

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

DANIEL MULDOWNEY,

Petitioner,

v.

Case No. 8:21-cv-2152-CEH-SPF

SECRETARY, DEPARTMENT
OF CORRECTIONS,

Respondent.

_____ /

ORDER

This matter is before the Court on review of the file. The Court finds that because counsel for Petitioner represented Petitioner in his state Rule 3.850 post-conviction proceedings (*see* Doc. 7-2, Exs. 20, 24), and because the issue of whether counsel rendered ineffective assistance during those state proceedings has been raised (*see* Doc. 7-2, Doc. 7 at 18; Doc. 9 at 5-6), the circumstances of this case warrant the Court considering *sua sponte* whether an actual conflict exists sufficient to disqualify counsel from representing Petitioner in this action. *See United States v. Diaz-Rosado*, 725 F. App'x 847, 854 (11th Cir. 2018) (“Courts are permitted, and sometimes required, to inquire into a potential conflict of interest.”); *Gray v. Pearson*, 526 Fed Appx. 331, 334 (4th Cir.2013) (“a clear conflict of interest exists in requiring Gray’s [federal habeas] counsel to identify and investigate potential errors that they themselves may have made in failing to uncover ineffectiveness of trial counsel while

they represented Gray in his state post-conviction proceedings[.]”); *Rhines v. Young*, 2015 WL 4651090, at *5 (D.S.D. Aug. 5, 2015), *aff’d*, 899 F.3d 482 (8th Cir. 2018) (noting that “the Fourth and Fifth Circuits. . .have recognized that a conflict of interest can arise when a petitioner’s initial-review collateral proceeding counsel and federal habeas proceeding counsel are the same.”).

Accordingly:

1. Within thirty (30) days of this order, both parties must file supplemental memoranda addressing whether a conflict of interest exists by virtue of counsel’s continued representation of Petitioner in this action and, if so, how it shall be resolved.

2. This action is **STAYED** pending the filing of the supplemental memoranda and resolution of the conflict-of-interest issue.

3. The Clerk is directed to **ADMINISTRATIVELY CLOSE** this case.

DONE and **ORDERED** in Tampa, Florida on August 26, 2024.


Charlene Edwards Honeywell
United States District Judge

Copy to: Counsel of Record