

PRINGLE

didn't hit anybody[;]" (2) "I did not hit anybody. I – that car pulled to the right and I corrected it and somebody in my blind spot[.]" Ex. 4 at 39, 41. Petitioner did not take the stand at trial.

Upon review, Petitioner raises a due process claim, a claim of constitutional dimension. She contends she should not have been convicted upon instructions that allowed for constructive knowledge, rather than actual knowledge of a crash. Indeed, in Florida, "[a] driver is not guilty unless he had actual knowledge there was a crash and knew—or should have known from the nature of the accident—that there was a resulting injury or death. Pitts v. State, 227 So. 3d 674, 677 (Fla. 1st DCA 2017) (citing State v. Dorsett, 158 So. 3d 557, 560 (Fla. 2015); State v. Mancuso, 652 So. 2d 370, 372 (Fla. 1995)).

If the charge given provides proper statements of the law and was not constitutionally infirm, there is no entitlement to habeas relief. Ford v. Schofield, 488 F.Supp.2d 1258, 1329 (N.D. Ga. May 11, 2007), aff'd sub nom. Ford v. Hall, 546 F.3d 1326 (11th Cir. 2008). For example, a mere omission, an incomplete instruction, or some other comparable deficiency is less likely to be prejudicial than a misstatement of law. Id. Indeed,

“not every ambiguity, inconsistency, or deficiency in a jury instruction rises to the level of a due process violation.” Middleton v. McNeil, 541 U.S. 433, 437, 124

### What "Cause" Means

"Cause" for default means some external circumstances prevented the petitioner from presenting his claim in state court. In other words, it was not the prisoner's fault, and there was no way he could have prevented it:

Excuses such as "I was in segregation," or "I didn't know the law," are not sufficient. Examples of good cause may be: serious physical disability, such as hospitalization that functionally incapacitates a prisoner; or attorney abandonment when retained to perform filing duties. Even then, the prisoner is expected to diligently raise his claims immediately once the impediment has been removed.

Your ordinary, everyday physical restrictions imposed by your confinement do not rise to the level of "cause" in federal court. Segregation, mental illness, illiteracy – all are inadequate. I have even tried presenting all three of these conditions at one time for one prisoner and not been able to get the prisoner to bypass the procedural default rule.

### What "Prejudice" Means

"Prejudice" in this context means that the trial errors underlying the constitutional claim "worked to [the petitioner's] actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions." *U.S. v. Frady*, 456 U.S. 152, 170 (1982).

In a practical sense, read this as "fundamental error," one which would automatically mandate a new trial. The fundamental error exception for underlying issues is also extremely narrow. See *Coleman v. Thompson*, 111 S.Ct. 2546, 2557 (1991); *Chapman v. California*, 386 U.S. 18 (1967) (harmless error doctrine).

### Actual Innocence Exception

If you cannot show cause and prejudice for the default, you may overcome this by demonstrating "actual innocence." This is overwhelmingly difficult to accomplish, as it

basically requires evidence that proves that, without a doubt, someone else committed the crime for which you were convicted. See *Schlup v. Delo*, 513 U.S. 298, 327-329 (1995); *Herrera v. Collins*, 506 U.S. 390 (1993)

Put another way, actual innocence means that "no reasonable juror" – none – would have found you guilty if not for the constitutional error complained of in the petition.

The actual innocence exception is arguably the highest hurdle in the entire American legal system. To activate this exception, you should be prepared to offer indisputable physical evidence – such as DNA evidence exculpating you and inculpating someone else.

### Equitable Principles

Federal courts are disposed to consider habeas petitions as "law and justice" require under 28 U.S.C. § 2243. This section of habeas law may be cited when facing default problems.

For case law on equitable principles applied to 2254, see: *Holland v. Florida*, 130 S. Ct. 2549, 2560, 2561 (2010) (equitable principles have traditionally governed the substantive law of habeas corpus); *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (Habeas corpus is governed by equitable principles); *Fay v. Noia*, 372 U.S. 391, 438 (1963); *Danforth v. Minnesota*, 552 U.S. 264, 278 (2008).

### Hiding Procedural Default Claims

I have seen prisoners attempt to "hide" their procedural defaults through a variety of amusing methods. I have never seen any prisoner succeed in this quest. The state invariably sniffs out procedural defaults, because when they find such a default their work is done. The claim is dead.