

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ADAM MURRAY COSTELLO,
PETITIONER

V.

L.T. CASE NO: 16-CF-000371

STATE OF FLORIDA,
RESPONDENT

_____ /

MOTION TO EXPAND THE RECORD

COMES NOW THE PETITIONER, Adam M. Costello, Pro Se, pursuant to Habeas Rule 7, and respectfully moves this Honorable Court to allow for the expansion of the record in lieu of an evidentiary hearing. In support of this motion, the Petitioner would state the following:

1. The Petition for Writ of Habeas Corpus was filed in this court on _____.
2. The claims raised therein are such that in order to accurately review them, the record needs to be expanded.

3. The documents and/or exhibits that Petitioner has attached are relevant and material to the determination of the claims.

4. An accurate and necessary record was never created due to the ineffectiveness of trial counsel. Counsel's ineffectiveness was outside of the control of Petitioner.

5. Consequently, due to the record not containing the relevant and material evidence that was also exculpatory, Petitioner was not afforded a "full and fair" hearing at any level of litigation.

6. The attached documents are necessary to substantiate his claims raised in his petition, as claims of ineffective assistance of counsel often require such evidence not on the record in order to properly demonstrate the necessary elements in order to satisfy the burdens to obtain relief.

7. Petitioner has alleged facts that, if proven, would entitle him to relief on the merits, and due to the ineffectiveness of trial and post-conviction counsel, the state courts were never able to even hear the claims by way of a full and fair hearing.

8. The documents attached that will demonstrate the ineffectiveness of counsel claims will also demonstrate the actual innocence claims raised in the petition. Such extraordinary claims require extraordinary proof, which can only be shown by the expansion of the record with the attachments provided by Petitioner. **Matheney V. Anderson, 253 F. 3d 1025, 1039 (7th Cir. 2001).**

9. The documents offered are part of discovery and would require no verification or authentication, as most are documents of the State.

10. This will also save time and precious judicial resources by not holding a hearing or requiring the clerk of the court to sort through and index any documents.

11. The record that the State Courts hold, does not take into consideration the exculpatory evidence in discovery, not placed on the record by the ineffectiveness of trial and post-conviction counsel. As such, the factual determinations and the conclusions of law are not reliable, because there was no full and fair hearing due to the incomplete record.

12. Petitioner contends that to proceed with a determination on the merits of his claims without the expansion of the record would further perpetuate the miscarriage of justice that petitioner has endured.

The attached exhibits offered for the expansion of the record comply with: Federal Rules of Evidence Rule 803(1)&(3), Rule 803(5)(B), 803(6)(B),(C),and (E), Rule 803(8)(A)(iii). Also pursuant to Federal Rules of Civil Procedure Rule 32(4)(D), as there is no need for a hearing, and petitioner does not possess subpoena power to procure attendance for a hearing. Therefore, pursuant to Fed. R. Civ. Proc. Rule 410 (a) and 410 (b), the attached duplicates obtained through discovery are relevant and substantiates facts that are of consequence in determining the action filed by Petitioner. Fed. R. Civ. Proc. Rule 1003, admits

duplicates unless a genuine question about their authenticity of which petitioner avers will not be a contention of the opposing party.

The attached exhibits comport with the aforementioned Rules and are pertinent to a full and fair determination of the facts alleged in his petition. Petitioner humbly requests that this Court grant his Motion To Expand The Record in the interests of justice, and allow him to provide the necessary proof for his claims.

WHEREFORE, petitioner humbly requests that this Motion to Expand the Record be granted so that the Petition for Writ of Habeas Corpus can be given a full and fair determination in light of the documents offered as proof to support his claims, or give any other relief that this Court deem just and proper.

Respectfully Submitted,

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