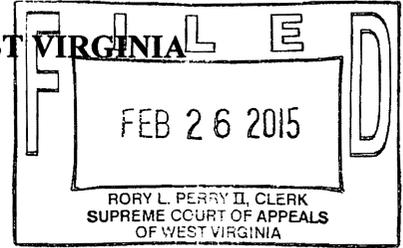

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 14-1023



ERIC FOSTER,

Petitioner Below, Petitioner,

v.

**DAVID BALLARD, Warden,
Mount Olive Correctional Complex,**

Respondent Below, Respondent.

RESPONDENT'S SUMMARY RESPONSE

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I.

INTRODUCTION

COMES NOW, David Ballard (hereinafter, "Respondent"), by and through counsel, Shannon Frederick Kiser, Assistant Attorney General, West Virginia Office of the Attorney General, and summarily responds to the two (2) Assignments of Error complained of in the Petition of Eric Foster (hereinafter, "Petitioner"). Petitioner has lodged two (2) Assignments of Error, arguing that the Circuit Court of Nicholas County, West Virginia (hereinafter, "Circuit Court"), abused its discretion by (1) denying Petitioner's request for habeas relief under a claim of ineffective assistance of counsel when it found that trial counsel's failure to communicate a plea offer made by the State did not prejudice Petitioner, and (2) denying Petitioner's request for habeas relief under a claim of ineffective assistance of counsel when it found that trial counsel's

performance in preparation of and during trial was not deficient under *State v. Miller* and *Strickland v. Washington*. The State, in this Summary Response, specifically and generally denies Petitioner's claims, arguing that Petitioner was rightfully denied habeas relief.

II.

STATEMENT OF THE CASE

Pursuant to Rule 10(d) of the West Virginia Revised Rules of Appellate Procedure, the State stipulates to the facts of Petitioner's brief, but adds, according to the documents filed as part of Petitioner's Appendix, the following:

A. Petitioner's September 2013 Habeas Omnibus Hearing

Petitioner's two-day habeas omnibus hearing took place during the separate days of September 12, 2013, and October 18, 2013. During the September 12, 2013, hearing, Petitioner first testified on his own behalf. (Full Testimony, Appendix Volume [hereinafter, "App. Vol."] I at 314-81.) He stated that trial counsel visited him only once while he was incarcerated in the Southern Regional Jail prior to his underlying trial. (*Id.* at 315.) Petitioner further stated that the visit lasted roughly forty (40) minutes and occurred approximately six months prior to trial, but identified that he had met with trial counsel during pretrial hearings. (*Id.* at 316-17.)

Petitioner also complained that trial counsel never consulted him about potential witnesses; namely his girlfriend, Tina Hartley, his friend, Ricky Johnson, and Jeremy Hanna, an eyewitness to the underlying crime. (*Id.* at 320-22.) He further alleged that he was not prepared for trial, and that trial counsel never explained or prepared him to testify in his own defense. (*Id.* at 323-24.) Petitioner also stated that the first plea offer he received was on the first day of trial, but alleged that he was never informed of the sentencing as it related to the plea offer compared to a conviction at trial. (*Id.* at 322-26.)

Petitioner identified that he refused the plea offer because he didn't feel that an offer which carried a sentence of forty (40) years was a "just plea . . . at the time." (*Id.* at 327.) Petitioner rectified this by stating that he did not know of the State's ability to prove his guilt or the penalties associated with the crimes for which he was charged." (*Id.* at 328.) Petitioner then recalled that trial counsel smelled of alcohol throughout the trial. (*Id.* at 332.) Petitioner also identified that trial counsel prevented him from asserting a theory of self-defense. (*Id.* at 338.)

Upon cross-examination, Petitioner strongly asserted that he never reviewed the police report in his criminal case. (*Id.* at 338-39.) Petitioner, however, admitted that much of the evidence to be used against him was discussed at pre-trial hearings during which both he and trial counsel were present. (*Id.* at 341.) Petitioner also stated that he never asked questions of his attorney regarding the State's plea offer. (*Id.* at 344-45.) Petitioner further stated that he was not accusing trial counsel of drinking alcohol during the trial. (*Id.* at 350.) Overall, Petitioner's position regarding the trial was that he suspiciously did not know what was occurring, failed to be informed by trial counsel, did not understand the charges or evidence, but that, at the same time, trial counsel was underperforming based upon Petitioner's theory of the case. (*Id.* at 350-61.)

The Circuit Court then questioned Petitioner, and identified that no evidence was presented at trial that Petitioner fired a shot at the victims. (*Id.* at 366.) Rather, Petitioner drove himself and the two other defendants to and from the shooting. (*Id.* at 367.) Petitioner also informed the Circuit Court that eyewitness testimony likely would not have advanced any new evidence at Petitioner's trial. (*Id.* at 368.) Finally, Petitioner admitted that a first degree murder conviction was more serious and carried a higher penalty than second degree murder, although both would have basically carried a sentence of life, as Petitioner would be an "old man" upon

release for the lesser conviction. (*Id.* at 369.) Lastly, Petitioner admitted that the potential testimony of Jeremy Hanna, that shots were fired from Petitioner's truck, could have harmed Petitioner's case. (*Id.* at 373.)

Petitioner then called Gregory Campbell, a criminal defense attorney, as an expert. (Full Testimony, App. Vol. I at 377-420.) Mr. Campbell testified that trial counsel performed deficiently by failing to hire an investigator, by failing to communicate the first plea offer to Petitioner, parole eligibility of the criminal sentences, and failing to supply Petitioner with information acquired through discovery. (*Id.* at 377-89.) Much of Mr. Campbell's testimony, however, presumed that trial counsel did not know or understand what was going to happen during Petitioner's trial. (*Id.* at 400-05.) Upon cross-examination, Mr. Campbell acknowledged that he was basing his opinions on generalities that could be made from a limited record, without actual information provided by both Petitioner and trial counsel. (*Id.* at 409.) Mr. Campbell further acknowledged that Jeremy Hanna's testimony could have been just as harmful as it could have been helpful to Petitioner's case. (*Id.* at 413.)

Next, Petitioner called Jeremy Hanna as a witness. (Full Testimony, App. Vol. I at 422-32.) Mr. Hanna stated that the victims had a reputation for pulling guns and intimidating others. (*Id.* at 424.) However, Mr. Hanna admitted to never seeing such action from the victims. (*Id.* at 431.) Mr. Hanna further stated that trial counsel never contacted him to testify at Petitioner's trial. (*Id.* at 429.) Mr. Hanna did indicate that he would testify that he was shot at by Petitioner and his co-defendants. (*Id.* at 430.)

Mr. Hurley, Petitioner's trial counsel, then testified on behalf of Respondent. (Full Testimony, App. Vol. I at 435-78.) Mr. Hurley disputed Petitioner's assertion that there was only one jailhouse visit, stating that he recalled visiting Petitioner three or four times. (*Id.* at

436.) Mr. Hurley opined that a potential reason that the jail had him visiting Petitioner only one time was due to his usual practice of visiting with multiple clients during one trip. (*Id.* at 438.) Mr. Hurley identified that he did not specifically give Petitioner discovery because he did not want such discovery to “get loose” within the jail, but he did identify that he went through all discovery with Petitioner. (*Id.* at 439.) Mr. Hurley also characterized his meetings with Petitioner prior to and after pretrial hearings as “far more involved” than Petitioner stated:

I think they were far more involved, but, yes, I think I did converse with him on a number of occasions, and I think he did understand concepts like acting in concert. I think he understood the idea of what a determinate sentence is and when parole eligibility is.

(*Id.*) Mr. Hurley identified that he practiced regularly in the Circuit Court, and was familiar with the general charge, feeling no need to submit specific instructions on behalf of Petitioner. (*Id.* at 440.)

Mr. Hurley further identified that he did investigate Petitioner’s crime and the resulting evidence. (*Id.* at 441.) Mr. Hurley stated that, after talking to trial counsel for Petitioner’s co-defendants, he anticipated the content of Jeremy Hanna’s testimony and did not feel the need to speak with Mr. Hanna personally. (*Id.* at 442.) He stated that he spent forty (40) to fifty (50) hours on Petitioner’s case. (*Id.* at 444.)

At all times during his testimony, Mr. Hurley proved to be critical and brutally honest about his shortcomings. He admitted to having suffered from alcoholism at the time of Petitioner’s trial, drinking heavily, but maintained that he did not drink “during the court day.” (*Id.* at 444.) Mr. Hurley admitted that, at the time of Petitioner’s trial, it was conceivable that he would have worn the same clothes throughout. (*Id.* at 445.)

Mr. Hurley also identified that Petitioner encouraged him to speak with Petitioner’s sister. (*Id.* at 446.) Mr. Hurley, however, stated that it was his policy not to talk to family

members about a criminal case. (*Id.*) Mr. Hurley did identify a strategy at trial: “I mean, the defense strategy was that [Petitioner] went up there innocently, did not take any further actions in furtherance of any offense, had no knowledge of what the co-defendants intended to do or were going to do, and therefore, had no participation in the events that followed.” (*Id.* at 448-49.) Mr. Hurley identified that he also spoke with Petitioner at length about the concept of self-defense, but acknowledged that he did not feel such a defense was reasonable in Petitioner’s case because he never fired a shot. (*Id.* at 449.) Further, he asserted that:

[S]elf-defense in this case isn’t viable because [Petitioner was] driving two other individuals with a firearm, somewhat presumably loaded, up to a house in the middle of the night after there had been a prior conflict, and, when you bring a loaded -- when you bring a weapon to an environment and then claim self-defense -- to somebody’s dwelling in the middle of the night, and then claim self-defense, I just didn’t think it would work. . . .

(*Id.*) Mr. Hurley further admitted that Petitioner’s decision to testify was certainly made on the day of the trial, but stated that he had prepped Petitioner for such testimony “over a period of time.” (*Id.* at 451.)

Mr. Hurley stated that he believed he had communicated the first plea offer to Petitioner, but conceded that he could not be absolutely positive. (*Id.* at 455-56.) Mr. Hurley also acknowledged that his trial folder for Petitioner was only three (3) or four (4) inches thick, but that he had never been a “copious note taker.” (*Id.* at 459.) He also admitted that his three (3) month wait to visit Petitioner after the indictment was probably not acceptable. (*Id.* at 461.)

Mr. Hurley testified that he encouraged Petitioner to accept the plea offer made by the State, largely because the crime resulted in two dead bodies, meaning that the jury would “be very interested in finding a culprit. . . .” (*Id.* at 465.) Additionally, he asserted that he informed Petitioner of the potential for parole, with the likelihood of a forty (40) year sentence,

“[e]ligibility . . . in 10 years [and] a max out date in 20. . . .” (*Id.* at 466.) Mr. Hurley, however, indicated that Petitioner believed he could beat the charge at trial. (*Id.* at 467.)

Mr. Hurley believed that he was successfully able to cross-examine State witnesses, indicating things such as to toxicology report of the victims, which showed that the victims were under the influence of narcotics. (*Id.*) He was also able to reveal the distance between the victims and Petitioner, suggesting that the victims were the aggressors. (*Id.* at 468.) Similarly, Mr. Hurley was able to identify inadequacies in the police investigation. (*Id.*) However, Mr. Hurley stood strong in the belief that the testimony of Jeremy Hanna would only damage Petitioner’s case. (*Id.* at 469.) He supported Petitioner testifying, however, in that the jury would consider Petitioner’s lesser involvement than that of the co-defendants. (*Id.* at 470.)

Mr. Hurley identified that, while he was certainly hung over on the days of Petitioner’s trial, he was never intoxicated. (*Id.* at 471.) He informed the Circuit Court that he felt he was fully aware of the facts of Petitioner’s case, that he had effectively informed Petitioner of those facts, and that he had discussed theories of defense with Petitioner. (*Id.* at 472.) Mr. Hurley candidly informed the Circuit Court that he could not be sure he relayed the State’s first plea offer to Petitioner, but he stressed that he relayed the second plea offer and completely informed Petitioner of the effects of the offer should Petitioner choose to accept. (*Id.* at 473-74.)

Petitioner also called his sister, Valena Kidd, who testified that Mr. Hurley never contacted her and seemed ill prepared for Petitioner’s trial. (Full Testimony, App. Vol. I at 488-97.) On Petitioner’s second day of evidentiary hearings, he called Ricky Johnson, Petitioner’s first cousin who witnessed Petitioner and his co-defendants following the shooting. (Full Testimony, App. Vol. I at 505-11.) Mr. Johnson identified that he tried to talk to Mr. Hurley to no avail, but surmised that he would not be able to add any additional evidence regarding the

crime outside of what had already been presented at Petitioner's trial, other than Petitioner calling 911 after travelling away from the crime scene. (*Id.* at 508-10.)

B. The Circuit Court's Order Denying Petitioner Habeas Relief

Following Petitioner's habeas omnibus hearings, the Circuit Court considered the evidence proffered and the briefs of the respective parties before issuing a "Final Order Denying Writ of Habeas Corpus and Dismissing Case" on September 10, 2014. (App. Vol. I at 241-82.) In relevant part, the Circuit Court identified that Petitioner had failed to satisfy the prejudice prong of *State v. Miller* with respect to his ineffective assistance of counsel claim arising from trial counsel's reputed failure to convey the State's first plea offer. (*Id.* at 264.) The Circuit Court, after identifying that the appropriate remedy would not be a new trial, found that there was no substantive evidence indicating whether or not the plea offer was conveyed. (*Id.* at 263-64.) As a result, the Circuit Court noted the possible deficiency and moved into the second prong of *Miller* analysis. (*Id.* at 263.) There, the Circuit Court simply could find no prejudice to Petitioner, as he had declined to accept "an even more advantageous plea" on the first day of trial. (*Id.* at 264.) As a result, the Circuit Court questioned the veracity of Petitioner's testimony, considering the opportunity for application of hindsight, and deemed that Petitioner had failed to prove that the outcome of the underlying criminal proceedings would have changed. (*Id.*)

With respect to Petitioner's remaining ineffective assistance claims, the Circuit Court determined that Petitioner was most likely unable to satisfy either prong of *Miller* analysis, and certainly unable to satisfy a showing of prejudice. (*Id.* at 265-81.) First, with respect to the second plea offer, the Circuit Court found that such offer was made and refused by Petitioner, and found that Petitioner's willingness to take such an offer now merely amounted to application

of hindsight. (*Id.* at 265.) The Circuit Court also found that trial counsel had likely discussed the plea offer with Petitioner, who had likewise been informed of the State's evidence should he proceed to trial. (*Id.* at 265-66.)

Second, the Circuit Court found that Petitioner's allegation that trial counsel failed to conduct a meaningful investigation was meritless. The Circuit Court identified that trial counsel specifically stated that he was "aware of all of the witnesses" and that Petitioner had specifically agreed not to call witnesses that would contrast with Petitioner's theory of defense. (*Id.* at 269.) Further, the Circuit Court concluded that Petitioner's newly proposed witnesses "would not have added anything and could even have hurt the Petitioner's case." (*Id.*)

Third, the Circuit Court referenced this Honorable Court's holding in Petitioner's direct appeal, which found that sufficient evidence existed at Petitioner's trial in which to find Petitioner guilty of the crimes charged. (*Id.* at 270.) Petitioner admitted that he was unable to assert what other evidence trial counsel could have proffered that would combat the State's evidence as considered by this Honorable Court on Petitioner's direct appeal. (*Id.*)

Third, the Circuit Court determined that Petitioner's claim that he was unprepared to testify at trial was disingenuous. (*Id.* at 272.) Petitioner indicated that he surmised he would be cross-examined should he choose to testify, and Petitioner failed to indicate what additional testimony he would assert would he have prepared. (*Id.*) Further, the Circuit Court noted trial counsel's assertion that he adequately prepared Petitioner throughout the course of his representation. (*Id.*)

Fourth, the Circuit Court challenged Petitioner's allegation that trial counsel performed deficiently by failing to submit proposed instructions. (*Id.*) Further, Petitioner submitted no instructions and could not identify what difference additional instructions would have made.

(*Id.*) Conversely, trial counsel had practiced within the Court, and was familiar with the Court's general charge. (*Id.*)

Fifth, the Circuit Court identified that Petitioner's contentions, with respect to ongoing communication between he and trial counsel, were largely debated during the omnibus evidentiary hearings. (*Id.* at 274.) While Petitioner testified that he and trial counsel never effectively communicated or reviewed Petitioner's case, trial counsel asserted that such communication had taken place. (*Id.*) The Circuit Court also identified that Petitioner had failed to make a showing of how his case would have been different should the allegedly lacking communication have taken place. (*Id.*)

Sixth, the Circuit Court found that Petitioner failed to show that trial counsel did anything at trial that was objectively wrong. (*Id.* at 275.) Further, the Circuit Court recognized that trial counsel was successful in his representation, effectively reducing Petitioner's first-degree murder charges to second-degree charges. (*Id.* at 276.) Seventh, the Circuit Court found trial counsel's explanation as to why he and Petitioner chose to forgo a theory of self-defense both credible and accurate. (*Id.*)

Finally, the Circuit Court held that Petitioner had not proven that trial counsel's closing statement was deficient under an objective standard of reasonableness. (*Id.* at 278.) Overall, the Circuit Court found trial counsel's testimony "credible based on the painful honesty exhibited by him in testifying about his alcoholism and personal struggles that affected [Petitioner's] proceedings." (*Id.* at 265 n.20.) As such, the Circuit Court denied Petitioner habeas relief.

C. Petitioner's Direct Appeal

Lastly, this Honorable Court issued a *per curiam* Opinion affirming Petitioner's conviction on November 19, 2007. *State v. Foster*, 221 W. Va. 629, 656 S.E.2d 74 (2007).

Respondent now incorporates this Honorable Court's findings of fact and discussion of law from Petitioner's 2007 Direct Appeal as if fully set forth herein.

III.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner has not requested oral argument. Respondent asserts that Petitioner's case is ripe for decision by Memorandum Opinion as the law contemplated within Petitioner's Assignments of Error is well practiced. Respondent further contends that oral argument upon the matter is unnecessary.

IV.

ARGUMENT

Petitioner's two (2) Assignments of Error contend that the Circuit Court erred by failing to grant Petitioner relief based upon Petitioner's alleged ineffective assistance of counsel. This Honorable Court has declared that

[in] reviewing challenges to the findings and conclusions of the circuit court in a habeas corpus action, we apply a three-prong standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard; the underlying factual findings under a clearly erroneous standard; and questions of law are subject to a *de novo* review.

Syl. Pt. 1, *Mathena v. Haines*, 219 W. Va. 417, 633 S.E.2d 771 (2006). Further, "[o]n an appeal to this Court the appellant bears the burden of showing that there was error in the proceedings below resulting in the judgment of which he complains, all presumptions being in favor of the correctness of the proceedings and judgment in and of the trial court." Syl. Pt. 2, *Perdue v. Coiner*, 156 W. Va. 467, 194 S.E.2d 657 (1973).

For purposes of reviewing ineffective assistance of counsel claims:

In the West Virginia courts, claims of ineffective assistance of counsel are to be governed by the two-pronged test established in *Strickland v. Washington*, 466

U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984): (1) Counsel's performance was deficient under an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different.

Syl. Pt. 5, *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995).

In reviewing counsel's performance, courts must apply an objective standard and determine whether, in light of all the circumstances, the identified acts or omissions were outside the broad range of professionally competent assistance while at the same time refraining from engaging in hindsight or second-guessing of trial counsel's strategic decisions. Thus, a reviewing court asks whether a reasonable lawyer would have acted, under the circumstances, as defense counsel acted in the case at issue.

Syl. Pt. 6, *Miller*.

During review, this Honorable Court "always should presume strongly that counsel's performance was reasonable and adequate." *Miller*, 194 W. Va. at 16, 459 S.E.2d at 127.

Further:

Having presented substantial evidence, counsel was not required to develop every conceivable defense that was available. Nor was counsel required to offer a defense or instruction on every conceivable defense. What defense to carry to the jury, what witnesses to call, and what method of presentation to use is the epitome of a strategic decision, and it is one that we will seldom, if ever, second guess. Obviously, lawyers always can disagree as to what defense is worthy of pursuing "such is the stuff out of which trials are made."

Id. (quoting *Solomon v. Kemp*, 735 F.2d 395, 404 (11th Cir. 1984), *cert. denied*, 469 U.S. 1181, 105 S.Ct. 940, 83 L.Ed.2d 952 (1985)). Therefore,

[i]n the determination of a claim that an accused was prejudiced by ineffective assistance of counsel violative of Article III, Section 14 of the West Virginia Constitution and the Sixth Amendment to the United States Constitution, courts should measure and compare the questioned counsel's performance by whether he exhibited the normal and customary degree of skill possessed by attorneys who are reasonably knowledgeable of criminal law, except that proved counsel error which does not affect the outcome of the case, will be regarded as harmless error.

Syl. Pt. 19, *State v. Thomas*, 157 W. Va. 640, 203 S.E.2d 445 (1974). Finally, “[o]ne who charges on appeal that his trial counsel was ineffective and that such resulted in his conviction, must prove the allegation by a preponderance of the evidence.” Syl. Pt. 22, *Thomas*.

A. Petitioner Was Not Prejudiced by Trial Counsel’s Debatable Effort to Provide Petitioner With Information Regarding the State’s First Plea Offer.

First and foremost, trial counsel and Petitioner are at odds as to whether Petitioner actually received notice of the first plea agreement. The Circuit Court dutifully proceeded onto the second prong of *Miller* analysis not upon clear indication of trial counsel’s deficiency, but based upon the probability that trial counsel could be considered to have rendered ineffective assistance. As such, a question of the objective reasonableness of trial counsel’s actions is still a very real point of issue. Respondent asserts, based upon Petitioner’s repeated attempt to downplay the actions of trial counsel and repeated assertions that proved to be untrue after full consideration of habeas omnibus hearing testimony, that Petitioner did receive notice of the first plea offer, and similarly refused such offer based upon Petitioner’s belief of innocence and wariness of sentencing.

Second, the Circuit Court correctly identified that Petitioner was not prejudiced by a prospective failure to receive the first plea offer, because he similarly refused a second, more advantageous offer. While Petitioner relies upon *Becton v. Hun*, 205 W. Va. 139, 516 S.E.2d 762 (1999) in asserting that the Circuit Court abused its discretion by denying that Petitioner was prejudiced, *Becton* is not analogous here. In *Becton*, the appellant failed to receive any plea from trial counsel, and was able to show prejudice in that, even if he chose not to accept such plea, the recommended sentencing by the State could influence the trial court to implement a lesser determinant sentence. *Becton*, 205 W. Va. at 144-45, 516 S.E.2d at 767-68. This Honorable Court proceeded through both prongs of *Miller* analysis and found trial counsel’s performance

deficient. *Id.* Such a holding contrasts Petitioner's assertion that trial counsel was automatically deficient for prospectively failing to deliver the first plea offer.

Third, Petitioner's alternative argument, that he would have more fruitfully understood the nature of the charges against him and accepted the second plea offer if he would have been informed of the first plea offer, is disingenuous. The evidence showed that Petitioner understood the charges against him, and that he understood the penalties associated with first-degree murder. Similarly, the evidence strongly suggests that Petitioner was adequately informed by trial counsel of the evidence against him, and the benefit in accepting such an offer. Petitioner, however, still refused the State's second offer, contending his innocence in the crime.

Rather, the Circuit Court rightly considered all of the evidence, including Petitioner's continued refusal to accept the subsequent plea agreement and maintain innocence, and Petitioner's suspect veracity in finding that, even if Petitioner had been conveyed the plea offer, it would have changed little in Petitioner's underlying criminal action. As such, this Honorable Court should deny Petitioner's first Assignment of Error and affirm Petitioner's denial of habeas relief in the Circuit Court below.

B. Petitioner Failed to Satisfy Either Prong of Strickland Analysis Regarding Trial Counsel's Effectiveness in Preparing For and Representing Petitioner During Trial.

Next, Petitioner again focuses on the first prong of *Miller* analysis without paying equal consideration to the second. While trial counsel admittedly made some questionable calls in defending Petitioner, the Circuit Court clearly uncovered that different actions during Petitioner's criminal trial would not have produced any different result, and in fact, could have subjected Petitioner to more serious punishment than was received. None of Petitioner's allegations within his second Assignment of Error were even considered by the Circuit Court to have undisputedly surpassed the first prong of *Miller* analysis. More importantly, the evidence

shows that none of Petitioner's allegations result in prejudice. As a result, based upon the foregoing facts and findings by the Circuit Court, this Honorable Court should deny Petitioner's second Assignment of Error, conclude that the Circuit Court has not abused its discretion, and affirm Petitioner's denial of habeas relief in the Circuit Court below.

IV.

CONCLUSION

WHEREFORE, for the foregoing reasons, Respondent respectfully requests that this Honorable Court deny Petitioner's appeal and affirm the Circuit Court below.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I, Shannon Frederick Kiser, Assistant Attorney General and counsel for the Respondent hereby verify that I have served a true copy of “*Respondent’s Summary Response*” upon Petitioner, by depositing said copy in the United States mail, with first-class postage prepaid, on this 26th day of February, 2015, addressed to counsel for Petitioner as follows:

Crystal L. Walden
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SHANNON FREDERICK KISER