

NO: \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

ZACHARY CHAMBERS,  
Petitioner,  
V.

UNITED STATES OF AMERICA,  
Respondent.

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ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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Zachary Chambers  
Petitioner

67028-066  
LSCI Allenwood  
PO BOX 1000  
White Deer, PA 17887

QUESTIONS PRESENTED FOR REVIEW

1. Whether the lower court abused its discretion in ruling that trial counsel's erroneous advice about petitioner's sentencing exposure if he proceed to trial did not violate petitioner's Sixth Amendment right to have the effective assistance of counsel?

PARTIES TO THE PROCEEDINGS

The parties to the proceeding in the Court whose judgement is sought to be reviewed are as follows:

1. The United States of America
2. Zachary Chambers

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ON PETITION FOR WRIT OF CERTIORARI TO THE  
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PETITION FOR A WRIT OF CERTIORARI

Petitioner Zachary Chambers respectfully requests that the court issue a Writ of Certiorari to review the judgement of the United States Court of Appeals for the Third Circuit entered on February 13, 2018, in the captioned matter.

OPINION BELOW

The judgement and unpublished opinion of the United States Court of Appeals for the Third Circuit denying Zachary Chambers' request for a certificate of appealability is labeled No.17-3358 and the District Courts denial of Zachary Chambers' 28 U.S.C. § 2255 motion is labeled No.10-770-2 and is reprinted at PA:1 to PA:3.

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"PA" refers to Petitioner's Appendix attached to this Petition.

## JURISDICTION

Jurisdiction to review the judgement of the United States Court of Appeals for the Third Circuit by writ of certiorari is conferred upon this Court by 28 U.S.C. § 1254(1).

The United States District Court had subject matter pursuant to 18 U.S.C. § 3231, which confers upon the District Court original jurisdiction over all offenses against the laws of the United States.

Appellate jurisdiction was conferred upon the United States Court of Appeals for the Third Circuit by 28 U.S.C. § 1291.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have the compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Const. Amend. VI.

## STATEMENT OF THE CASE

### A. Nature of the case and procedural history

On July 27, 2011, a superceding indictment was returned against Zachary Chambers and other defendants charging conspiracy to distribute cocaine and crack cocaine. Attorney Frank M. Spina, II, appeared on behalf of Mr. Chambers. On September 1, 2011, Mr. Chambers pled not guilty.

On March 7, 2012, the district court granted Mr. Spina's motion to withdraw as Mr. Chambers' lawyer, and appointed Caroline Goldner Cinquanto, to represent Mr. Chambers under the criminal justice act.

On July 25, 2012, a second superceding indictment was returned against Zachary Chambers and 15 co-defendants. Of the 11 counts in the second superceding indictment, Mr. Chambers was named in two: (1) Count one: conspiracy to distribute five kilograms or more of cocaine, 280 grams of cocaine base ("crack") and marijuana, in violation of 21 U.S.C. § 846; and (2) Count six: Attempted possession with the intent to distribute 500 grams or more of cocaine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B).

On February 25, 2013, over the course of six days, Mr. Chambers and Tyreek Styles were tried before a jury on Counts One and Six. The other defendants had pled guilty either prior to trial or during trial.

On August 12, 2013, the court held a sentencing hearing. Mr. Chambers' offense level was 36 and his criminal history level was five, providing a guideline range of 292 to 365 months.

Mr. Chambers raised two objections to the PSR: the drug quantity calculation and the two-level enhancement for possession of a weapon. He also requested a downward departure under U.S.S.G. § 4A1.3(b), based on inadequacy of criminal history category. The court denied the request for a downward departure, and sentenced Mr. Chambers to a term of 330 months on each of counts 1 and 6, to be served concurrently.

Mr. Chambers timely appealed to the United States Court of Appeals for the Third Circuit, and that court affirmed Mr. Chambers' conviction and sentence on October 8, 2014.

On October 1, 2015, Mr. Chambers filed a pro se motion for post conviction relief under 28 U.S.C. § 2255, claiming ineffective assistance of counsel.

The district court denied Mr. Chambers' petition. On his pro se appeal, Chambers filed a motion for a certificate of appealability claiming ineffective assistance of counsel asserting that his trial counsel failed to sufficiently investigate his criminal history and inform him of the proper range of sentencing if he were to be judged guilty.

The United States Court of Appeals for the Third Circuit granted a certificate of appealability on July 11, 2016, solely as to the claim that trial counsel was ineffective for failing to inform Chambers that his prior juvenile adjudications would increase his sentencing exposure, and on August 24, 2016, vacated the district court's order denying the 2255 petition, in part, and remanded the matter for an evidentiary hearing.

The evidentiary hearing was held on April 14, 2017, at which both Chambers and his trial counsel, Caroline Goldner Cinquanto, Esquire, testified.

On October 13, 2017, the district court denied Mr. Chambers' 2255 motion and denied a certificate of appealability. Mr. Chambers timely filed an appeal in the United States Court of Appeals for the Third Circuit.

On February 13, 2018, the Third Circuit denied Chambers' request for a certificate of appealability.

#### B. Statement of Facts

Zachary Chambers was a teenager in Southwest Philadelphia when he began a friendship with an older man named Bellvin Smith. Bellvin Smith was a longtime, high-level dealer of cocaine and crack cocaine. Bellvin Smith became the target of a wide-ranging law enforcement investigation in 2009-2011. During this investigation federal law enforcement officers tracked Mr. Smith's movements through travel records, cell phone records, GPS tracking on his cell phone, wiretaps, and records from the United States Postal Service or UPS. At least one confidential informant was also used. The government learned from this evidence that Mr. Smith's business operations involved purchasing the drugs from a supplier in Los Angeles and having them shipped back to Philadelphia. Mr. Smith took several trips to the west coast in furtherance of these transactions. He would often fly to Las Vegas and rent a car to drive to Los Angeles. He usually had one or more friends with him who would carry money for him and who would go to Las Vegas to party, but not all of them accompanied Mr. Smith on the side trips to Los Angeles where Mr. Smith purchased drugs.

Mr. Smith was eventually arrested and pled guilty to drug and conspiracy charges as a result of a wide-ranging investigation that also resulted in charges being filed against 15 of Mr. Smith acquaintances, including Zachary Chambers. Mr. Smith testified against Mr. Chambers at trial.

The government produced testimony and evidence at trial indicating that Mr. Chambers accompanied Mr. Smith on seven trips from Philadelphia to Las Vegas from September 2009 through June 2010. Federal agents also obtained wiretap evidence involving some of Mr. Chambers' phone calls, and cell site location information (CSLI) for Mr. Chambers' cell phone via court order. Witnesses testified that Chambers was a close friend of Bellvin Smith and handled drugs for him several times at Bellvin Smith's request. Most of those witnesses were co-conspirators who testified under cooperating plea agreements in order to get reduced sentences.

In Mr. Chambers' 2255 motion he claimed that trial counsel was ineffective for failing to adequately advise him regarding the potential sentencing consequences of proceeding to trial. Specifically trial counsel failed to accurately advise Chambers regarding the impact that his juvenile adjudications could have on his sentencing guidelines range and trial counsel misadvised Mr. Chambers that his potential sentencing guidelines range after a trial was approximately 151-188 months, far lower than what Chambers actually faced. The inadequate advice of counsel prejudiced Mr. Chambers in that he rejected a ten-year plea offer based on that inadequate advice, proceeded to trial, was convicted, and ultimately received a sentence of 330 months imprisonment.

Evidence presented at the April 11, 2017, hearing

At the evidentiary hearing, both Mr. Chambers and trial counsel testified.

Mr. Chambers testified as follows:

At the time he was originally prosecuted for this case, he was 22 years old, he had no experience with the Federal Criminal system and he had no experience with the federal sentencing guidelines. N.T. 4/11/17 at 9. Trial counsel first met with him on March 20, 2012. Id. At that meeting, they discussed potential sentencing consequences after a trial. Id. at 10. Mr. Chambers had been offered a plea deal of ten years incarceration, the mandatory minimum sentence. Id. at 10. At this first meeting, Mr. Chambers told trial counsel about his prior criminal history, including his juvenile arrests. Id. at 12. As they were speaking, trial counsel took notes on a piece of paper that he could not see. Id. She then told Mr. Chambers that he faced a sentencing range of 151 to 188 months (12.5 years to 15 years, 8 months) if he proceeded to trial and was found guilty. Id.; see also id. at 16. Trial never explained how she calculated this guideline range. Id. at 13. Believing that his sentencing exposure was in the 12.5-15.5 year range after a trial, Mr. Chambers chose to reject the 10-year plea offer.

<sup>1</sup> The transcript of the April 11, 2017, evidentiary hearing is available in the district court and appears on the district court docket as docket number 759.

After that first meeting, Mr. Chambers and trial counsel met again on at least ten occasions. N.T. 4/11/17 at 20. During those meetings, they never again discussed Mr. Chambers' potential sentencing guideline range. Id. Instead, they used their time to review the discovery which, because of a protective order, Mr. Chambers was only permitted to view in the company of counsel. Id. at 21.

Mr. Chambers never realized prior to trial that his guideline range could be as high as 30 years. N.T. 4/11/17 at 23. Prior to receiving his presentence investigation report, trial counsel never told him that his juvenile adjudications would put him in a criminal history category V. Id. at 33. He did not realize his true criminal history category and the true guidelines range until after he received the presentence report. Id. at 22-23, 33. Had Mr. Chambers known prior to trial that his guideline range would be up to 30 years' incarceration, he would have accepted the plea offer of 10 years' incarceration. Id. at 25, 35.

At the evidentiary hearing, trial counsel testifies as follows:

Trial counsel estimated that she had represented approximately 50 criminal defendants in federal court since 2006 and that she had attended CLE programs and training on how to calculate federal sentencing guidelines. N.T. 4/11/17 at 51. Her practice was to have a preliminary discussion with every client regarding their potential sentencing guidelines. Id. at 53. Trial counsel testified regarding the notes she took during her initial meeting with Mr. Chambers. Id. at 58; PA 4-11. According to her notes, they discussed Mr. Chambers' criminal history, including his possible juvenile adjudications. Id. at 59-60. On the second to last page of her notes in her own handwriting, she noted and circled "151-188" Id. at 68; PA at 10. Trial counsel also wrote "plea 108-135". Id. At the top of the page she wrote "rejected 10 year deal". PA 10. These notes represented the preliminary guideline range that trial counsel discussed with Mr. Chambers. N.T. 4/11/17 at 70. Trial counsel did not yet have discovery at the time she had this preliminary conversation with Mr. Chambers.

Trial counsel testified that after her first meeting with Mr. Chambers, she received and reviewed discovery material which included documentation of Mr. Chambers' criminal history. According to trial counsel, within one or two months of meeting Mr. Chambers, she reviewed with him this criminal history documentation, along with a revised guidelines range calculation. N.T. 4/11/17 at 75. She started telling him he was "looking at 30 years". Id. at 76. The ten-year plea offer remained open until shortly before trial. Id. at 84. Trial counsel stated that Mr. Chambers never indicated to her that he wanted to plead guilty. Id. at 87.

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<sup>2</sup> "PA" refers to Petitioner's Appendix 4-11 of this filing was admitted as Government's Exhibit 4 at the April 11, 2017, hearing.

During trial counsel's testimony, the government moved into evidence seven exhibits which represented a total of 31 pages of handwritten notes or correspondence from trial counsel to Mr. Chambers. The exhibits included notes regarding the dates when trial counsel met with Mr. Chambers. In all of these handwritten notes by trial counsel, there was not a single notation indicating that Mr. Chambers was facing 30 years of imprisonment after trial. N.T. 4/11/17 at 90. Nor were there any notes regarding Mr. Chambers' final criminal history category. Id. Furthermore, counsel acknowledged that the only pretrial court filing that contained an estimation of Mr. Chambers' guideline range upon conviction after trial was the government's pretrial detention memorandum which estimated Mr. Chambers' guidelines range to be 151-188 months. Id at 93; PA at 14. Indeed trial counsel had circled this portion of the filing. Although trial counsel testified that she did a revised sentencing guideline calculation for Mr. Chambers after their initial meeting, she acknowledged that her revised guidelines calculation was not written down anywhere. Id. at 94.

Mr. Chambers testified again on rebuttal and denied that trial counsel ever informed him that he was facing 30 years imprisonment N.T. 4/11/17 at 97-98. He also reiterated that, after their initial meeting and her initial guidelines calculation of 151-188 months she never discussed a different guidelines range with him. Id.

#### REASONS FOR GRANTING THE PETITION

This court should grant review because this case presents an important question of Sixth Amendment law: (1) whether petitioner's Sixth Amendment right to reasonably effective assistance of counsel violated when the lower court ruled that trial counsel accurately advised petitioner of his potential sentencing exposure.

A. The lower courts ruling deprived petitioner of his Sixth Amendment right to have the effective assistance of counsel.

The Third Circuit erred in affirming the denial of petitioner's 28 U.S.C. § 2255 motion. Mr. Chambers was denied his Sixth Amendment right to have the effective assistance of counsel at critical stages of a criminal proceeding, when trial counsel inaccurately advised Mr. Chambers of his potential sentencing guidelines range therefore depriving Mr. Chambers of his right to effective assistance of trial counsel during the plea bargaining stage. Lafler V. Cooper, 132 S.Ct. 1376, 182 L.Ed. 398 (2012) "The Sixth Amendment's guarantee of effective counsel extends to plea bargaining, including to plea offers that were rejected, Missouri V. Frye, 566 U.S. 133 (2012).

Mr. Chambers was seriously misled about his sentencing exposure when trial counsel advised him that his sentencing guidelines if convicted at trial would be 151-188 months incarceration. In reality his guidelines range after trial was 292 to 365 months incarceration. Based on his understanding that his sentencing exposure after trial would be 12.5 to 15.5 years, Mr. Chambers rejected a guilty plea offer of ten years imprisonment. Mr. Chambers' decision to reject the prosecutions plea offer and proceed to trial was based off of trial counsel's erroneous advice. Chambers consequences of taking a chance at trial were not markedly harsh than pleading, which was 2.5 to 5.5 years more prison time difference from the prosecutions plea offer of ten years imprisonment. Had Mr. Chambers known prior to trial that he would be in criminal history category V based off his juvenile adjudications and his guidelines range would be up to 30 years incarceration, he would have accepted the plea offer of ten years imprisonment. Trial counsel's bad advice made all the difference in Chambers' decision making. Chambers had no knowledge of the law and relied on counsel's advice to make decisions in his case. See Ohio V. Hand, ohio,2016 BL276326,99CrL 655 "A juvenile adjudication is not established through a procedure that provides the right to a jury trial, under the rationale of Apprendi v. New Jersey, 530 U.S. 466(2000), It cannot be used to increase a sentence beyond a statutory maximum or mandatory minimum". Mr. Chambers judgement was clouded by misunderstanding up through the time of trial because of his counsel's inaccurate advice. Trial counsels failure to give petitioner accurate information interfered with his ability to make reasonable choices about his case, causing him to pass up on an opportunity to take a plea offer and avoid trial, that might have lowered his guideline range and possibly his sentence.

There is a reasonable probability that Mr. Chambers would have received a substantially lower sentence had the court accepted the terms of that plea. See Lee v. United states, 137 S.Ct.1958, 198 L. Ed.2d 476(2017) ("The inquiry focuses on a defendant's decision making, which may not turn solely on the likelihood of conviction after trial"). (citing Hill v. Lockhart, 474 U.S. 52, 59(1985)) "Where a defendant has no plausible chance of an acquittal at trial, it is highly likely that he will accept a plea if the government offers one".

In Mr. Chambers' case trial counsel failed to give him enough information to make a reasonably informed decision. Chambers did not realize that he would be subjecting himself to a 30 year sentence by proceeding to trial. Double the amount of the guidelines range of 151-188 months that trial counsel told him if he were convicted at trial and three times the amount of the prosecution's plea offer. In light of the overwhelming evidence that the government had in its possession, cooperator testimony, recorded phone calls, pole camera videos, recovered money, and cell site location information. Had Mr. Chambers been accurately told he was facing a possible 30 year sentence if convicted at trial he would have accepted the ten year plea offer. Because Mr. Chambers was seriously misled about his sentence exposure when the likelihood of his conviction was overwhelming, he received ineffective assistance of counsel.

Mr. Chambers has demonstrated that he was prejudiced by his trial counsels erroneous advice. Chambers contends that he can make this showing because the logical decision to make was to accept a guilty plea had he known the result of proceeding to trial he would be facing 30 years imprisonment.

Mr. Chambers has made a substantial showing that he was denied constitutional right to effective assistance of counsel.

A defendant has a Sixth Amendment right to reasonably effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 687 (1984). To establish a claim of ineffective assistance of counsel, a defendant must show (1) his attorney's performance was unreasonable under prevailing professional norms and (2) that there is a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different". Strickland, 466 U.S. at 687-91, 694. A defendant has the right to effective assistance of counsel at the plea bargaining stage. United States v. Day, 969 F.2d 39, 42-43 (3d Cir. 1992) (citing United States ex rel. Caruscov v. Zelinsky, 689 F.2d 435 (3d Cir. 1982)). If at the plea bargaining stage, counsel gives advice that is so incorrect and insufficient that it "undermine[s] a defendant's ability to make an intelligent decision about whether to accept the offer," a defendant's right to effective assistance of counsel has been violated. Day, 969 F.2d at 43. If a defendant is "seriously misled about his sentence exposure when the likelihood of his conviction was overwhelming, he received ineffective assistance of counsel". Id. at 44. If trial counsel did indeed render unreasonable advice regarding a defendant's sentencing exposure, then the court should consider whether there is a reasonable probability that the defendant would have accepted a plea offer had he been given accurate advice. Id. at 45.

Importantly, a "defendant need not show that counsel's deficient conduct more likely than not altered the outcome of the case". Strickland, 466 U.S. at 693. Rather, a defendant must show only "a probability sufficient to undermine confidence in the outcome". Id. at 693-94.

B. Reasonable jurists could find debatable whether the district court clearly erred in its factual findings.

The district court clearly erred in finding, contrary to the written evidence, that trial counsel informed Mr. Chambers that he was facing a possible sentence of 30 years after trial. Trial counsel's notes which were copious and detailed, were completely absent of any evidence of a guideline range of 30 years. Trial counsel took notes regarding the number of times she met with Mr. Chambers and the topic of conversation during these meetings. In all of these notes, the only written indication of any guidelines calculation that was communicated to Mr. Chambers was a calculation of 151-188 months if he were convicted after a trial. In all trial counsel's notations, there was no indication that she discussed

a higher sentencing guidelines range or a possible sentencing exposure of 30 years. Rather, the written documentation presented at the evidentiary hearing indicated in two separate locations that Mr. Chambers was facing a guidelines range of 151-188 months. This specific range was noted in trial counsel's notes regarding her first meeting with Mr. Chambers (PA at 10) and in the government's pretrial detention memorandum containing trial counsel's hand written notes, on which trial counsel circled the guidelines range of 151-188 months (PA at 13). Even though additional pages of notes from trial counsel's file were admitted at the evidentiary hearing, none of these documents contained a differing sentence guidelines range of 151-188 months or any notations of a greater possible sentence after trial.

In light of this documentary evidence, Mr. Chambers respectfully submits that the district court clearly erred in finding that Mr. Chambers was not denied any constitutional right. At the very least, reasonable jurists could find debateable whether the district court's findings were clearly erroneous.

#### CONCLUSION

For the foregoing reasons, Petitioner Zachary Chambers respectfully requests that the Court grant his Petition for a Writ of Certiorari.

Respectfully Submitted,



ZACHARY CHAMBERS

Dated: May 10, 2018