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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

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CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL.  
JACKSONVILLE, FLORIDA

R.C. KNOX,

Petitioner,

v.

Case No. 3:10-cv-306-J-20TEM

SECRETARY OF THE FLORIDA  
DEPARTMENT OF CORRECTIONS,  
et al,

Respondents.

ORDER

I. Status

Petitioner Knox, who is proceeding in forma pauperis, initiated this action by filing a pro se Petition for Writ of Habeas Corpus (Doc. #1) under 28 U.S.C. § 2254 on April 6, 2010, pursuant to the mailbox rule. Petitioner Knox filed an Amended Petition (Doc. #8) on May 27, 2010, in which he challenges a 2008 state court (Duval County, Florida) judgment of conviction for sale or delivery of cocaine on the following due process grounds: (1) his fifteen-year sentence exceeds the maximum sentence that may be imposed for a strict liability offense; (2) the trial court erred when it sentenced him as a habitual felony offender; and (3) the trial court erred by failing to send back the verdict to the jurors to decide upon which charge they found him guilty.

Respondents have submitted a memorandum in opposition to the Petition. See Respondents' Response to Petition for Habeas Corpus (Response) (Doc. #14) with exhibits (Resp. Ex.). On September 20, 2010, the Court entered an Order to Show Cause and Notice to Petitioner (Doc. #11), admonishing Petitioner regarding his obligations and giving Petitioner a time frame in which to submit a reply. Although granted a sufficient amount of time in which to reply, Petitioner has not replied to the Response, but has requested that the Court "carry on with [his] case." See Doc. #18, filed April 11, 2011. This case is ripe for review.

## II. State Court Procedural History

On December 6, 2007, R.C. Knox was charged in Duval County, Florida, with sale or delivery of cocaine, occurring on November 16, 2007. Resp. Ex. A at 10, Information. After a trial, see Resp. Exs. B and C, Transcripts of the Jury Trial (Tr.), the jury found Petitioner guilty, as charged, on September 26, 2008. Tr. at 299-300; Resp. Ex. A at 57, Verdict. On October 20, 2008, the court adjudged him guilty and sentenced him, as a habitual felony offender, to fifteen years of incarceration. Resp. Ex. A at 74-79; 118-33, Transcript of the Sentencing Hearing (Sentencing Tr.). Petitioner filed a notice of appeal on November 10, 2008. Resp. Ex. D-2.

On or about May 5, 2009, Petitioner filed a pro se motion to correct illegal sentence, in which he raised the following two due

process claims: (1) the fifteen-year sentence exceeds the maximum sentence that may be imposed for a strict liability offense, such as sale or delivery of cocaine, and (2) the sentence is illegal because a habitual felony offender sentence may not be imposed for sale or delivery of cocaine. Resp. Ex. D. When the motion was not ruled on within sixty days, it was deemed denied by operation of Fla. Rule Crim. P. 3.800(b)(1)(B)/(b)(2)(B).<sup>1</sup>

On direct appeal of the conviction and sentence, Petitioner, through counsel, filed an initial brief, raising the following issues: (1) whether the offense of sale or delivery of cocaine is a strict liability offense and, if so, whether the sentence of fifteen years in prison violates due process, and (2) whether the trial court erred, as a matter of law, in sentencing Petitioner, as a habitual felony offender, because the offense of "delivery" of cocaine is an offense "relating to" possession of cocaine and therefore does not qualify for habitual offender sentencing. Resp. Ex. E. The State filed an Answer Brief, see Resp. Ex. F, and Petitioner filed a Reply Brief, see Resp. Ex. G. The appellate court, without issuing a written opinion, affirmed per curiam on January 6, 2010. Knox v. State, 25 So.3d 563 (Fla. 1st DCA 2010); Resp. Ex. H. The mandate was issued on January 22, 2010. Resp.

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<sup>1</sup> Rule 3.800(b)(1)(B) provides, in pertinent part: "Within 60 days from the filing of the motion, the trial court shall file an order ruling on the motion. If no order is filed within 60 days, the motion shall be considered denied."

Ex. H. Petitioner did not file a petition for writ of certiorari in the United States Supreme Court.

### III. One-Year Limitations Period

The Petition is timely filed within the one-year period of limitations. See 28 U.S.C. § 2244(d); Response at 2.

### IV. Evidentiary Hearing

"In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief." Schiro v. Landrigan, 550 U.S. 465, 474 (2007) (citation omitted). "It follows that if the record refutes the applicant's factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing." Id. The pertinent facts of this case are fully developed in the record before the Court. Because this Court can "adequately assess [Petitioner's] claim[s] without further factual development," Turner v. Crosby, 339 F.3d 1247, 1275 (11th Cir. 2003), cert. denied, 541 U.S. 1034 (2004), an evidentiary hearing will not be conducted.

### V. Standard of Review

The Court will analyze Petitioner's claims under 28 U.S.C. § 2254(d). This standard is described as follows:

As explained by the Supreme Court, the phrase "'clearly established Federal

law' . . . refers to the holdings . . . of [the Supreme Court's] decisions as of the time of the relevant state-court decision." Williams v. Taylor, 529 U.S. 362, 412, 120 S.Ct. 1495, 1523, 146 L.Ed.2d 389 (2000). We have held that to be "contrary to" clearly established federal law, the state court must either (1) apply a rule "that contradicts the governing law set forth by Supreme Court case law," or (2) reach a different result from the Supreme Court "when faced with materially indistinguishable facts." Putman v. Head, 268 F.3d 1223, 1241 (11th Cir. 2003).

As regards the "unreasonable application" prong of § 2254(d)(1), we have held as follows:

A state court decision is an unreasonable application of clearly established law if the state court unreasonably extends or fails to extend a clearly established legal principle to a new context. An application of federal law cannot be considered unreasonable merely because it is, in our judgment, incorrect or erroneous; a state court decision must also be unreasonable. Questions of law and mixed questions of law and fact are reviewed de novo, as is the district court's conclusion regarding the reasonableness of the state court's application of federal law.

Jennings v. McDonough, 490 F.3d 1230, 1236 (11th Cir. 2007) (quotation marks and citations omitted). In sum, "a federal habeas court making the 'unreasonable application' inquiry should ask whether the state court's application of clearly established federal law was objectively unreasonable." Williams, 529 U.S. at 409, 120 S.Ct. at 1521. Finally, 28 U.S.C. § 2254(e)(1) commands that for a writ to issue because the state court made an "unreasonable determination of the facts," the petitioner must rebut "the presumption of

correctness [of a state court's factual findings] by clear and convincing evidence."<sup>2</sup>  
28 U.S.C. § 2254(e)(1).

Ward v. Hall, 592 F.3d 1144, 1155-56 (11th Cir. 2010), cert. denied, 131 S.Ct. 647 (2010).

Finally, for a state court's resolution of a claim to be an adjudication on the merits, so that the state court's determination will be entitled to deference for purposes of federal habeas corpus review under AEDPA, all that is required is a rejection of the claim on the merits, not an opinion that explains the state court's rationale for such a ruling. Harrington v. Richter, 131 S.Ct. 770, 785 (2011) (holding that section 2254(d) does not require a state court to give reasons before its decision can be deemed to have been adjudicated on the merits); Wright v. Sec'y for the Dep't of Corr., 278 F.3d 1245, 1255 (11th Cir. 2002), cert. denied, 538 U.S. 906 (2003). Thus, to the extent that Petitioner's claims were adjudicated on the merits in the state courts, they must be evaluated under § 2254(d).

#### VI. Exhaustion/Procedural Default

There are prerequisites to a federal habeas review:

Before bringing a § 2254 habeas action in federal court, a petitioner must exhaust all state court remedies that are available for challenging his state conviction. See 28

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<sup>2</sup> This presumption of correctness applies equally to factual determinations made by state trial and appellate courts." Bui v. Haley, 321 F.3d 1304, 1312 (11th Cir. 2003) (footnote omitted) (citing Sumner v. Mata, 449 U.S. 539, 547 (1981)).

U.S.C. § 2254(b), (c). To exhaust state remedies, the petitioner must "fairly present[]" every issue raised in his federal petition to the state's highest court, either on direct appeal or on collateral review. Castille v. Peoples, 489 U.S. 346, 351, 109 S.Ct. 1056, 1060, 103 L.Ed.2d 380 (1989) (emphasis omitted). Thus, to properly exhaust a claim, "state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." O'Sullivan v. Boerckel, 526 U.S. 838, 845, 119 S.Ct. 1728, 1732, 144 L.Ed.2d 1 (1999).

Maples v. Allen, 586 F.3d 879, 886 (11th Cir. 2009) (per curiam), petition granted in part, 131 S.Ct. 1718 (U.S. Mar. 21, 2011) (No. 09A974, 10-63).

Procedural defaults may be excused under certain circumstances: "[n]otwithstanding that a claim has been procedurally defaulted, a federal court may still consider the claim if a state habeas petitioner can show either (1) cause for and actual prejudice from the default; or (2) a fundamental miscarriage of justice." Id. at 890 (citations omitted). In order for Petitioner to establish cause,

the procedural default "must result from some objective factor external to the defense that prevented [him] from raising the claim and which cannot be fairly attributable to his own conduct." McCoy v. Newsome, 953 F.2d 1252, 1258 (11th Cir. 1992) (quoting Carrier, 477 U.S. at 488, 106 S.Ct. 2639). Under the prejudice prong, [a petitioner] must show that "the errors at trial actually and substantially disadvantaged his defense so that he was denied fundamental fairness." Id.

at 1261 (quoting Carrier, 477 U.S. at 494, 106 S.Ct. 2639).

Wright v. Hopper, 169 F.3d 695, 706 (11th Cir. 1999), cert. denied, 528 U.S. 934 (1999).

In the absence of a showing of cause and prejudice, a petitioner may receive consideration on the merits of a procedurally defaulted claim if he can establish that a fundamental miscarriage of justice, the continued incarceration of one who is actually innocent, otherwise would result. The Eleventh Circuit has explained:

[I]f a petitioner cannot show cause and prejudice, there remains yet another avenue for him to receive consideration on the merits of his procedurally defaulted claim. "[I]n an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default." Carrier, 477 U.S. at 496, 106 S.Ct. at 2649.<sup>3</sup> "This exception is exceedingly narrow in scope," however, and requires proof of actual innocence, not just legal innocence. Johnson v. Alabama, 256 F.3d 1156, 1171 (11th Cir. 2001).

Id. "To meet this standard, a petitioner must 'show that it is more likely than not that no reasonable juror would have convicted him' of the underlying offense." Johnson v. Alabama, 256 F.3d 1156, 1171 (11th Cir. 2001) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)), cert. denied, 535 U.S. 926 (2002). Additionally,

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<sup>3</sup> Murray v. Carrier, 477 U.S. 478 (1986).

"[t]o be credible,' a claim of actual innocence must be based on reliable evidence not presented at trial." Calderson v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup, 513 U.S. at 324). With the rarity of such evidence, in most cases, allegations of actual innocence are ultimately summarily rejected. Schlup, 513 U.S. at 324.

## VII. Findings of Fact and Conclusions of Law

### A. Ground One

As ground one, Petitioner claims that his fifteen-year sentence far exceeds the maximum sentence that may be imposed for the strict liability offense of sale or delivery of cocaine, thus violating his right to due process of law. Specifically, he argues that "[s]ince [his] offense of conviction is a strict liability offense which encompasses innocent conduct, the maximum punishment available consistent with due process is the misdemeanor punishment of imprisonment not to exceed one year." Petition at 18. In effect, Knox challenges the authority of the Legislature to authorize a sentence in excess of one year for the commission of what Knox describes as a strict liability offense.

This ground was raised and exhausted on direct appeal. See Resp. Ex. E at 7-18. The State responded, see Resp. Ex. F at 2-8, and Petitioner replied, see Resp. Ex. G at 3-5. The appellate court, without issuing a written opinion, affirmed *per curiam*, see

Knox, 25 So.3d 563, and the mandate was issued on January 22, 2010, see Resp. Ex. H.

Assuming Petitioner raised this ground as a federal constitutional claim on direct appeal, the State, in its appellate brief, addressed the claim on the merits. Resp. Ex. F at 8-18. Thus, the appellate court may have affirmed Petitioner's conviction based on the State's argument on the merits. If the appellate court addressed the merits, Petitioner would not be entitled to relief because the state court's adjudication of this claim is entitled to deference under AEDPA. Although there is not an opinion that explains the state court's rationale for its ruling, one is not required. All that is required is a rejection of the claim on its merits. See Wright, 278 F.3d at 1255.

After a thorough review of the record and the applicable law, the Court concludes that the state court's adjudication of this claim was not contrary to clearly established federal law, did not involve an unreasonable application of clearly established federal law, and was not based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings. Thus, Petitioner is not entitled to relief on the basis of this claim.<sup>4</sup>

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<sup>4</sup> Petitioner Knox has neither shown that the state court's adjudication of the claim was contrary to clearly established federal law, involved an unreasonable application of clearly established federal law, nor that it was based on an unreasonable determination of the facts in light of the evidence presented in

Moreover, assuming that the state court's adjudication of this claim is not entitled to deference under AEDPA, Petitioner's claim is, nevertheless, without merit. Knox was charged under Florida Statutes § 893.13(1)(a)1, which provides that "it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance[,] including cocaine. See Resp. Ex. A at 10, Information. The jury found him guilty, as charged, of the second degree felony. Id. at 57, Verdict; 74, Judgment. On October 20, 2008, the court sentenced Knox to fifteen years of imprisonment, as a habitual felony offender. Id. at 78 (citing Florida Statutes § 775.084(4)(a)); Sentencing Tr.

Knox's issue is not with Florida Statutes § 893.13(1)(a)1, but with § 893.101. An explanation follows. The Due Process Clause of the Fourteenth Amendment requires the State to prove beyond a reasonable doubt each element of the offense charged. Thompson v. Nagle, 118 F.3d 1442, 1448 (11th Cir. 1997) (citing Jackson v. Virginia, 443 U.S. 307, 314 (1979)), cert. denied, 522 U.S. 1125 (1998). First, this Court reviews the state law history, which is the foundation for Petitioner's due process claim:

In Chicone, the supreme court held that the offense of possession of a controlled substance included not only knowledge that the substance was in the defendant's possession, but also knowledge of the illicit nature of

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the state court proceedings.

