No. 18-6718

IN THE

SUPREME COURT OF THE UNITED STATES

TIMOTHY EDWARDS-PETITIONER

VS.

UNITED STATES OF AMERICA-RESPONDENT

SEVENTH CIRCUIT APPEAL COURT

APPELLATE NO. 17-2436

PETITION FOR WRIT OF CERTIORARI

Timothy Edwards, Pro Se
Inmate Number 11371-025
Yankton Federal Prison Camp
P.O. Box 700
Yankton, South Dakota 57078

QUESTION PRESENTED

The Appellate Court violated Mr. Edwards Sixth Amendment Due Process Rights and Supreme Court precedent by the strict application of Rule 4(b). Where the cause was Attorney Abandonment thereby, making the short delay "Excusable Neglect" as to a Pro Se Defendant.

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:

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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 _____; 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[✓] is unpublished.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 _____ to the petition and is

[ ] reported at _____; 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[ ] is unpublished.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[ ] is unpublished.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[ ] is unpublished.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

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 1, 2018, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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).

RELEVANT CONSTITUTIONAL PROVISIONS AND RULES

United States Constitution Amendment 6, rights of the accused. in all criminal prosecutions, the accused shall enjoy the right to speedy and public trial, by an impartial jury of the State and the 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 compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States Appellate, Rule 4(b) Appeal in a Criminal Case.

(1) Time for filing a Notice of Appeal

(A) In a criminal case, a defendant's notice of appeal must be filed in the District Court within 14 days after the alter of:

(i) The entry of either the judgement or the order being appealed: or

(ii) The filing of the Government's notice of appeal:

STATEMENT OF THE CASE

Timothy Edwards was operating Edwards Street Machines, in New Baden Illinois. The business repairs, refurbishes and rebuilds customs and antique cars. Timothy Edwards, was able to start the business from money received by his mother from the death settlement, from the railroad death of Edwards' younger brother [PSI P.16,¶96]. He had always been a hard worker, having started work at a young age to help support his family. [PSI P.14,¶81].

Timothy Edwards, a devoted father and "husband", to his significant other Natalie Schaefer, his step daughter Kacie, and his toddler Mia. [PSI 13, ¶74-75].

Yet, all was not easy for Timothy Edwards. He was in special education in elmentary/middle school. He graduated from high school 123 out of 150. Timothy Edwards would tell you that vocational school got him through high school. It was his hands, that got him through, Certification in Collision/Refinishing Technology with Specialty in Auto Fabrication. [PSI ¶5,90-95].

Timothy Edwards, suffers from depression, anxiety and panic attacks. He also has experienced trauma due to the loss of his grandfather and the sudden tragic death of his brother. Timothy Edwards, continues to suffer from panic attacks, and anxiety attacks, that make him feel like he is having a heart attack, and remains depressed since the death of his younger brother. [PSI P.14, 83-83].

During the winter of 2014, David Jenkins was caught dealing cocaine. David Jenkins named Lisa Stamm and Timothy Edwards as his connections. Further, he maintained that Edwards sold the cocaine from his shop. [PSI 5-8]. Additionally, proffered that Timothy Edwards for Mr. Jnekins', to Jenkin's Federal Probation Officer. All of which Timothy Edwards, has denied until he was coerced, theatened and made promised for four hours in the hallway, the day of jury selection.

On September 17, 2014, Defendant, Timothy Edwards, originally was charged by indictment, [R. 1], knowingly and intentionally distributing cocaine and marijuana, in violation of Title 21, United States Code, Section 841(a)(1). On October 22, 2014, a superseding indictment was returned, containing same charge, on May 17, 2016 a second superseding indictment as to Timothy Edwards

was returned adding two additional charges, so that the final indictment: Count 1 charged 21 U.S.C. §841(a)(1)(b)(1)(c) and 846; Count 2 charged 18 U.S.C.§ 1001(a)(2), making a false statement to Federal Law Enforcement Officer; and Count 3, 21 U.S.C. § 856(a)(1)and(b), maintaining a place of business (1001 State RT. 177 New Baden Il.), for the purpose of distributing controlled substances, maintaining a drug involved premises. As well as a Forfeiture allegation of said property.

Mr. Edwards proceeded to a change of plea hearing. Mr Edwards plead guilty to Count 1-3. [R. 132]. The District Court imposed sentence on Mr. Edwards on April 7, 2017. [R. 170]. Final judgement was entered on April 10, 2017. [R. 174].

That Edwards learned for the first time on/about May 20, 2017, that counsel did not file "Notice of Appeal", but instead abandon Edwards. On 6/2/17, Edwards mailed his "Motion to Extend Time to File Late Notice of Appeal" that was "filed" on 6/7/17 under de [R. 179] pursuant to Federal Rule of Appellate Procedure 4(b)(4)(Criminal Appeal) however, Edwards believed that based on "Civil" forfeiture (as proclaimed by AUSA Durborow and Counsel Boyd emails) he may be governed under Rule 4(a) for "Civil" appeals that provide for lengthier extension of time. Either way, Edwards never received neither "Civil" forfeiture hearing, documents or, "Criminal" forfeiture hearing or documents. That on 6/20/17, [R. 182] the District Court issued it's denial of [R.179] stating that the 30 days had lapsed without addressing Edwards' "Good Faith" and "Excusable Neglect". On 7/5/17, Edwards' filed his "Notice of Appeal " to the Court's denial order [R.182]. On 7/6/17, the District Court entered a "Final Order of Forfeiture" [R.192] of which Edwards claims the District Court either lacked Jurisdiction to enter, due to the "Notice of Appeal" having been filed on 7/5/17, leaving the forfeiture matter open or being premature notice, or appeal allowing the belated "Final Order of Forfeiture" to act as just that of a "Final (Criminal) Order of Forfeiture" triggering the 14 day requirement under Rule 4(b) for filing a "Notice of Appeal". Whereas, Edwards had filed a "New Notice of Appeal" within the 14 day time frame with the District Court on 7/13/17 [R.193].

Jurisdiction for the **Writ of Certiorari** rest with the Supreme Court's discretion pursuant to this Court's Rule 10.

1. References to the record in this case will be designated "R.__" with appropriate docket number. Reference to the Change of Plea Hearing will be designated "CPH___"; Reference to the PreSentence Investigation will be designated "PSI_" with page and paragraph. The Appendix as "App._".

REASONS FOR GRANTING THE PETITION

Timothy Edwards was sentenced April 7, 2017. Judgement was entered on April 11, 2017. The 14 day Notice of Appeal passed on April 25, 2017. Edwards had expected and had expressed his desire to appeal to counsel prior to sentence. (Indeed, he wanted to withdraw the plea). He left it to Counsel to get it done. He surrendered to the BOP at Pekin Federal Prison Camp on May 16, 2017. After the delay of getting phones and email up and running, he checked on his appeal. On May 20, 2017, Edwards, Pro Se, mailed and filed "Motion to Extend Time to File Late Notice of Appeal". (R. 179). This a mere 38 days after the initial due date. This is not three months after. The Notice request was denied June 20, 2017. Edwards filed his "Notice of Appeal" to this order on July 5, 2017. (R. 182). This became Appeal Cause No. 17-2365 on July 6, 2017, the District Court entered a "Final Order of Forfeiture." (R. 192). A "New Notice of Appeal" within the 14 days on July 13, 2017, (R. 193). This Notice became Appeal 17-8014 . On July 5, 2017 , the Seventh Circuit merged and 17-2365 into Appeal 17-2436. The Court of Appeals has all timing in it's order in error. This ruling falls in the face of this very Court's precedence.

> "I do not question the correctness of the Court of Appeals construction of Fed. R. App. P. 4(b), nor that it's sua sponte action is consistent with the plain language of Fed. R. Crim. P. 49(c). Nevertheless, if the Rule 4(b) & 49(c) were truly the last word in defining petitioner's opportunity to appeal under our federal system of procedure. Simply put, the application of these Rules to penalize an uncounseled and incarcerated defendant for a clerical error that was none of his doing and of which he had no knowledge, would seem to me not only unduly harsh but resoundingly unjust. See **Logan v. Zimmerman Brush Co.**, 455 US 422, 433-437,71 L.Ed. 2d 265,102 S. Ct. 1148(1982); **Boddie v. Connecticut**, 401 US 371, 377-379, 28 L.Ed. 2d 113, 91 S. Ct. 780(1971); **Mullane v. Central Hanover Trust Co.**, 339 US 306, 313-315, 94 L.Ed. 865, 70 S. Ct. 652(1950).

It is established here not only by this Petitioner's lack of understanding, but Attorney's failure to follow the established duty to file "Notice of Appeal".

> "But even though no one would think a doctor incompetent for refusing to perform unwise and dangerous surgery, the law is that "a lawyer who disregards specific instruction from the defendant to file a notice of appeal acts in a manner that is unprofessionally unreasonable." 18 Indeed, in **United States v. Peguero**, 19 the Supreme Court summarized its previous holding in **Rodriquez v. United States**, 20 as "when counsel fails to file requested appeal, a defendant is entitled to resentencing and to an appeal without showing that his appeal would likely have had merit." 21 This

proposition may amount to saying "it is ineffective assistance of counsel to refuse to file a notice of appeal when your client tells you to, even doing so would be contrary to the plea agreement and harmful to your client," but that is the law on filing a notice of appeal. Quoted from **United States v. Sandoval-Lopez**, 409 F.3d 1197 (2004)

"In saying this, we recognize that six Courts of Appeals have held that a waiver of appeal does not relieve counsel of the duty to file notice of appeal on his client's request. See **United States v. Campusano**, 422 F.3d 770, 772-77 (2cd cir 2006); **United States v. Poindexter**, 492 F.3d 263, 2007 U.S. App. Lexis 15360(4th cir June 28, 2007); **United States v. Tapp**, 491 F.3d 263, 2007 U.S. App. Lexis 15343(5th Cir June 28, 2007); **United States v. Sandoval-Lopez**, 409 F.3d 1193, 1195-99 (9th cir 2004); **United States v. Garrett**, 402 F.3d 1262, 1265-67 (10th cir 2005); **Gomez-Diaz v. United States**, 433 F.3d 788,791-94 (11th cir 2005). These decisions all rely on the holding of **Roe v. Flores-Ortega**, 528 U.S. 470, 120 S. Ct. 1029, 145 L. Ed. 2d 985(2000), that a criminal defendant has a statutory right to appellate review, and that when counsel utterly frustrates that right by failing to appeal on his client's request, counsel's performance is automatically ineffective. A lawyer who does not show up for trial might as well be a moose, giving the defendant a moose does not satisfy the Sixth Amendment. See **United States v. Cronic**, 466 US 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984). The same understanding [495 F.3d 547] applies when a lawyer does not show up for appeal. Quoted from **United States v. Nunez**, 546 F.3d 450, 456 (7th cir 2008).

This was clearly abandonment of Mr. Edwards. This failure is clearly contrary to even the basics of District Court's explanation of the Appeal Waiver. First, the District Court stated:

The Court: It's important for me to highlight one of the things that Ms. Durborow said. As I understand it, your agreement includes your agreement that you not-- that you will not appeal a sentence as long as it's-- I take it as long as it's within the guideline range. Is that how that appeal--did you say appeal waiver?

Second, the District Court stated:

The Court: Okay. So, for example, if Congress changes a law, if the Sentencing Commission changes the law, if the Seventh Circuit, the appellate court for this circuit in which we sit, were to change the law, it sounds like under these terms you could take advantage of any such change in the law. But as far as a reasonable sentence, if I impose a sentence within the guideline range, you've said, well I'm not going to try to change it on that basis alone.

While Edwards disagrees with the sentence, as this Court can see from this Writ of Certiorari. There is more, for you see, this oral plea agreement is no contract at all. There is no meeting of the minds as to the terms of the plea. (See discussion following herein). Indeed, the alleged agreement was not even compete. The forfeiture issue was

unresolved. Edwards can not be said to have had a meeting of the minds. Further, emphasizing this point is the District Court's closing at sentencing. The District Court states:

> The Court: If requested, the clerk will prepare and file a notice of appeal on your behalf. If you cannot afford to pay the costs appeal or appellate counsel, you have the right to apply for leave to appeal in forma pauperis, which means you can apply to have the Court waive your filing fee. On appeal you may also apply for Court appointed counsel.

The Appellate Court's dismissal under 4(b) was an act of manifest injustice. Mr. Edwards was abandoned by counsel. Under **"Strickland"** established the legal principals governing ineffective-assistance-of-counsel claims. Namely, a defendant must show both deficient performance and prejudice. Id., at 687,104 S. Ct. 2050, 80 L.Ed. 2d 674. It is the first prong of **Strickland** test that is at issue here. In assessing deficiency, a court presumes that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgement." Id., at 690, 104 S. Ct. 2050, 80 L.Ed. 2d 674. The burden to rebut that strong presumption rests on the defendant, Id., at 687, 104 S. Ct. 2050, 80 L. Ed. 2d 674, who must present evidence of what his counsel did or did not do, see **Burt v. Titlow**, 571,U.S.___, ,134 S. Ct. 10, 187 L. Ed. 2d 348 (2013). What counsel did not do is clear and shows that the presumption is rebutted:

1. They did not adhere to Edwards' Speedy Trial requests;
2. They did not reveal to Edwards' critical retraction by government witness;
3. They did not reveal absents of a key witness;
4. They did not protect or defend Mr. Edwards during the plea negotiations or collquy;
5. They, most critically here, failed in the representation of Mr. Edwards in the filing of the "Notice of Appeal". Which was their duty as retained counsel. Indeed, they did not, by their own admission, discuss it with Mr. Edwards; rather, they unilaterally decided not to file said notice of appeal. This despite Mr. Edwards expressed dissatisfaction with the plea, and the desire to withdrawal same.

Beginning with the last point, it is so well established that it is counsel's duty, whether retained or appointed, to file the "Notice of Appeal", that case law need not be cited. Even if counsel does not believe there are appealable issues. The course is to file the notice and withdraw. If not allowed to withdraw, counsel could file Anders brief, if he believes no appealable issues exists. Counsel did none of the above, nor did counsel give Mr. Edwards notice that he would not

file "Notice of Appeal". Mr. Boyd states in his sworn affidavit for the government against Mr. Edwards "we never discussed appeal". It is this ineptitude that was strikingly present the day of trial. While asserting pressure to plead, counsel failed to inform his client, Edwards, that a witness was absent. Martha Medina alleged co-conspirator, although not charged was held in contempt for failure to appear the first day of trial as docket shows. Furthermore, as docket shows she was arrested after Edwards' sentencing, in Texas. Were the government not only did not charge her but waived immigration pending with her presents in the United States.

Yet, they did manage to present and pressure along with AUSA several threats to force the plea.

1. That Mr. Edwards would receive 70 year sentence;
2. That his fiancee would be charged, convicted and serve 30 years;
3. That his then two year old daughter would be placed into foster care;
4. That the government had nine banker boxes of "New Evidence", never before seen;
5. That in return for plea he would receive 5 years at the most, 2-3 years possibly;
6. That if he paid for the property in lieu of forfeiture of $50,000;

They, then promised certain plea results of 5 years or less. Which will be further detailed in the following argument. As counsel sat silently by and let the colloquy run away from the intent, or understanding of the alleged plea agreement, helping neither the Court or Client.

A detailed look at the plea hearing, clearly demonstrates the manifest injustice of using Rule 4(b) to exclude Edwards from Direct Appeal. For Timothy Edwards did not knowingly enter into his guilty plea. The plea colloquy did not properly inform Mr. Edwards of the minimum sentence, the elements of the charges contained in the Second Superseding Indictment, or the Government's burden to prove each element beyond a reasonable doubt. The plea colloquy leaves in doubt whether Mr. Edwards even knew the exact crime he was pleading to in this case. Further, the District Court failed to question and advise Timothy Edwards regarding the promises and threats that were made to him

during the four hour hallway discussion prior the hearing.

Edwards asserts that his plea colloquy did not comply with Rule 11 because he was not questioned and advised sufficiently or properly under Criminal Rule of Procedure 11 to enter a knowingly, voluntary and intelligent plea. He admittedly never, actually his counsel never, filed a motion before the District Court. However, Mr. Edwards had requested his counsel to file same. While this is admittedly a 2255 issue, it may be relevant to the standard of review this Court uses in this appeal. This Court's review is for "plain error" if no motion to review was sought at the District Court. **United States v. Vonn**, 535 U.S. 55, 62, 122 S. Ct. 1043, 152 L. Ed. 2d 90 (2002); **United States v. Burnside**, 588 F.3d 511,520 (7th cir 2009). Yet, Timothy Edwards, by emial on October 18,2016, attached hereto as App. Pp. "B", but counsel failed to file as with other motions and response. (See docket entry [107] and order). If counsel had complied with this demand this Court would review a guilty plea for abuse of discretion. **United States v. Chavers**, 515 F.3d 722, 724 (7th cir 2008). After a guilty plea is accepted, a defendant may withdraw a guilty plea for a "fair and just reason" for doing so. Fed. R. Crim. P. 11(d)(2)(B). IN which case, a District Court's findings, if motion and hearing had taken place and here it should have, would be reviewed for "clear error". **Chavers**, 515 F.3d at 724. There is "clear error" here with a fair reading of the change of plea transcript.

The claim of a Rule 11 violation is determined by whether (1) an error has occurred; (2) it was plain; (3) it affected Edwards' substantial rights; and (4) it seriously affected the fairness, integrity or public reputation of judicial proceedings. See **Burnside** 588 F.3d at 520.

Rule 11 has certain requirements that the District Court must do before "the Court accepts a plea of guilty... the Court must address the defendant personally in open court...[and] inform the defendant of, and determine that the defendant understands... the nature of the charges to which the defendant is pleading." Fed. R. Crim. P. 11(b)(1)(G). Defendant must be informed of "any possible maximum penalty, including imprisonment, fine and the terms of supervised release." Fed. R. Crim. P. 11(b)(1)(I) he must know "any applicable forfeiture." Fed. R. Crim. P. 11(b)(1)(J) Importantly, "before

accepting a plea of guilty..the court must address the defendant personally in open court and determine that the plea is voluntary and not the result from force, threats or promises (other then plea agreement). Fed. R. Crim 11(b)(2).

> The case law is clear, Rule 11 requires that; a District Court "ensure that [Defendant] understands the law of his crime in relation to the facts of his case." **United States v. Vonn**, 535 U.S. at 62. Unless the defendant "fully comprehends the elements of the crime to which he is confessing, his plea cannot be said to be knowingly and voluntarily entered." **United States v. Fernandez**, 205 F.3d 1020, 1025 (7th cir 2000)(quotation and citation omitted) to determine whether a defendant in fact understands the nature of a charge, we take the totality-of-the-circumstances approach and consider (1) the complexity of the charge; (2) the defendant's intelligence, age, and education; (3) whether the defendant was represented by counsel; (4) the District Judge's inquiry during the plea hearing and the defendant's own statements; and (5) the eveidence proffered by the government. Id., citing **United States v. LeDonne**, 21 F.3d 1418, 1423 (7th cir 1994). **United States v. Pineda-Buenaventura**, 622 F.3d 761, 771 (2010). Id. 771.

The law is clear. The Trial Court must accomplish certain tasks, as set out above, during a change of plea hearing.

> "[A] guilty plea violates Due Process because it was not knowingly and voluntary. It is fundamental that 'a plea of guilty must be intelligent and voluntary to be valid.' **Brady v. United States**, 397 U.S. 742, 747 n4, 25 L.Ed. 2d 747, 90 S. Ct. 1463 (1970). Moreover, a plea is not voluntary 'in the sense that it constituted an intelligent admission that he committed the offense unless the defendant received 'real notice of the true nature of the charge against him, the first and most recognized requirement of the Due Process.' **Henderson v. Morgan**, 426 U.S. 637, 645, 49 L.Ed. 2d 108, 96 S. Ct. 2253 (1976) (quoting **Smith v. O'Grady**, 312 U.S. L.Ed. 859, 61 S. Ct. 572 (1941)). To this end, Rule 11(b)(1)(G) of the Federal Rules of Criminal Procedure requires that a defendant adequately be informed of and understand 'the nature of each charge to which the defendant is pleading.'" **United States v. Bradley**, 381 F.3d 641, 646 (7th cir 2004).

The District Court failed to carry out the necessary tasks required by Fed. R. Crim. P. 11. The District Court certainly failed to make sure Timothy Edwards understood the charges. Mr. Edwards plea was not voluntary, and understood, violating his Due Process. Thus, under either standard of review Timothy Edwards plea must be rejected and set aside as not knowingly, intelligently, or voluntarily entered.

> Mr. Edwards does not waive his ineffective counsel argument in a 2255, but points out to this Court that there is "clear error" on the record here requiring a hearing at the District Court level. He is confident he also reaches the "plain error" standard of review. Yet, in the

unorthodoxed appendix, he clearly demonstrates that he is entitled to remand for a hearing on validity of his plea. The plea should be found to void ab initio.

The individual defendant is to be taken into account when assessing the application of Fed. R. Crim. P. 11. The case law is clear, that this must be done.

> As the Fernandez case indicates the individual himself is important. Our assessment of these factors in Fernandez, a native Spanish-speaking defendant with a fifth grade education and limited English plead guilty to conspiring to distribute marijuana 205 F.3d at 1022. At his plea hearing, Fernandez, like Pineda-Buenaventura here, demonstrates confusion both in the concept of conspiracy and specific acts which he was pleading guilty. Id. at 1025-1027. In his exchanges, with the court, Fernandez gave ambiguous, partial, and even contradictory answers, and even at times appeared confused. **United States v. Pineda-Buenaventura**, 622 F.3d 701, 771(7th cir 2010).

Here, we have similar difficulties in seeing Timothy Edwards as a defendant who understood the change of plea hearing. Mr. Edwards walked into the District Court that fateful day expecting to go to trial. However, he was greeted by counsel and a prosecutor that were bound and determined to end it in a plea agreement. After four hours in which threats, and promises were made, of which the Trial Court hardly questioned and advised regarding, Edwards was induced to plead guilty. He was told his daughter would be handed over to social services. The Government claimed to have 9 additional banker boxes of "New Evidence" not previously seen by the defense. The mother of his children was threatened with indictment. He was also made various promises consistent with previous plea offers, and AUSA emails for lesser sentences. This becomes clear, when Edwards states that he expects a sentence to a term of five years. (CPH P. 7, 11. 24-25).

As to the individual, Timothy Edwards, we have one who was struggling to keep up that day. As discussed above, he came in expecting to go to trial. He was subject to various threats and promises from his counsel and the Government. He also entered that courtroom two days after the anniversary of his younger brother's tragic death. This death hit him so hard that he was diagnosed with Post Traumatic Stress Disorder. (hereinafter PTSD). A condition that Mr. Edwards carries to this day. Mr. Edwards sought help for the PTSD from the loss of his brother. (PSI 14).

Additionally, he self medicated with marijuana, as illustrated by many therapy clinics, he had no resolution to this on going issue and it adversely affected him in pressure situations. (PSI 14). Compounding the pressure of these charges and the PTSD was the fact Mr.Edwards, while successful in auto restoration, is limited in his education. He went through elementary school attending learning disability classes. He struggled then, as now, with comprehension, speech and reading. (Mr. Edwards is being assisted here by fellow inmates.) He struggled through High School finishing 123 out of 150 (PSI 15). He got through by attending half days at Collinsville Vocational Center for autobody. This got him through high school not academics.

Into this situation comes layman Edwards, his intelligence, age, emotional condition and education need to be considered. As in Fernandez, Bradley, and United States v. Fard, 775 F.3d 939, 940 (7th cir 2014). Mr. Edwards factors argue against knowing, intelligent, and voluntary plea.

The first major confusion comes when in as to the actual charge Mr. Edwards is pleading. The Government states that he is pleading to a lesser included of Count 1 and Counts 2&3. (CPH P 2). Mr. Edwards repeatedly states he has not seen any documents, confusion carries the day from the begining. Indeed, The District Court tells Mr. Edwards that " your pleading today is somewhat different." A review of the opening of the hearing makes the reigning confusion clear:

> The Court: Okay. So Now, as I understand it you're pleading to today is somewhat different than what's in the Second Superseding Indictment, a so-called lesser included charge.
> The Defendant: I have not seen any paperwork, Your Honor.
> The Court: All right. But you understand what you're pleading to?
> The Defendant: Yes.
> The Court: Can you tell me what you're pleading to?
> The Defendant: Pleading to conspiracy to distribute cocaine and marijuana (CPH P. 6, 11. 21-25).

This vague summary of the oral amendment to the Second Superseding Indictment is not completely correct. Timothy Edwards was to plead to Three Counts and admit to a forfeiture. The further colloquy does not resolve this issue.

The Court: All right. Now, your facial expression suggests that--did I surprise you with saying that?
The Defendant: I haven't had reviewed any paperwork of anything, Your Honor.
The Court: I understand that. But you've been talking to your lawyer for like four hours, right?
The Defendant: Yes, Your Honor.
The Court: Have you been participating with your lawyer in talking about what it is you're pleading to?
The Defendant: Yes, Your Honor.
The Court: Do you feel like you understand what you're pleading to?
The Defendant: For the most part,Your Honor. (CPH P. 7, 11. 1-16).

Two things happen here. First, Timothy Edwards facial expresses surprise over what he is to plead to. Second, he expresses a desire to see it in writing. The District Court in response mentions that there was four hours of discussion in the hallway. The District Court fails to delve into what was said in the hallway, rather he moves on to Timothy Edwards' understanding.

The Court: Why don't you tell me what you understand about you plea in this case.
The Defendant: I understand that I'm basically to admit any and all guilt in this situation, to avoid facing ten to life in prison, to receive a lesser sentence.
The Court: All right. And what is it that you think you're receiving as result of that?
The Defendant: Five years. Potentially five years.
The Court: Rather than being exposed to ten years to life, you're being exposed to what?
The Defendant: Twenty. (CPH P. 7-8, 11 17-25, 1-3).

This is telling. Timothy Edwards expresses that he is facing potenially five years. He does not say five to twenty or the correct five to forty. The District Court does not explore this five year mind set at all.

Yet, note that at the moment of acceptance of the guilty plea the District Court states:

The Court: So it's in the finding of the court, in the case of United States of America vs. Timothy Edwards, that the defendant's fully competent and capable of entering an informed plea. Defendant is aware of the nature of the charges and the conseqences of the plea. The plea of guilty is a knowing and voluntary plea supported by an independant basis in fact containing each of the essential elements of the offense contained in Counts 1,2 and 3 of the superciding indictment. Therefore accepted and the defendant is now adjudged guilty of those offenses. (CHP P 31, 11. 16-25).

This is not accurate. It was not a plea as to Count 1 of the indictment; rather, an amended Count 1,2, and 3 plus agreement to forfeiture Count.

While this error may not be sufficient to void the plea as to a misunderstanding of the charges to which Timothy Edwards was pleading, there is more confusion as to the elements and relation to Government burden of proof. The District Court did not comply with Federal Rule of Criminal Procedure 11. While the Government would state the elements it believed it could prove, Timothy Edwards labored under the belief that the Government only had to prove one thing, to get the whole thing. This lack of definition becomes clear in Timothy Edwards response to the District Court's inquiry into the elements.

> The Court: Were there-- do you believe the Government would be able to prove each of those elements of each of those offenses?
> The Defendant: It's my understanding that they only have to prove one part to pretty much get the whole thing, right?
> The Court: Well that's-- I'm not so sure about that, but as to each of those individual--and as Mr. Boyd could probably tell you, the Government has to prove each count independently. The Jury would have to find you guilty as to each of those counts.
>
> They have to approach these counts almost like three separate cases. They have to make a finding on Count 1, then they have to make a separate finding on count 2, and a separate finding on count 3. In other words, just because they find you guilty on let's say count2, they don't necessarily--they can't just assume you're guilty of count 1 and also guilty of count 3. They have to separately either guilty or not guilty of each count. And so in your answer, not so much.
>
> The evidence may--the evidence that comes in at trial may be applicable to count 1 and also to count 3, or count 2 and count 3 or count 1 and count 3, but they have to make separate finding as to each count.
>
> So do you believe the Government could--would be able to prove their case as to each of those counts?
> The Defendant: Yes, Your Honor. (CPH P. 24-25, 11. 13-25,1-4).

Mr. Edwards was not informed anywhere in the plea colloquy that the Government had to prove more than "one part to pretty much get the whole thing." The District Court's discussion deals only with separate findings as to each count, but neglects an explanation that the elements of each count have to be proven. There is no discussion that all the elements not one part have to be proven. These elements must be proven beyond a reasonable doubt.

reasonable doubt.

The case law is clear. "When the Government purposes a plea agreement, when the defendant accepts it and when the District Court enforces it, there must be a meeting of the minds on all it's essential terms. Among the essential terms is the 'nature of the charges to which the defendant pleads.'" **Bradley** at 648 citing **United States v. Barnes**, 83 F.3d 934, 938(7th cir 1996). **Bradley** also states:

> "When there is no evidence that the requisite elements of the offense were comprehended by any party to the proceedings, confidence in the defendant's understanding of the charge certainly undermined. As we previously have explained, 'unless the defendant understands the elements of the crime he is admitting, his plea cannot be said to have been knowingly and voluntarily entered. **Bradley** at 646-647 citing **Untied State v. LeDonne**, 21 F.3d 1418, 1423(7th cir 1994)."

A Court must make certain that the defendant understands the elements of crime charged. **United States v. Blackwell**, 172 F.3d 129 (2cd cir 1999). It is not sufficient to prove facts that don't go to elements. It is not sufficient to fail to prove beyond a reasonable doubt. It certainly is not sufficient to leave a defendant thinking that the Government only needs to prove one part of the case, to get the whole thing. When Edwards stumbles through this portion of the colloquy the District Court rushes on. The District Court discusses charges as a whole and not essential elements.

Indeed, the **Fernandez** case illustrates in detail that it is a Fed. R. Crim. P. 11 failure to make sure the defendant understands the charge. The Seventh Circuit's discussion of the issue makes it abundantly clear.

> "Another factor, the depth and clarity of the discussion between the Trial Judge and the defendant concerning the nature of the charge, illustrates that Fernandez experienced substantial confusion over the crime to which he was admitting guilt. For example, when the District Court asked Fernandez, if he has done the things set forth in AUSA's factual proffer, Fernandez responded, "Not all of the acts, partially." When asked which acts he didn't commit, Fernandez changed his answer to "Yes, Your Honor, I did." In response to this new and dualistically different answer, the District Judge bypassed Fernandez altogether and questioned the interpreter directly asking "He did those things?" To which the interpreter answered "Yes." The confusion over precisely what acts Fernandez admitted continued at the hearing on his motion to

withdraw the guilty plea. During that hearing, the Trial Court asked Fernandez, if he understood everything that the previous lawyer had told him at the change of plea hearing and Fernandez responded, "Not everything. I thought I was pleading guilty partially."

In short, Fernandez' accounts of which acts he admitted and those he denied were murky. Based on this record it is impossible to ascertain precisely what acts Fernandez admits and which he denies. Fernandez twice told the District Court that he was only "partially guilty". However, without further investigatory questions to flush out the details of Fernandez' participation in the conspiracy, the District Court accepted the guilty plea. Because we cannot glean a clear understanding of Fernandez' participation in the crime charged. It is impossible to determine whether Fernandez himself understood the nature of the crime to which he was pleading guilty. The final factor in our totality of the circumstances approach requires us to analyze the Government's proffered evidence. We find the Government's factual proffer detailed and, normally, it would probably be sufficient to secure Fernandez' guilty plea. The facts show, however, that this was anything but ordinary change of plea hearing. Fernandez' attorney had a serious conflict of interest; there was no written and signed plea agreement with the Government; and the language barrier between Fernandez and the District Judge caused substantial confusion during the hearing--so much confusion that the District Court resorted to questioning the interpreter rather than Fernandez. Neither the District Court nor the AUSA explained the nature of the crime of conspiracy to Fernandez. Fernandez, changed his responses to whether, he had, in fact, committed the acts related to the factual proffer. **Fernandez** at 1026-1027.

Likewise here, the District Court never explains the meaning of elements and burden. The District Court never fully explores Timothy Edwards the individual. When Edwards' admits to the AUSA proffer, no knows from the record, and the District Court never questioned Edwards' to make sure, that Edwards was not still laboring under the belief that the Government only has to "prove one part to pretty much get the whole thing, Right?" The District Court's response "..I'm not sure about that.." If the District Court is not sure, how than is Edwards. In fact, the District Court rushes on to a discussion of whole charge not the elements.

Truly, it was not until this appeal, that Timothy Edwards came to have some understanding of elements to a charge, and that the Government had to prove each one. Timothy Edwards now sees that guilt means more than "they have to prove one part." The District Court handled the charges like

Timothy Edwards was a lawyer not a layman laboring under restraints .

The lack of completeness of the District Court's plea colloquy failed to meet the requirements of Fed. R. Crim. P. 11(b)(1)(G), or even an understanding to what it means to have a trial by jury as required under Fed. R. Crim. P. 11(b)(1)(C). When this is combined with the individual Timothy Edwards, suffering from PTSD, struggling with reading, speech, and comprehension, and badgered into acceptance of a partial understanding. The plea is factually fatally flawed. The District Court did not properly explain the meaning of mandatory minimum penalty, or for that matter the maximum possible sentence. Timothy Edwards clearly states that he is receiving "Five year. Potentially five years." This is a far cry from the sentence of seven years eventually handed out by the District Court. While there is some discussion about the maximum sentence, Edwards believed it was 20 and the District Court corrected to 40. This, however, does nothing to address Timothy Edwards belief in potential 5 years. Indeed, the confusion continues about the sentence and range further into the hearing. In this moment, it becomes clear that Timothy Edwards was not understanding the sentence administration.

> The Court: And those are consistent with what you understand when you came to the decision to plead guilty?
> The Defendant: Are those all different ranges?
> The Court: No. You understand those things when you made your decision to plead guilty?
> The Defendant: Yes, Your Honor. (CPH P. 16, 11. 12-17).

The ranges and the maximum are all confused. Edwards is badgered into this acknowledgement. Further, was the District Court asking a question or making a statement that Edwards acknowledged in a manner consistent with the setting. Timothy Edwards was left in the dark. This continued even after the change of plea hearing. In his October 18, 2016, email to counsel and counsel's reply, it becomes clear that 5 years was the intended potential. Timothy Edwards does not even mention the five years, but counsel immediately jumps into defending five years.

Again, the case law is clear. A Sentencing Court must insure that a defendant enters into a plea knowingly and voluntarily wanting to plead guilty, with knowledge that he will receive a sentence of at last certain terms. **United States v. Glover**, 623 F.3d 413 (7th cir 2010). The District Court did

not do this here. This becomes even more certain when the violation of Fed. R. Crim. P. 11(b)(2) is discussed herein. At the change of plea hearing, the District Court failed to advise or question Timothy Edwards on any aspect of the applicable forfeiture as required by Fed. R. Crim. P. 11(b)(1)(J). It is waved to the side by the District Court, the Government, and Defense Counsel. It becomes a side issue outside of the courtroom, just as the force, threats, and promises discussed Intra, an unresolved issue. Interestingly, this is another part , promise, or term of the "Oral Plea Agreement". Even though the U.S. Attorney's manual at 9-113.106 states the Government will not coerce a plea by use of a forfeiture. There are no question and answers about the potential interested parties in the to be forfeited property. The property owned by an LLC. There is no discussion of the civil and criminal forfeiture documents or preliminary order. There is no discussion of preliminary orders and final orders of forfeiture.

The record is void of mention of elements of the forfeiture required by 21 U.S.C. §853(a). That the Government would have to convict Timothy Edwards of Count 1 and/or Count 3. (Indeed, a review of the change of plea shows no discussion by the Court of Counts 2 & 3.) That the Government had to prove beyond a reasonable doubt that the property was derived from the proceeds of violation of Count 1 and/or Count 3, and used to commit and to facilitate the commission of the crimes alleged, was absolutely not discussed. That this is required in both civil and criminal side of forfeiture is not discussed. 18 U.S.C. §983(d).

The District Court failed to insure that the plea was not the result of force, threats, or promises. The District Court had opportunity to do so at a key point. The District Court was informed that a four hour hallway "discussion" took place. However, the District Court failed to question Timothy Edwards about the contents of such discussion. Did they result in any promises as to results? Was there any force placed upon Timothy Edwards? Was there any threats?

In the four hour hallway negotiations, Timothy Edwards was told (1) that he would receive a 70 year sentence; (2) His significant other would be charged, convicted, and serve 30 years; (3) That his then 2 year old daughter would be placed in foster care; (4) That the Government had nine banker boxes

of "New Evidence"; (5) That if he paid for the property in lieu of forfeiture an amount of $50,000; (7) It would be 5 years at the most, I would be able to see my daugters first day of kindergarten if plead. This was repeated over and over in the four hour by the AUSA Durborow and Mr. Edwards Attorney's. Mr. Edwards attorney's were more interested in talking and laughing about their night at Larry Flint's Hustler Club, then explaining the plea terms and meaning. This left, as Timothy Edwards said at change of plea hearing "In a pickle "as I have "No choice". (CPH P. 8, 1-13). The District Court did not explore this in any detail.

Machibroda explains that a plea that is induced by promises and threats deprive a plea of it's voluntary character. **Machibroda v. United States**, 368 U.S. 487, 82 S. Ct. 510, 7 L.Ed. 2d 473(1962). The change of plea hearing is full of indications that there is a larger amount of agreement terms than the District Court is ever told. The District Court's failure to comply with Rule 11 invalidates this plea.

Timothy Edwards asserts that because of the ineffectual and void plea because of the failure to follow Fed. R. Crim. P. 11, the proper standard of review is De Novo. See e.g. **Blackmon v. Williams**, 823 F.3d 1088, 1099 (7th cir 2013).

> "In a substantive actual-innocence claim, the defendant's "New Evidence" must be strong enough to convince the Court that his sentence is Constitutionally Intolerable " even if his conviction was the produce of a fair trial." **Schlup v. Delo**, 513 U.S. 298,316, 115 S.Ct. 851, 130 L.Ed. 2d 808 (1995). In a procedural-or "gateway"-actual-innocence-claim, the defendant's evidence need only establish sufficient doubt about his guilt to justify a conclusion that his sentence is a miscarriage of justice" unless his conviction was the product of a fair trial." Id. Put slightly differently, a defendant satisfies the gateway standard if his "New Evidence" raises "sufficient doubt about guilt to undermine confidence in the result.."Id. at 317."

3. The relationship with Edwards' Attorneys was strained due to counsel's failure to reply to Government's Motion in Limine.(Docket [125]). additionally, Counsel's derogatory and false statements on Facebook. (App. 6) counsel spending the night and early morning at Larry Flint's Hustler Club did not help. They might have been still under the influence.

The Appellant here argues that issue II and III is a miscarriage of justice in light of the defective plea colloquy. This Court should review in the same standard as **Schlup**. **De Novo** is proper.

Defendant-Appellant asserts that issue IV. Is also properly reviewed **De Novo** as it is a question of law.

There is a claim of Actual Innocence, for the violation of constitutional Rights. On September 16, 2014 Special Agent Chad Nord, testitfies under oath, in East St. Louis Illinois to a grand jury, to indict, Timothy Edwards, on Conspiracy to Distribute and Posses with Intent to Distribute Cocaine and Marijuana 21 U.S.C. § 841(a)(1),(b)(1)(B) and 846. Contradictory testimony from Special Agent Neil Rohlfing on October 21, 2014 states under oath to grand jury, hearsay not corroberated by fact or evidence. U.S. v. Williams 133 F.3d 1048 (7th cir 1998) statements made by informant to agent were hearsay, case overturned similar circumstances. Testimony and evidence proves Due Process Violation, were the grounds for the false indictment leading to illegal incarceration by Coerced Plea, defendant Timothy Edwards admitted under oath, to Honorable Judge Herndon, in front of AUSA Prosecutor Dierdre Durborow, thus making both said parties witness's to facts, day of jury selection, after four hours of coercion. Case law such as, Dooley v. U.S., 2011 U.S. Dist. Lexis 107748 September 21, 2011 and Feeny v. U.S., Dist. Lexis 17921 Febuary 8, 2017, although both 2255 motions before the 7th cir denied, due to improper pro se filings, lay ground work for said constitutional right violations, in a district with one of the highest plea bargin convictions as well as publically known for corruptions of power. Testimonry form S.A. Chad Nord and S.A. Neil Rohlfing, shown in for the record data stamped DJ 203-224 and DG 225-231. S.A. Chad Nord states for the record under oath, that meeting between Timothy Edwards, Lisa Stamm and "B" confidental informant, were Lisa Stamm allegedly brokers, a kilogram of cocaine, from Mr. Edwards to C.I. "B", evidence shows DEA had air survellance and alleged wire

tap used as evidence to grand jury to indict, then supercide indictment of Mr. Edwards. The grand jury conviently was never made aware that meeting was never recorded, due to technical difficulties and wire tap never recorded said meeting for alleged kilogram of cocaine for $42,500. U.S. v. Silva, 380 F.3d 1018 (7th cir 2004) conviction based on hearsay Hayes v. Brown, F.3d 372 (9th cir 2005) prosecutor knowingly presented false information U.S. v. Staffeldt, 451 F.3d 578 (9th cir 2008) wire tap was factually deficient. In actuality the meeting was at Mr. Edwards place of buisness, an automotive repair shop, open to the public, were the three discussed C.I. "B" and Ms. Stamm purchasing a wrecked Bentley for Mr. Edwards to repair for them. Evidence shown as "App 13" will show estimate from Mr. Edwards' shop for the purchase of Bentley for $44,625 which is spoken of in grnad jury testimony, text message picture from Ms. Stamm to Mr. Edwards for $42,500. Jells v. Mitchell, 538 F.3d 478 (6th cir 2008) material and inconsistant statement was with held. U.S. v. Cunningham, 145 F.3d 1385 (DC) cert. denied 525 U.S. 1059 (1998) unredacted tapes violated confrontation. This alone proves Gross Prosecutoral Misconduct, by lack of factual supporting evidence presented to grand jury. U.S. v. Watson, 260 F.3d 301 (3rd cir 2001) drug agents could not give opinion about defendants intent. Hayes v. Brown, 399 F.3d 972 (9th cir 2005) prosecutor knowingly presented false evidence. Through false testimony by S.A. Chad Nord and S.A. Neil Rohlfing to grnad jury, no actual "recorded" meeting between Mr. Edwards, Ms. Stamm and C.I. "B". This Fruit From a Posionous Tree caused the illegal indictment of defendant Mr. Edwards, Violating Due Process Rights, U.S. v. Boyd, 55 F.3d 667 (D.C. cir 1995) officer relied upon hypothetial in drug case. McKenzie v. Smith, F.3d 721 (6th cir) Cert. Denied 540 U.S. 1158 (2005) uncorroberated hearsay did not support conviction. Th hearsay in which was used as factual statements to grand jury, without ever conducting a controlled buy, without video or audio recording of any talk or agreement of purchase of drugs, nor confiscation of any illegal substances nor paraphenilla, from Defendant Mr. Edwards, showing no actual

involvement, nor particapation in said conspiracy. "The great hearsay rule... is a fundamental rule of safety, but one overinforced and abused,- the spoiled child of the family, proudest scion of our jury trial rules of evidence, but so petted and indulged that it has become a nuisance and obstruction to speedy and efficent trials." John H. Wigmore, A students text book of law of evidence 238 (1935).

On count two of the superciding indictment 18 U.S.C. 1001 (a)(2) making a false statement to law enforcement officer 6/27/13 alleged date of offence. Defendant Mr. Edwards, never lied to nor presented any false information to Mr. Jenkins probation officer. Mr. Jenkins whom was currently enrolled at SWIC in Edwardsville, Illinois Vocational Center for autobody, asked Mr. Edwards for a chance to learn the trade hands on sonce he was erolled in school and fills out application. Mr. Edwards, whom has done internships previously gives Mr. Jenkins a chance hiring him as a intern without pay until which point Mr. Jenkins shows to be a value to the company and will stick with the trade. Mr. Edwards then contacts Mr. Jenkins probation officer, once on the date of hire and never again there after, nor did Probation Officer Mr. Raymond, call back to confirm further employement or come by for any visit. Mr. Edwards presented the evidence to Mr. Storment as well as Mr. Noble of Mr. Jenkins application filled out, signed and dated by Mr. Jenkins. Mr. Jenkins unwilling to particapate, nor to be punctual, as stated to S.A. Chad Nord, whom took this statement as Mr. Jenkins never worked as an intern for Mr. Edwards' bodyshop. Mr. Jenkins internship only lasted roughly two weeks, due to his unwillingness to particapate and learn the trade. Mitchell v. Gibson, 262 F.3d 1036 (10th cir 2001) withholding exculpatory evidence that could have effected sentance. United States v. Riley, 189 F.3d 802 (9th cir 1999) intentional distruction

Speedy Trial Act violation began when said defendant, Mr. Edwards request then Defense Counsel Mr. Kuehn to invoke, said right, immeditally after being arrained on said conspiracy, before the Seventh Circuit of Illinois, in East St. Louis, Illinois. Then counsel Mr. Kuehn told Mr. Edwards "You watch to much F---ing T.V. and that doesn't exsist". United States v. Shorter, 54F.3d 1248 (7th cir) Cert. Denied 516 U.S. 896 (1995) actual conflict when defendant accused counsel of improper behavoir. Said Defendant Mr. Edwards, then seeks new counsel, after consulting with Mr. Storment III Jr., about previos and wishes to invoke Speedy Trial Rights, Mr. Storment is retained to file SPeedy Trial and aquittal of charges, due to lack of evidence provided to grand jury. After some time passes and nothing more then continuances are filed, Mr. Edwards recieves email from prosecutor Deirdre Durborow to Mr. Storment shown as " Paul file your motion to continue the trial, because the government just informed you today of a potential new development and this could impact negotiation. We can talk with the court and see if they will kick it out a month or two then I can hold off on going to the grand jury and that would allow you to have one last effort with your client." DeeDee. United States v. Hardemann, 249 F.3d 826 (9th cir 2001) delay to arrain co-defendant violated Speedy Trail Act. United States v. Hall, 181 F.3d 1057 (9th cir 2000)failure to make "Ends of Justice" finding for Speedy Trial exclusion shown as "Exhibit C" Docket entry R. [39] United States v. Johnson, 120 F.3d 1107 (10th cir 1997) continuance because of court conflict violated Speedy Trial Act shown as _" Docket entry R. [154]. Mr. Edwards was denied his right to Speedy Trial. Mr. Storment clearly working as a dual prosecutor with

of notes of interview with informant violated Jenks Act. United States v. Dispentino, 242 F.3d 1090 (9th cir 2001) trial court constructively amended indictment. Furthermore, proving Gross Prosecutoral Misconduct, Speedy Trial Violation, Due Process Right Violation and 6th Amendment Consititutional Right Violation. Provind that Prosecutor Ms. Durborow made it impossible for Mr. Edwards to haave a fair trial, by impeding his Constitutional Right to Counsel. Defendant Mr. Edwards, prays this Honorable Court, review such evidence De Novo as prosecutor selective and vindictive nature to be considered " Defect in the institution of prosecution", and thus serve basis for Rule 12 Motion. 7 in the sum, the first category of "Defects" essentially involving attacks upon the way the government was able to aquire an indictment of said Defendant Mr. Edwards. Another "Defect" was the second superciding indictment of Defendant Mr. Edwards, that the prosecutor used a grand jury to improve a case already pending pending trial; as well as the delay between intitiation of an investigation of Defendant Mr. Edwards, and subsequent indictments. Defendant Mr. Edwards, earlier introduces evidence of false testimony presented as fact to grand jury. Criminal Law § 46.6 interferance, government violates the right to effective assistance of counsel, when it interferes in a certain way, with ability of counsel to make independant decisions about how to conduct the defense.

Deirdre Durborow, violated not only attorney client previlage, inevidably denied Mr. Edwards of his constitutional right to Speedy Trial. Furthermore Mr. Edwards made then defense counsel aware of alleged co-defendant, Lisa Stamm's Uncle Honorable Judge Joe Christ, whom overdosed on cocaine at Honorable Judge Cook's hunting cabin. Mr. Edwards question the fact of potential source of supply, to said co-defendants, Ms. Stamm and Mr. Jenkins. Mr.Edwards then confronts, Mr. Storment of his involvement with said Honorable Judges, earlier case law showing all three being involved in a coerced defandant guilty plea, which later defendant sues for coerced plea Ramsey v. Christ, 2014 U.S. Dist. Lexis 51531 (April 14, 2014)(7th cir 2014). Defendant, Mr. Edwards, then hires third attorney, Mr. Travis Noble of Sindle, Sindle and Noble, an advertised trial attorney. Whom upon review of case discovery states " This case is full of inadmissable hearsay evidence, easy win." Day of jury selection Mr. Noble then takes Mr. Edwards into the hallway of Honorable Judge Herndon's courtroom, stating " The prosecutor just brought in nine banker boxes of new evidence, there is no way to win the case now." Banks v. Dretke, 540 U.S. 668 (2004) defendant was denied excuplatory evidence. United States v. Boyd, 55 F.3d 239 (7th cir 1995) government failed to disclose drug use and dealing by prisoner witness. United States v. Barnes, 49 F.3d 1144 (6th cir 1995) request for discovery of extraneous evidence created a continuing duty to disclose. At which point Mr. Edwards states " YOu said you had all teh discovery and were prepared for trial. File a continuance to review the new evidence." Mr. Noble replies " This is normal for the feds, and there is nothing we can do about it." Mr. Noble states " the prosecutor is willing to drop the ten year minimum manditory if we plead

right now in open court." Mr. Edwards replies "No, I would not go to prison for a crime I did not commit." Mr. Noble asks Mr. Edwards " Did you see the jurors downstairs?" Mr. Edwards replies "No, that would be illegal!" Mr. Noble then states " They are all old white farmers they will fry your a--." Prosecutor Ms. Durborow then walks up to Mr. Edwards and Mr. Noble seeing that Mr. Nobel is not able to get Mr. Edwards to take the deal to plead guilty. At which point Ms. Durborow and Mr. Noble make threats, and promises, such as, Mr. Edwards you will be found guilty espically with the new evidence, and sentanced to 70 years, then fiance Natalie Schaefer would be charged and convicted, sentanced to 30 years in prison. Mr. Edwards two year old daughter would be taken and put into foster care. As well as the forfieture of business property, property in which Mr. Edwards family resides and any vehicles owned. After four hours of threats, coercion, and promises to only serve two or three years, if Mr. Edwards plead guilty right now to charges. Mr. Edwards afraid and confused feels no option other then to plead guilty, or his family would surely suffer. Mr. Noble insists that he would not defend a client with no chance of winning the case, and the only option is to take the plea deal. Upon entering the courtroom to plead, now with Grant Boyd to except the guilty plea, Mr. Edwards admits under oath to Honorable Judge Herndon, coercion amde by Ms. Durborow and Mr. Noble. At which point Honorable Judge Herndon should ahve held a evidentary hearing. United States v. Gonzalez, 113 F.3d 1026 (9th cir 1997) court should have held an evidentary hearing when defendant claimed plea was coerced. United States v. Martinez-Molina, 64 F.3d 719 (1st cir 1995) court failed to inquire whether plea was voluntary or whether defendant had been threatened or coerced. Being as such and proven by Transcripts from

from the day of change of plea. Defendant Mr. Edwards, seeks Honorable Judge Herndon and Prosecutor Ms. Durborow, to be called as witness's to said constitutional rigth violations, praying that the Appealate Court seeks reclusial of said parties for conflict of interest. As Honorable Judge Herndon states for the record the day of sentencing at page 52 lines 5-8: "Is everything resolved on forfieture? I guess I need to impose the final order of forfeiture for $72,500. Is that right Miss Durborow?" The trail Court improperly became involved in plea bargaining at this point. U.S. v. Casallas, 59 F.3d 1173 (11th Cir 1995). Furthermore bias is shown by the Honorable Judge Herndon at page 50 lines 9-17 highlighted by this statement at lines 9-25: "And because I really--not because I didn't think he was guilty, I think because he acted as though he simply didn't want to be here." Franklin v. Mc Caughtry, 398 F.3d 995 (7th Cir. 2005). The record indicates bias against the defendant. What defendant wants to be there? Bracy v. Gramly, 520 U.S. 899 (1997). The petitioner could get discovery of trail judge bias against him. Mr Boyd now acting instead of Mr. Noble, Noble did not show for sentencing hearing, states on the record that the governemnt withheld evidence about Mr. Jenkins. S.H. P. 28, ln 4-7. Mr. Boyd states "but without full disclosure of Mr. Jenkins dealings and his proffer and what happened, I have a feeling Mr. Jenkins was much more involved in controlled substance distribution then just the case. The Court responds: "Oh, yes I agree..."

The Forfieture was defective. The first failure to advise Timothy Edwards as required by Fed. R. Crim. P. 11. Timothy Edwards reasserts his argument in I.E, Supra as if fully reasserted here.

Second, Timothy Edwards assert that there was a lack of notice to the final notice. The Government filed it's Motion for Order of Finding of No Third Party Interest by United States as to Timothy Edwards on July 5,2017. At this time, the Government and the District Court knew two thing's one, that Timothy Edwards was incarcerated in the Federal Prison system. Two, the Government and the District Court were also aware that there was a complete breakdown of attorney-client relationship. By Edwards' Motion to Extend Time to File Late Notice of Appeal, filed on June 7,2017 and the Court's order of June 20, 2017, denying said motion.

Therefore, it is clear from the record that counsel had failed to file the notice of appeal which was his obligation under circuit rules.In the motion, Edwards' asserted an affidavit. Further, the Government and Grant Boyd had communications via email regarding said motion. (App. 21).

In the affidavit, in said motion makes clear, and of this there is no doubt, that there was a complete breakdown in attorney-client relationship. The breakdown no later then the change of plea hearing and was complete just after sentancing. In this time period and after the Government and District Court continued with the Forfieture Motions and notice, knowing or should have known full well that Edwards was not being informed. Abundantly obvious, is that Timothy Edwards interests were not being protected by counsel. He was abandoned.

The District Court erred by not complying with the requirements of Fed. R. Crim. P. 11. The District Court failure to properly question and advise Timothy Edwards of Rule 11 defeated the purpose of Rule 11. The District Court failed to properly advise and question in the matter of the charges, and the elements as required by Fed. R. Crim. P. 11(b)(1)(G). Timothy Edwards never understood the charges of their related elements as they related to the Government's burden in a criminal case.

The District Court erred in failing to properly advise and question regarding the manditory minimum as required by Fed. R. Crim. P.(11)b)(1)(I). Additionally, the District Court failed to question and advise as required by Fed. R. Crim. P. 11(b)(2) on forfieture. Signifacntly the District Court failed to question and advice to the force, threats, and promises brought upon Timothy Edwards to obtain a plea. In all respects, Timothy Edwards' plea was not knowing, voluntary, or intelligently made as is absolutely required.

The failure of the individual Timothy Edwards to be taken into account further exasperates the situation. The Plea Colloquy was a failure, and rift with error by the District Court, and should be set aside.

This Court should not think at all technical and harmless, Timothy Edwards shows the Constitutional errors of Constitutional magnitude regarding the actual innocence and defense, and speedy trial violation. Timothy Edwards Constitutional Rights were Violated.

Finally, the District Court erred in it's handling of the forfieture in the change of plea hearing, in it's procedures, and post sentance notice.

Edwards proclaims that the usual case of attorney abandonment occurs when an attorney has failed to file a Direct Appeal. In such case, the attorney has Constitutionally deprived the defendant of the oppurtunity to appeal. United States v. Bell, 826 F.3d 378 (7th cir 2016) citing, Ryan v. United States, 657 F.3d 604, 606 (7th cir 2011). Whereas, the relief therefore afforded is a Direct Appeal following the entry of a new judgement in the underlying criminal case. See, e.g., Id.; United States v. Hirsch, 207 F.3d 928, 931 (7th cir 2000); Castellanos v. United States, 26 F.3d 712, 720 (7th cir 1994).

As with the notice of appeal, his interests and those parties dependant on his proper handling of the forfieture were abandon. Unaware of the continued actions because of the lack of notice, Timothy Edwards could take no action

The forfieture should fail for all these reasons.

CONCLUSION

All of the above argues against the use of 4(b) to exclude and prevent Mr. Edwards Direct Appeal. It is "Manifest Injustice" to force Mr. Edwards out of his Direct Appeal and to §2255. Edwards' pleads for this Honorable Court to reverse the Order of the Appellate Court and allow his Direct Appeal.

Date Nov 6th 2018

Timothy Edwards 11371-025

Timothy Edwards, 11371-025
Yankton Federal Prison Camp
P.O. Box 700
Yankton, South Dakota 57078

Scribed and dated this 6th day of November 2018 before me:

MY COMMISSION EXPIRES
FEBRUARY 22, 2024