. Blake's direct appeal attorney's failure to raise this claim was ineffective and Mr. Blake is entitled to habeas relief.

#### **CONCLUSION AND RELIEF SOUGHT**

For all the reasons discussed herein, Mr. Blake respectfully urges this Court to grant habeas corpus relief.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS has been furnished by United States Mail, first-class postage prepaid to Katherine Vickers Blanco, Assistant Attorney General, Office of the Attorney General, 3507 Frontage Road, Suite 200, Tampa, FL 33607-7013, this 30<sup>th</sup> day of May, 2013.

**CERTIFICATE OF FONT**

This is to certify that the Petition has been reproduced in 12 point Courier type, a font that is not proportionately spaced.

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