

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

MAURICE BAUM — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Maurice Baum
(Your Name)

Reg. No. 57082-056
FCI Edgefield, P.O. Box 725

(Address)

Edgefield, South Carolina 29824
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

(I)

Was Trial Counsel's failure to object to the District Court's determination and findings of the drug amount attributable to the Petitioner objectively unreasonable assistance of counsel in violation of the Sixth Amendment to the United States Constitution.

(II)

Was Trial Counsel's advisement for Petitioner to enter a guilty plea to the Money Laundering Count, which carries a statutory maximum penalty of twenty years imprisonment, as opposed to the Dog Fighting Count, which carries a statutory maximum penalty of five years imprisonment, ineffective assistance of counsel in violation of the counsel guaranteed by the Sixth Amendment of the United States Constitution.

(III)

Was Trial Counsel's advisement to the Petitioner of the benefits of entering into a plea of guilty without an enhanced penalty for a supervisory role when the evidence would have been clear in showing otherwise, ineffective assistance of counsel in violation of the counsel guaranteed by the Sixth Amendment of the United States Constitution.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4(A), 4(B)
REASONS FOR GRANTING THE WRIT	5-13
CONCLUSION.....	14

INDEX TO APPENDICES

APPENDIX A

United States Court of Appeals - 2017 U.S. App'x LEXIS 26702

APPENDIX B

United States District Court - 2017 U.S. Dist. LEXIS 112384

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

United Staes V. Lemaster, 403, F.3d 216, (4th Cir 2005).....	5
Strickland V. Washington 466 U.S. 668, 104, S.Ct. 2052, 80 L.Ed.2d (1987).....	6
Glover V. United States 531 U.S. 198, 203-04, 121 S.Ct. 696, 148 L.Ed.2d (2001).....	6, 9
United States V. Brannon 48 F. App'x 51, 53 (4th Cir. 2002).....	8
United States V. Blaylock 20, F.3d 1458, 1455-66 (9th Cir 1994).....	8
Griffen V. United States 330 F. 3d 733, 737 (6th Cir 2003).....	8
Paters V. United States 159 F. 3d 1043, 1047-48 (7th Cir 1998).....	8
United States V. Merritt 102 F. App'x 303, 307-08 (4th Cir 2004).....	8
Wolford V. United States 722 Fed. Supp. 2d 664, 688 (E.D. Va 2010).....	8, 9
United States V. Day 969 F. 2d 39, 43 (3rd Cir 1992).....	8
Hill V. Lockhart 474 U.S. 52, 56-57, 106 S. Ct. 366, 88, L. Ed2d (1985).....	8
Molke V. Gillies 332 U.S. 708, 721, 68, S.Ct. 316, 92 L.Ed. (1948).....	8
Lee V. United States 582, 198 L. Ed. 2d 476, 137 S.Ct. (1958).....	10

STATUTES AND RULES

28 U.S.C. § 2255	5
28 U.S.C. § 2255(b).....	5
21 U.S.C. 846.....	4
21 U.S.C. 841(b)(1)(A).....	4
18 U.S.C. § 1956(1)(B)(i).....	4
28 U.S.C. § 2253(c)(1)(B).....	4
18 U.S.C. § 1956.....	7
18 U.S.C. § 49(a).....	7
§ 841(a)(1).....	7
§ 841(b)(1)(A).....	7

OTHER

TABLE OF AUTHORITIES CITED (CONTINUED)

CASES	PAGE NUMBER
United States V. Breckenridge 93 F. 3d 132, 136 (1996).....	11
United States V. Steffen 741 F. 3d 411 (4th Cir. 2013).....	12
United States V. Mejia-Orosco 867 F. 2d 216, 221-21 *5th Cir. 1989).	12
United States V. Slade 631 F. 3d 185, 190 n. 1 (4th Cir. 2011).....	12
Lafler V. Cooper 132 S. Ct. 1376, 1385-86 (2012).....	11,12

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at 2017, U.S. App'x LEXIS 26702; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at 2017, U.S. Dist. LEXIS 112384; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was December 27, 2017.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

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

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. Counselor provided ineffective assistance a Sixth Amendment violation to the United States Constitution

STATEMENT OF THE CASE

On May 14, 2013, Petitioner was charged by a superceding information that alleged two (2) violations of federal law. Count One, alleged that Petitioner conspired to distribute and possess with the intent to distribute 280 grams or more of cocaine base, and 5 kilograms or more of cocaine in violation of 21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(A). Count Two, alleged a violation of 18 U.S.C. § 1956(1)(B)(i) - also known as the federal money laundering statute.

On May 14, 2013, Petitioner entered into a plea with the Government in regards to the two count information.

On January 16, 2014, the District Court accepted the plea to the two count information.

On July 8, 2014, the District Court imposed a 273 month term of imprisonment as to Count One and 240 months as to Count Two, to run concurrent with one another.

The Petitioner filed a Notice of Appeal that was dismissed. See UNITED STATES V. MAURICE BAUM, 604 Fed. App'x 295 (2015). Petitioner applied for a Certificate of Appealability, which was denied at the Magistrate's recommendation May 27, 2015. See BAUM V. UNITED STATES, 2017 U.S. App. LEXIS 8740 (4th Cir. N.C.).

Petitioner filed a Motion to Vacate, Set Aside, or Correct a Sentence by a Person in Federal Custody Pursuant to 28 U.S.C. § 2255, which was denied at the Magistrate's recommendation

S T A T E M E N T O F T H E C A S E , c o n t .

on May 15, 2017. See MAURICE BAUM V. UNITED STATES, 2017 U.S. Dist. LEXIS 112384. Petitioner filed for a Certificate of Appealability, which was denied on July 17, 2017. See MAURICE BAUM V. UNITED STATES, 2017 U.S. Dist. LEXIS 110343.

Petitioner filed an appeal to the District Court's order accepting the recommendation of the Magistrate Judge and denying relief on his 28 U.S.C. § 2255 motion, and the subsequent denial of his Certificate of Appealability, however, this appeal was dismissed in accordance to 28 U.S.C. § 2253(c)(1)(B), on December 27, 2017, stating an absence of the substantial showing of the denial of a constitutional right. See UNITED STATES V. MAURICE BAUM, 2017 U.S. App. LEXIS 26702.

This brings us to the instant action proposed before this Honorable Court for the determination of final resolution, under the current interpretation of the law, or the speculative application of a novel interpretation.

REASONS FOR GRANTING APPEAL

The Petitioner claimed in his original 28 U.S.C. 2255 that the drug quantity caused his sentence to be increased. Specifically, he alleged material facts that are in dispute with the Magistrate Court's finding in its R&R. The Petitioner set out that the statements dealing with drug quantity from his PSR that were factually incorrect and supported it from the record. He alleged that the following drug quantities were incorrect:

1. PSR Statement from Marcell Bowe
2. PSR Statement from Desmond White
3. PSR Statement from Devell Bunch

The drug quantities alleged by these statements from the PSR are material to the Petitioner's case and his sentence. The total drug quantity alleged by the government increased the sentence imposed by the Court by a significant amount.

The District Court accepted the Magistrate's Court R&R on these findings without holding an evidentiary hearing even though the record supported the argument that there were material facts in dispute.

In addressing a petition under §2255, a court is required to conduct a hearing unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief. 28 U.S.C. § 2255(b); *United States v. Witherspoon*, 231 F. 3d 923, 925-26 (4th Cir. 2000). An evidentiary hearing is not necessary where the petitioner's claims are "so palpably incredible, ...patently frivolous or false as to warrant summary dismissal" or where the petitioner's allegations are directly contradicted by his earlier statements in open court. *United States v. Lemaster*,

403 F. 3d 216, 220-22 (4th Cir. 2005).

Counsel's conduct fell below an objective standard of reasonableness by allowing the Government to begin the plea bargain negotiations with an inflated number as to drug quantity, thus nullifying any alleged benefit from the plea bargain. Counsel had a responsibility to investigate the statements that increased the sentence.

Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1987), sets out a two-prong test for ineffective assistance of counsel. First, a defendant must show that counsel provided deficient advice that fell below an objective standard of reasonableness. Second, a defendant must show how this deficient advice caused him prejudice. *Id.* at 687.

In this case, Counsel made a plea bargain with the government that was not a bargain at all by bargaining away drug quantity that was not provable by any standard, which in turn increased the Petitioner's sentence. This was not effective assistance. Any increase in sentence due to counsel's actions is per se unreasonable. Glover v. United States, 531 U.S. 198, 203-04, 121 S. Ct. 696 148 L. Ed. 2d 604 (2001).

The District Court erred in not holding an evidentiary hearing as material facts in dispute were supported by the record.

The drug weight that would not have been applicable to the Petitioner changes the calculation of his sentence. The Magistrate Judge's R&R that was adopted by the District Court is flawed and an evidentiary hearing is needed.

II.

Trial counsel rendered ineffective assistance of counsel by advising Petitioner to enter a plea to the superceding information of Money Laundering in violation of 18 U.S.C. §1956, that has a statutory maximum of 20 years, instead of having the Petitioner plea to Animal Fighting in violation of 18 U.S.C. § 49(a) which carries a statutory maximum of five years.

Petitioner's circumstances are as follows:

The Government alleged that Petitioner conspired with others to distribute cocaine and cocaine base in violation of §§841(a)(1) and (b)(1)(A). The Government alleged that the Petitioner was also involved in the crime of Animal Fighting.

The Government superceded the Petitioner with an information alleging that he laundered the proceeds from the animal fighting venture. Thus, the animal fighting violation was under active consideration to charge the Petitioner with. Counsel for the Petitioner opted to bargain with the Government for the greater of the two informations instead of the lesser. The greater of the informations, i.e., money laundering, has a statutory maximum of 20 years which the District Court imposed the maximum sentence allowed by law, 20 years imprisonment.

Counsel's reasoning in this was that it wouldn't matter in the long term as the controlling sentence would be the drug count under § 841(a)(1). That reasoning has shown itself to be flawed, as the money laundering information has now become the controlling sentence as the drug sentence has been reduced from the original sentence of 273 months to an amended sentence of 221 months. Counsel did not bargain with the Government

in good faith and acted in an objectively unreasonable fashion by having Petitioner plea to an information that caused a greater sentence to be imposed.

Generally, claims of ineffective assistance of counsel during the plea process fall into three categories. First, "the complete failure of a defense attorney to timely inform his client of a plea offer constitutes unreasonable professional assistance." UNITED STATES V. BRANNON, 48 F. Appx 51,53(4th Cir. 2002) (citing UNITED STATES V. BLAYLOCK, 20 F. 3d 1458, 1465-66 (9th Cir. 1994); see GRIFFIN V. UNITED STATES, 330 F. 3d 733, 737 (6th Cir. 2003). Second, a defense attorney's inaccurate advice or misinformation in conveying a plea offer may constitute deficient assistance. Brannon, 48 F. Appx at 53 (citing PATERS V. UNITED STATES, 159 F. 3d 1043, 1047-48(7th Cir. 1998); see UNITED STATES V. MERRITT, 102 F. App'x 303, 307-08 (4th Cir. 2004); WOLFORD V. UNITED STATES, 722 f. Supp. 2d 664, 688(E. D. Va 2010) (concluding that counsel was deficient where he "misled the petitioner into believing that she had some possibility of prevailing at trial on the basis of several non-viable defenses.")

Third, incomplete advice in conveying a plea also may provide a basis for a claim of ineffective assistance of counsel. WOLFORD, 722 F. Supp. 2d at 689 (concluding that counsel's incorrect and incomplete legal advice to the petitioner during the plea negotiations process was objectively unreasonable". (citing Strickland, 466 U.S. at 688); see also UNITED STATES V. DAY, 969 F. 2d 39, 43 (3rd Cir. 1992) A defendant has the right to make a reasonably informed decision whether to accept a plea offer." (citing HILL V. LOCKHART, 474 U.S. 52, 56-57, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985); VON-MOLTKE V. GILLIES, 332 U.S. 708, 721, 68 S. Ct. 316, 92 L. Ed.(1948)

Here, the District Court erred when concluding that counsel did not misrepresent the impact between the two statutory sentences; 1) Animal fighting, and 2) money laundering. The District Court reasoned that Petitioner's acceptance of a statutory sentence with a 20 year maximum did not demonstrate prejudice when placed against the animal fighting with its maximum sentence of five years. The District Court briefly spoke about the sentence Petitioner received making it appear that the sentence Petitioner received for money laundering did not cause prejudice.

The Petitioner received the statutory maximum sentence for money laundering, twenty years. Petitioner contends that he received the third example articulated in the foregoing as he received incomplete legal advice during the plea negotiations process. See Wolford.

Counsel provided deficient advice under prong one of the Strickland standard in having Petitioner enter a plea of guilty to money laundering when the lesser offense of animal fighting was available for bargaining purposes. The second prong, i.e. the prejudice prong, was Petitioner's term of imprisonment which was increased substantially due to the deficient advice of his counsel. See Glover v. United States, supra. The District Court failed to apply the correct standard under Strickland and hold an evidentiary hearing in the determination of this matter.

III.

Counsel's representation fell well below objectively reasonable standards when he failed to object to a miscalculation of the sentencing guidelines.

The Supreme Court has held that a right to effective assistance of counsel exists during the sentencing in both noncapital and capital cases. Lafler v. Cooper, 132 S. Ct. 1376, 1385-86 (2012). Sentencing is a critical stage of the trial proceedings, thereby it entitles a defendant to counsel who is effective in accordance with the Sixth Amendment to navigate the precarious intricacies of such proceeding. See United States v. Breckenridge, 93 F. 3d 132 136 (1996)(holding that, "counsel's failure to object to an improper application of the sentencing guidelines may amount to ineffective assistance of counsel.")

Petitioner was given a 3 level enhancement for being a manager or supervisor of criminal activity involving five or more participants pursuant to U.S.S.G. § 3B1.1(b). Counsel should have objected to this enhancement not only because Petitioner never explicitly or even implicitly admitted, either verbally or through any action, to being a manager or supervisor of anyone in the conspiracy, but also because Counsel was aware of the existence of Affidavits of Evidence to the contrary.

The United States Court of Appeals for the Fourth Circuit has held that in order to receive an enhancement pursuant to § 3B1.1(b), a District Court must draw an inference from "a variety of data, including the information in the PSR, as well as the Defendant's statements and demeanor at the sentencing hearing regarding the degree to which the defendant was responsible for

committing an offense relative to other participants. See United States v. Steffen, 741 F. 3d 411 (4th Cir. 2013) (citing United States v. Mejia-Orosco, 867 F. 2d 216, 220-21)5th Cir. 1989)).

The appellate court has also held that in order to qualify for the role enhancement, the government must present evidence that the defendant managed or supervised participants, as opposed to property, in the criminal enterprise. See United States v. Slade, 631 F. 3d 185, 190 n.1 (4th Cir. 2011).

Counsel had an affirmative duty to produce impeachment and exculpatory evidence that refuted the credibility of a determinative enhancement to the plea, and could have done so in a variety of differing ways, whether through simply introducing the attestation of the Affidavits, subpoenaing witnesses, or performing joint interviews with the Government.

Trial Counsel instead allowed a plea agreement to be crafted off of deceptive factors, and coerced Petitioner into taking the plea, and agreeing to allegations that were untruthful and inaccurate.

The Sixth Amendment Guarantees a defendant the effective assistance at "critical stages of a criminal proceedings", including when he enters a plea. See Lafler v. Cooper, 1566 U.S. 156, 165 (2012). The Petitioner in deciding to take a plea was advised by

Counsel that it made no difference except to save some extra added additional jail time. Counsel continuously sought to convince Petitioner that the controlling portion of his sentence would be based off of the drug charge rather than the conspiracy charge, yet this was profoundly misleading, and in fact, has been proven to be patently false.

The additional time of incarceration that could have been imposed by the District Court if Petitioner had proceeded to trial and lost, is unimportant when viewed next to the loss Petitioner actually suffered.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Maurice Baum

Date: 3-26-2018