IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT IN AND FOR DUVAL COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

JOHN MICHAEL ALAI,

Defendant.

_____/

CASE NOs. 2011-CF-3844
2011-CF-3845
2011-CF-3860
2011-CF-4081
2011-CF-4121
2011-CF-4195
2011-CF-4196
2006-CF-15985

DEFENDANT'S MOTION FOR POST-CONVICTION RELIEF

COMES NOW, JOHN MICHAEL ALAI, by and through the undersigned counsel, and pursuant to Florida Criminal Procedure Rule 3.850, hereby moves this Court to vacate and set aside the judgment of conviction in this matter. In support of the instant motion, Defendant states the following:

INTRODUCTION

1. This Court has jurisdiction over this matter pursuant to Section 26.012 of Florida Statutes. The following facts are attested to by the Defendant in the attached oath.

STATEMENT OF FACTS

2. Defendant was arrested on or about April 7, 2011. During arraignment, he was assigned public defender Jon Lorimier. On May 10 and May 19, Mr. Lorimier filed a motion to release for failure of the State to file charges. On May 20, 2011, the State charged the Defendant with two counts of grand theft of a motor vehicle, six counts of burglary, two counts of felon in possession of a firearm, one count of discharge of a firearm from a vehicle, one count of aggravated assault, and one count of fleeing and eluding law enforcement officer. Each charge

was assigned a separate case number but all cases were disposed of collectively. During a meeting with Mr. Lorimier, with no discussion of a possible defense, the Defendant was advised to plea guilty because "going to trial would be a waste of time, and upon losing he would most likely receive a life sentence." The Defendant was arraigned on May 31, 2011, and a plea of not guilty was entered on his behalf.

3. On June 7, 2011 during a case conference, in which the Defendant, Mr. Lorimier and the State's Attorney were present, the State offered the Defendant a sentence of 20 years in exchange for a guilty plea. At this point, Defendant had not received a copy of any discovery. Additionally, Mr. Lorimier had not done any investigation, nor interviewed any witnesses, such as the co-defendant, the victim of the assault, even the Defendant's family. As a result, the Defendant lacked confidence in Mr. Lorimier and asked to speak with the State's Attorney directly. The State's Attorney explained to the Defendant that based on the discovery, she would accept no less than a 20-year sentence in exchange for a guilty plea. In the presence of the State's Attorney and putting forth no effort to assist his client, Mr. Lorimier stated that "going to trial on this matter would be foolish," undermining any chance of negotiating a better deal for the Defendant. The Defendant was hesitant to take the plea and asked the State's Attorney if she would provide him with discovery as Mr. Lorimier was rushing out of the courtroom to attend to another matter. Subsequently, the State's Attorney did provide the Defendant with some of the discovery directly.

4. On June 13, 2011, the date of trial, Mr. Lorimier again urged the Defendant to plea guilty to all charges and accept the 20-year sentence because "it was his only option." By this time, the Defendant understood that Mr. Lorimier had not bothered with any investigation because "it would be as pointless as going to trial." As a result, Defendant withdrew his plea of

not guilty, and entered a plea of guilty at the urging of Mr. Lorimier. Subsequently, he was adjudged guilty and received five 20-year sentences, two 10-year sentences, and six 5-year sentences, all sentences ran concurrently. The Defendant did not file an appeal and this is his first motion for post-conviction relief.

ARGUMENT FOR RELIEF

I. DEFENDANT'S SIXTH AMENDMENT RIGHT TO COUNSEL WAS VIOLATED WHEN TRIAL COUNSEL FAILED INVESTIGATE ANY POSSIBLE DEFENSE, AND UNDERMINED DEFENDANT'S POSITION, WHICH RENDERED HIS ASSISTANCE INEFFECTIVE.

5. It is axiomatic that both the United States Constitution and the Florida Constitution guarantee each defendant in a criminal prosecution the right to the effective assistance of counsel. The fundamental right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a due process of law in an adversarial system of justice. United States v. Cronic, 466 U.S. 648, 658 (1984).

6. The United States Supreme Court has held that "[t]he benchmark of judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial [court] cannot be relied on having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984). Under the Strickland standard, ineffective assistance of counsel is made out when the defendant shows that (1) trial counsel's performance was deficient, i.e., that he or she made errors so egregious that they failed to function as the "counsel guaranteed the defendant by the Sixth Amendment," and (2) the deficient performance prejudiced the defendant enough to deprive him of due process of law. Id. at 687.

7. A court deciding a claim of ineffective assistance of counsel must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. "The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. In making that determination, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Strickland, at 690.

8. A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. In making that determination the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case. Downs v. State, 453 So.2d 1102, 1108 (Fla. 1984).

9. It is well-settled that under the Federal and Florida Constitutions, effective assistance of counsel requires that trial counsel conduct a reasonable investigation into the facts of the case. Davis v. State, 928 So.2d 1089 (Fla. 2005); Freemen v. State, 858 So.2d 319, 325 (Fla. 2003); see also Coles v. Peyton, 389 F.2d 224, 226 (4th Cir. 1968) (holding "the defendant's right to representation does entitle him to have counsel 'conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial"); Scott v. Wainwright, 698 F.2d 427, 429–30 (11th Cir.1983) (defense counsel's failure to familiarize himself with the facts and relevant law made him so ineffective that the petitioner's guilty plea was involuntarily

entered); Washington v. Strickland, 693 F.2d 1243, 1257 (5th Cir. 1982) (when counsel fails to conduct a substantial investigation into any of his client's plausible lines of defense, the attorney has failed to render effective assistance of counsel); Young v. Zant, 677 F.2d 792, 798 (11th Cir.1982) (where counsel is so ill prepared that he fails to understand his client's factual claims or the legal significance of those claims, counsel fails to provide service within the expected range of competency). Moreover, "[t]rial counsel has a duty to investigate any potential ... exculpatory evidence that may assist his or her client," Bell v. State, 965 So.2d 48, 62 (Fla. 2007).

10. In setting forth a claim of ineffective assistance of counsel, a defendant must demonstrate that trial counsel's conduct was not a sound trial strategy. Dufour v. State, 905 So. 2d 42, 51 (Fla. 2005) (citing Strickland, 466 U.S. at 689). "Judicial scrutiny of counsel's performance must be highly deferential." Id. (citing Strickland, 466 U.S. at 689). However, importantly, "a trial strategy to do nothing...is not an acceptable one." Williams v. State, 507 So. 2d 1122, 1124 (Fla. 5th DCA), rev. denied, 513 So. 2d 1063 (Fla. 1987). Further, the undermining of the defendant's position as to his guilt or innocence by defense counsel is recognized as ineffective assistance. See Mills v. State, 714 So. 2d 1198 (4th DCA 1988).

11. Here, trial counsel made no effort to zealously represent the Defendant. He made no effort to investigate a possible defense, interview witnesses or even advocate for the Defendant. From the onset of the case, Mr. Lorimier urged the Defendant to plea guilty. There was no discussion with the Defendant of a possible defense. Mr. Lorimier made no effort to develop a defense through the process of interviewing the Defendant, co-defendant, the victim, witnesses, or even speaking with the Defendant's family. He prevented the Defendant from even developing his own defense by failing to secure and make available to the Defendant

discovery, let alone review that discovery with him. Defendant had to rely on the State's Attorney to do that which his own attorney was obligated. Mr. Lorimier's trial strategy to give up any defense from the onset and "do nothing...is not an acceptable one." Williams v. State, 507 So. 2d 1122, 1124 (Fla. 5th DCA), rev. denied, 513 So. 2d 1063 (Fla. 1987). Subsequently, his performance as counsel was ineffective and undermined the Defendant's Sixth Amendment right to adequate representation.

12. Further, Mr. Lorimier undermined the Defendant's position. In every discussion with the Defendant, he urged him to do one thing only: plead guilty. Even when the Defendant attempted on his own to negotiate a better deal with the State's Attorney, Mr. Lorimier contributed to this effort by stating, "going to trial on this matter would be foolish." This undermining of the Defendant's position by defense counsel is ineffective assistance. See Mills v. State, 714 So. 2d 1198 (4th DCA 1988). As a result of Mr. Lorimier's ineffective assistance, Defendant's Sixth Amendment Rights were violated and the judgment of conviction should be set aside.

WHEREFORE, the Defendant, JOHN MICHAEL ALAI, respectfully requests that this Court enter an Order:

A. Vacating, the judgment of conviction entered against him on June 13, 2011; or

B. Permit the Defendant to withdraw his plea; or

C. Schedule an evidentiary hearing to determine the merits of this Motion for Post-Conviction Relief; or

D. Expressly permit the defendant to reserve the right to amend this motion; and

E. Awarding any such other and further relief as this Court deems just and proper.

DATED this 7th day of June, 2013

Respectfully Submitted,

Jeffrey D. Harvey, Esq.
Florida Bar No. 102653
BROWNSTONE, P.A.
400 North New York Avenue, Suite 215
Winter Park, Florida 32789
Telephone: (407) 388-1900
Facsimile: (407) 622-1511
Jeffrey@brownstonelaw.com
Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail this 7th day of June, 2013

Office of the State Attorney
220 East Bay Street
Jacksonville, FL 32202

Jeffrey D. Harvey, Esq.

NOTARIZED OATH

STATE OF FLORIDA
COUNTY OF Calhoun

Before me, the undersigned authority, personally appeared John Michael Alai, who first being duly sworn, says that he: (1) is the Defendant in the above-styled proceeding; (2) has read and understands the foregoing, and has personal knowledge of the facts and matters therein set forth and alleged; and (3) under the penalties of perjury, hereby swears or affirms that the forgoing is true and correct.

John Alai
Signature

John Alai
Printed Name

The forgoing was acknowledged before me this 3 day of June, 2013, by, who produced FLDL as identification, and who took an oath.

NOTARY PUBLIC STATE OF FLORIDA
ROBIN K. REEDER
MY COMMISSION # EE 064542
EXPIRES: February 26, 2015
Bonded Thru Budget Notary Services

Robin K. Reeder
Notary Public
My Commission Expires:

BROWNSTONE
AN APPELLATE LITIGATION LAW FIRM

VIA USPS / PRIORITY

June 7, 2013

Clerk of Court, Duval County
Criminal / Felony Division
501 W Adams Street
Jacksonville, FL 32202

RE: State of Florida v. John Michael Alai
CASE NOs.: 11-3844CF; 11-3845CF; 11-3860CF; 11-4081CF; 11-4121CF; 11-4195CF; 11-4196CF; 06-15985CF

Dear Clerk:

Enclosed please find the Defendant's *Motion for Post-Conviction Relief*, for filing in the above-styled causes. Please contact me immediately with any question or concern that will impede filing.

Sincerely,

BROWNSTONE, P.A.

Janelle Hartzog
Paralegal

Enc.
cc: Office of the State Attorney - Courthouse Annex, Criminal / Felony Division, 220 East Bay Street, Jacksonville, Florida, 32202

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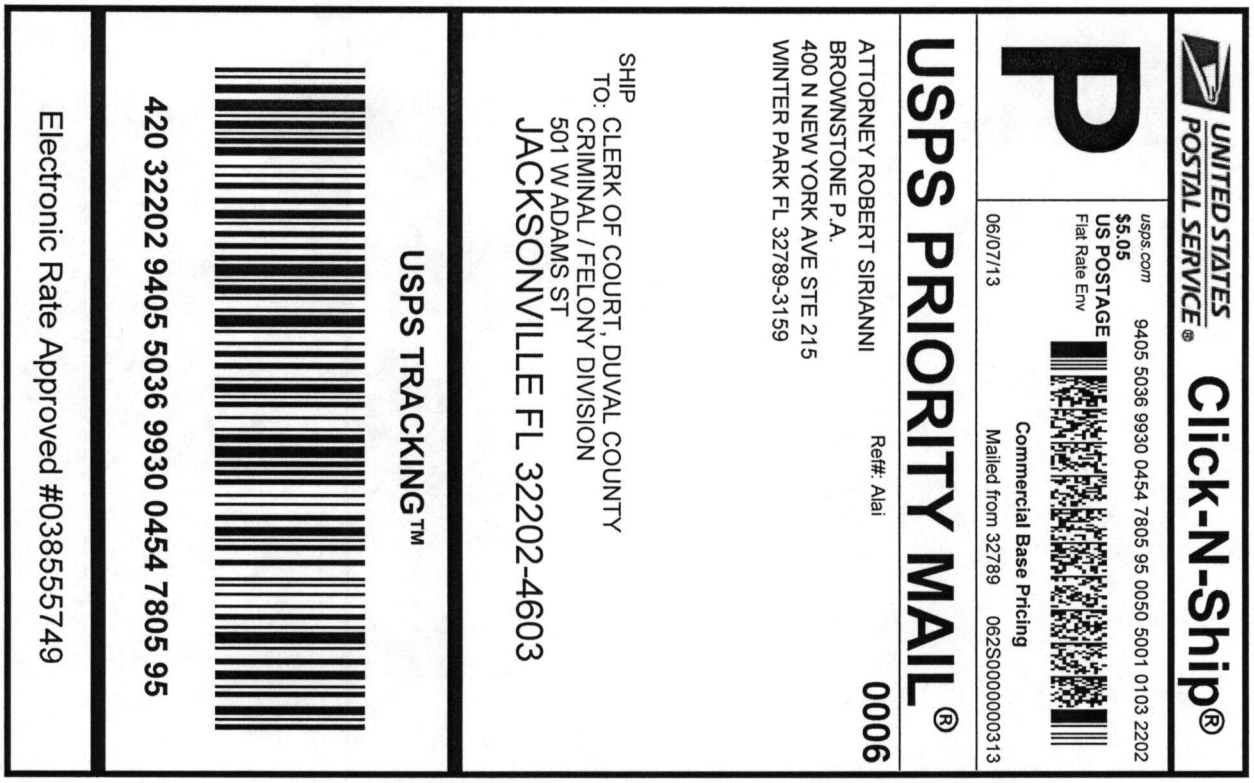

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From: ATTORNEY ROBERT SIRIANNI Ref#: Alai
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400 N NEW YORK AVE STE 215
WINTER PARK FL 32789-3159

To: CLERK OF COURT, DUVAL COUNTY
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501 W ADAMS ST
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