

IN THE SUPREME COURT
OF THE UNITED STATES

CASE NO. _____

UNITED STATES OF AMERICA,
Appellee-Respondent,

v.

D'ANGELO BATTIS,
Appellant-Petitioner.

PETITION FOR ISSUANCE OF A
WRIT OF CERTIORARI
TO THE COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

By:
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QUESTIONS PRESENTED

1. Whether the Eleventh Circuit Court of Appeals erred when it ignored Petitioner's pro se brief in its entirety.
2. Whether the Eleventh Circuit Court of Appeals erred when it affirmed summarily Petitioner's unconstitutional sentence.
3. Whether the Eleventh Circuit Court of Appeals erred in failing to consider whether Petitioner's plea was knowing, intelligent, and voluntary.

LIST OF PARTIES

All parties to this action are named nad listed in the caption of this matter as included on the cover page to this petition.

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JURISDICTION

The date on which the United States Court of Appeals for the Eleventh Circuit decided this matter was March 16, 2018. No petition for rehearing was timely filed in this case.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

OPINIONS BELOW

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

The opinion of the United States Court of Appeals for the Eleventh Circuit appears at Appendix A to the petition and is, to the best of Petitioner's knowledge, unpublished.

The judgment of the United States District Court appears at Appendix B to the petition and is, to the best of Petitioner's knowledge, unpublished.

STATEMENT OF THE CASE

Petitioner was initially charged in a four-count indictment. On February 24, 2016, upon advice of counsel, Petitioner pleaded guilty to only Count Three, knowing and intentional possession of a firearm in furtherance of a drug trafficking crime. All other counts were dismissed by the government. A Presentence Investigation Report ("PSR") was ordered by the sentencing court. Counsel filed no objections to the PSR and, Petitioner was sentenced to a term of 262 months imprisonment.

On August 4, 2017, Petitioner filed a motion under 28 U.S.C. § 2255 asserting, inter alia, ineffective assistance of counsel. The district court GRANTED that motion, vacated his sentence, and re-imposed the sentence with leave for Petitioner to file a Notice of Appeal. Petitioner then timely filed that Notice.

On appeal, Petitioner's counsel filed a document purporting to be the "Brief of Appellant," yet it was filed pursuant to Anders v. California. This same counsel averred there were no cognizable grounds for appeal. This was the same counsel which the district court had already determined had been ineffective under Sec. 2255. The Anders brief was nothing more than counsel's self-serving attempt to salvage his reputation following the result of the Sec. 2255 motion.

As a result, Petitioner filed his own Appellate Brief pro

se, setting forth two specific reasons why his appeal was meritorious and should have been granted.

On March 16, 2018, the Eleventh Circuit Court of Appeals issued its opinion as to Petitioner's appeal. Therein, the Court recognized that counsel filed a motion under Anders and had moved to withdraw. The Court further stated that its "independent examination of the entire record reveal[ed] no arguable issues of merit," granted counsel's motion to withdraw, and affirmed Petitioner's conviction and sentence. At no time did the Court even acknowledge that Petitioner filed a pro se brief or that the Court reviewed and considered its contents.

Petitioner now seeks for this Honorable U.S. Supreme Court to issue a writ of certiorari to the Eleventh Circuit to review the opinion below and address the Eleventh Circuit's complete disregard for Petitioner's right to represent himself on appeal, as well as address the meritorious arguments Petitioner had raised on appeal, and for this Court to vacate the conviction and sentence and remand this matter for further proceedings.

REASONS FOR GRANTING THE PETITION

COMES NOW, Petitioner, D'ANGELO BATTIS, pro se, and files the instant Petition requesting issuance of a writ of certiorari to the Eleventh Circuit Court of Appeals. Petitioner is a layman of the law, unskilled in the law, and requests this Petition be construed liberally. Haines v. Kerner, 404 U.S. 519 (1972).

This Petition addresses the error committed by the Eleventh Circuit in (1) ignoring Petitioner's pro se brief in its entirety, (2) affirming Petitioner's unconstitutionally enhancing sentence, and (3) affirming Petitioner's conviction.

ARGUMENT ONE

The Eleventh Circuit Erred When It
Ignored Petitioner's Pro Se Brief
In Its Entirety

The law is well settled that a defendant, on appeal, has the right to file a pro se brief in response to a brief submitted by counsel pursuant to Anders v. California, 386 U.S. 738 (1967). Anders; U.S. v. Moreno-Torres, 768 F.3d 439 (5th Cir. 2014). The Anders Court specifically noted that a pro se defendant is allowed to raise any point that he chooses after which the court must decide whether the case is wholly frivolous. Anders. It is axiomatic that the appellate court review and consider the issues raised in the pro se brief in reaching its determination.

In numerous other cases in which an attorney filed a brief pursuant to Anders and a pro se brief was subsequently filed,

the Eleventh Circuit has specifically identified that the pro se brief was received and reviewed. See, e.g., Thomas v. U.S., 572 F.3d 1300 (11th Cir. 2009) ("...either by counsel's Anders brief or the inmate's pro se brief."); U.S. v. Gonzalez, 173 Fed. Appx. 749 (11th Cir. 2006) ("...defense counsel ... filed an Anders brief. Acting pro se, Defendant filed a Memorandum of Law ..."); Grubbs v. Singletary, 120 F.3d 1174 (11th Cir. 1997) ("[Defendant] in turn filed a pro se brief to supplement the Anders brief."); U.S. v. Driver, 663 Fed. Appx. 915 (11th Cir. 2017) ("...appellate counsel filed a brief pursuant to Anders.... Defendant submitted a pro se response to the Anders brief ..."). However, in the instant case, the Eleventh Circuit never once mentioned that it had either received or reviewed/considered Petitioner's pro se brief. In fact, there is no indication that the appellate court even received the brief. See, Exhibit A to the instant Petition. Given the Eleventh Circuit's routine citing that the pro se brief filed subsequent to an Anders brief had been received and considered, the complete lack of such an acknowledgement in Petitioner's case can only be based upon the Eleventh Circuit's complete and utter disregard for the pro se brief, and its having ignored the arguments raised therein, otherwise the Eleventh Circuit would have, at the very least, mentioned that a pro se brief had

been filed. If this Court stated it was a defendant's right to file a pro se brief in response to an Anders brief, it is surely his right to have that brief considered by the appellate court in conducting its analysis of the case. That the Eleventh Circuit apparently chose to ignore Petitioner's pro se brief can only be considered error reversible upon a writ of certiorari from this Court.

ARGUMENT TWO

The Eleventh Circuit Erred When It Affirmed Summarily Petitioner's Unconstitutional Sentence

Appellate courts review sentencing errors, including guideline enhancements, for clear error. U.S. v. Satery, 681 Fed. Appx. 854 (11th Cir. 2017). In the case at bar, in his pro se brief, Petitioner contended the trial court committed clear error in his sentence when it failed to comport its calculations and application of the guideline sentencing enhancement with this Court's precedents. However, the Eleventh Circuit, in Exhibit A, wholly failed to even address any analysis of whether the trial court committed clear error, thus committing error itself.

At sentencing, the trial court enhanced Petitioner's sentence based upon two prior Florida state convictions for drug-related charges, deeming Petitioner a "career offender." To reach this determination, the sentencing court relied solely upon the PSR. That report only set forth the drug charges by

description, not by statute number.

The government never introduced and the trial court never relied upon any of the specific documents this Court has required be reviewed in regards to sentencing enhancements. Shepard v. U.S., 544 U.S. 13 (2005). Absent these documents, it is unclear whether Petitioner's convictions were under Fla. Stat. § 893.13 or § 893.135, both of which criminalize drug offenses, specifically sale, manufacture, and delivery of controlled substances. However, unlike § 893.13, § 893.135 also prohibits the act of purchase, which is not included in the definition of a serious drug offense in U.S.S. Guidelines § 4B1.1/4B1.2. Without proper Shepard documents, the trial court had no way to determine whether Petitioner's prior convictions fell within the ambit of the guideline enhancement.

Moreover, the sentencing court failed to conduct any inquiry into the underlying convictions prior to using them for enhancement purposes. This Court in Mathis v. U.S., 136 S.Ct. 2243 (2016), clarified when and how the modified categorical approach is applied in the context of federal sentencing. Courts are instructed that there is a difference between alternative elements of an offense and alternative means of satisfying a single element. Elements must be agreed upon by a jury beyond a reasonable doubt, while a jury need not agree on the way a particular requirement of an offense is met. The

facts and means are real world things extraneous to the crime's legal requirements. In this case, absent the Shepard documentation and no jury determination as to the elements of the underlying state conduct, the sentencing court was obligated to undertake a proper analysis of the statutes. See, Mathis; Descamps v. U.S., 133 S.Ct. 2276 (2013). It did no such thing. Petitioner, however, asserts that the Florida statutes are indivisible statutes and, without the sentencing court doing anything whatsoever to ascertain whether the prior convictions met the criteria of the federal sentencing guideline enhancements other than accepting the word and content of the PSR, Petitioner should have been assigned only the least culpable act criminalized, which did not qualify as a proper predicate offense. Moncrieffe v. Holder, 130 S.Ct. 1678 (2011).

In sum, in enhancing Petitioner's sentence, the sentencing court committed plain error by (a) not reviewing and/or utilizing the appropriate documents set forth in Shepard, instead relying solely on the PSR; (b) not requiring the government to adhere to its burden to identify the actual statute(s) of conviction for predicate offenses, U.S. v. Wilson, 2016WL209901, at *1 (11th Cir. Jan. 19, 2016); (c) not performing the requisite inquiries as directed by Mathis and Descamps; and (d) enhancing Petitioner's sentence via indivisible statutes contrary to Moncrieffe. In the Anders brief, counsel contended Peti-

tioner's position was without merit; Petitioner contested that conclusion in his pro se brief. Yet, the Eleventh Circuit did not even consider the argument raised by Petitioner, thus compounding the sentencing error by erring itself.

Petitioner respectfully requests this Honorable Supreme Court issue a writ of certiorari to review the opinion of the Eleventh Circuit, and reverse the unconstitutionally imposed sentence.

ARGUMENT THREE

The Eleventh Circuit Erred In Failing to
Consider Whether Petitioner's Plea was
Knowing, Intelligent, and Voluntary

Requirements when entering a plea are that it be entered into knowingly, intelligently, and voluntarily. See, e.g., Florida v. Nixon, 543 U.S. 175 (2004); Cuyler v. Sullivan, 446 U.S. 335 (1980); Wood v. Georgia, 450 U.S. 261 (1981); McMann v. Richardson, 397 U.S. 759 (1970). Again, the Eleventh Circuit simply affirmed Petitioner's conviction without analyzing whether Petitioner's arguments raised in the pro se brief were accurate.

To begin, Petitioner had received a promised impression from his deficient counsel that he would receive, at most, a sentence of five (5) years given that neither a gun nor drugs were ever found upon his person and the gun the government used to charge Petitioner was not at all his responsibility. Under these circumstances, Petitioner had no expectation whatsoever

to receiving a potential twenty-one (21) year sentence, with all of the improper enhancements previously discussed. Counsel merely advised Petitioner to accept the plea and answer all colloquy questions in the affirmative for the judge. Petitioner requested counsel object to the contents of the PSR and to the sentencing procedure as well; counsel ignored these requests. In sum, counsel led Petitioner through the process, ignored his requests for actions which would have defended Petitioner against the charges, and instructed Petitioner to his complete detriment. It cannot honestly be argued that Petitioner accepted the plea with his eyes open and having full knowledge of what he was accepting, especially in light of the broadside of the improper enhancements.

Additionally, although Petitioner raised argument in his pro se brief as to the applicability of an appellate waiver contained in the plea, since the Eleventh Circuit did not dismiss the appeal based upon the waiver, Petitioner does not raise that issue herein. It is clear the Eleventh Circuit did not bother to even consider the issue whatsoever, regardless of whether it was raised by Petitioner's pro se brief or counsel's Anders brief.

Since the Eleventh Circuit merely sidestepped the issue of whether Petitioner's plea was knowing, intelligent, or voluntary by issuing a form summary affirmance, it is obvious that

the appellate court chose to completely ignore Petitioner's arguments raised in the pro se brief, most likely in favor of expediency and Petitioner not contesting its erroneous determination issued by the Court. Such blatant error by the Eleventh Circuit can only be cured by this Honorable Court issuing a writ of certiorari to review the opinion of the Eleventh Circuit, and vacating Petitioner's conviction predicated upon an unknowing, unintelligent, and involuntary plea.

CONCLUSION

It is clear that Petitioner's counsel, in filing an Anders brief subsequent to the trial court having granted Petitioner's motion under Sec. 2255, took a position entirely contrary to Petitioner's best interest and solely in favor of protecting counsel's representation. It was also abundantly clear that the trial court committed clear error when it enhanced Petitioner's sentence in derogation of this Court's case precedent, and accepted Petitioner's unknowing, unintelligent, and involuntary plea. That the trial court under Sec. 2255 reinstated Petitioner's appellate rights should have spoken clearly to the Eleventh Circuit Court of Appeals that it needed to review this matter with a close and critical eye, and Petitioner raised such meritorious issues in his pro se brief to support his appeal being granted. The Eleventh Circuit, obviously, was in derogation of its obligations and, merely, sum-

marily affirmed the clear errors of the trial court based on counsel's submitted Anders brief.

WHEREFORE, Petitioner respectfully requests this Honorable U.S. Supreme Court issue a writ of certiorari to the Eleventh Circuit Court of Appeals to review its decision and opinion in this case, and vacate his conviction and sentence for the reasons raised herein.

DATED: _____

Respectfully Submitted,

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