In The

Supreme Court of the United States

ALVIN LEON ROUNDTREE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

On Petition for A Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the district court's failure to construe Mr. Roundtree's pro se motion for specific performance as a motion to vacate under 28 U.S.C. §2255 - consistent with the holding of at least three Circuits which directly resulted in both the denial of that motion as unauthorized and the appellate court affirmance of that denial, and rendered Mr. Roundtree's initial §2255 motion, filed two days after the appellate court's affirmance, untimely, constitutes an "extraordinary circumstance" that warrants equitable tolling, where Mr. Roundtree has exhibited the requisite diligence.

2. Ineffective assistance counseling, failing to file notice to appeal after sentence when asked to do by defendant and stated by the court several times.
   Flores Ortega 528 U. S. 470 Feb 22, 2000 a 5th amendment violation.
   Government violate due process asking for a harsher sentence at sentencing. 6 amendment violations, Santobello V. New York 1991 404 U.S. 257, Kernan Cuero 199 LED 236 U. S. Nov 6, 2017.

PARTIES TO THE PROCEEDINGS

Petitioner, Alvin Leon Roundtree was the Defendant in the United States District Court of the Western District of Texas, San Antonio Division, in USDC Case 5:13-cr-554-1, Movant in USDC Case 5:15-ev1137 in that court, and Appellant in the United States Court of Appeals for the Fifth Circuit in USCA Case No 18-50037.

Respondent, United States of America was the named Plaintiff in the United States District Court for the Western District of Texas, San Antonio Division in USDC Case 5:13-cr-554-1, Respondent in USDC Case 5:15-cv-1137 in that court, and Appellant in the United States Court of Appeals for the Fifth Circuit in USCA Case No. 18-50037. No other relevant parties are represented in the instant action.

TABLE OF CONTENTS

INDEX OF APPENDICES

TABLE OF AUTHORITIES

STATUES

OPINIONS BELOW

The Order of the United States Court of Appeals for the Fifth Circuit denying COA is unpublished and may be found at USCA Case No. 18-50037 United States of America v. Alvin Leon Roundtree (Aug 29, 2018) (Appendix -A1).

The Memorandum Opinion and Order of the District Court for the Western District of Teas at San Antonio is unpublished and may be found at W>D>Tex Case No.5:15-cv-1137; United States of America v Alvin Leon Roundtree (Feb 29, 2016) (Appendix -A3).

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1254(1). The Fifth Circuit entered its order on August 29, 2018 and this Petition was filed within 90 days of that order.

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

This case involves a federal criminal defendant's constitutional rights under the Fifth and Sixth Amendments. The Fifth Amendment provides in pertinent part:

No person shall be .... deprived of life, liberty, or property, without due process of law.

The Sixth Amendment provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to ... have the assistance of counsel for his defense.

This case also involves the application of 28 U.S.C. § 2253(c), which states in pertinent part:

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from--

. . .

(B) the final order in a proceeding under section 2255.

. . .

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE

Mr. Roundtree received a harsher sentence as a result of actions by the United States which violated the terms of the plea agreement in the underlying criminal case. Mr. Roundtree has sought redress of this violation of due process - and several related claims of ineffective assistance of counsel - only to have those efforts frustrated as described below.

A. Facts and Proceedings in the Courts Below

The Guilty Plea & Sentencing

Mr. Roundtree pled guilty on March 12, 2014 to a charge of assaulting an officer or employee of the United States with a deadly weapon [DE #75]. On September r 12, 2014, Mr. Roundtree was sentenced to a serve a 240-month term of imprisonment to be followed by a 3-year term of supervised release [DE #129].

The Motion to Compel Specific Performance

On February 17 and February 23, 2015, Mr. Roundtree filed identical pro se motions to compel specific performance [DE #138 & #140]. Mr. Roundtree's motions sought relief from the sentence imposed based on the Government's failure to adhere to the terms of the plea agreement, resulting in imposition of a harsher sentence, and arguing that the Court enjoyed authority to grant such relief pursuant to Santobello v. New York, 404 U.S. 257 (1971) Kernan Cuero, 199 LED2D 236 Nov 6,2017.

On February 26, 2015, the district court summarily denied the motions to compel in a cursory order. App. E, p. A13, Despite his pro se status and the post-conviction posture of the case, Mr. Roundtree was not provided with a Castro warning that the motion was ripe for summary denial or an opportunity to cure any deficiencies in the motion, and the order itself provide no explanation of the basis for denial. Id.

Mr. Roundtree appealed this denial to the U.S. Court of Appeals for the Fifth Circuit. United States v. Roundtree, No. 15-50304. In its December 10, 2015 unpublished order dismissing Mr. Roundtree's appeal, the Court faulted Mr. Roundtree for failing "to cite, in the district court or this court, any recognized procedural vehicle supporting his motions. " App. D, p. A12. They noted that the district court could not construe the motions as proceeding under Section 2255 without providing a Castro warning. "[f]urthermore, Roundtree has not shown that he was prejudiced by the district court's failure to construe his motions as a §2255 motion." Id. In conclusion, they dismissed as frivolous what they found to be an appeal "from the denial of [] meaningless, unauthorized motion[s]." Id. (quoting United States v. Early, 27 F.3d 140, 142 (5th Cir. 1994)).

The Motion to Vacate Under §2255

On December 12, 2015, two days after the Fifth Circuit dismissed Mr. Roundtree's appeal, he filed a pro se motion to vacate under §2255, while supporting

brief, in the district court [DE #147 & #148]. Mr. Roundtree's motion to vacate sought relief based on the same ground as the motion to compel to specific performance, i.e., the Government's failure to adhere to the terms of the plea agreement, resulting in imposition of a harsher sentence, and based on several allegations of ineffective assistance of counsel. Id. On December 29, 2015, the Magistrate Judge issued a Show Cause Order, informing Mr. Roundtree that his motion to vacate was untimely and instructing Mr. Roundtree to provide any explanation of why his motion should not be dismissed as untimely [DE #149].

On January 19, 2016, Mr. Roundtree filed a pro se response to the Show Cause Order, arguing that his earlier pro se motion to compel to specific performance should be construed liberally in a manner that tolled his AEDPA deadline from the date of its filing through the Fifth Circuit's dismissal of his appeal of its denial [DE #151]. Mr. Roundtree argued for equitable tolling - albeit without explicitly invoking that phrase - based on:

> the requirement that his earlier pro se motions to compel be liberally constructed; his lack of legal sophistication: his limited resources; his good faith efforts to comply with the various rules of court; and that he enjoyed an additional 90-days beyond his true AEDPA deadline, based on his perceived ability to petition the Supreme Court, despite having not filed a direct appeal from his conviction and sentence.

On February 29, 2016, the district court dismissed Mr. Roundtree's motion to vacate as untimely and contemporaneously denied COA. App. B, p. A3. The district court found that Mr. Roundtree's AEDPA deadline was "not later" than October 12, 2015, and his motion to vacate, signed on December 12, 2015, was filed after that deadline. Id., p. A4. The court rejected Mr. Roundtree's argument that equitable tolling was warranted by any of the factors he raised, specifically noting that the motions to compel did not toll the deadline and that neither Roundtree's pro se status nor his ignorance of the AEDPA deadline constituted a sufficient basis for tolling. Id., pp. A5-A7. Nothing in the district court's order addressed the merits of Mr. Roundtree's claims, both the dismissal and the denial of COA, were based exclusively on the motion's untimeliness. Id., p. A8

Mr. Roundtree filed a motion for leave to supplement, with proposed supplemental 2255 and supporting documents attached on March 7, 2016 [DE #154], and a timely notice of appeal on March 9, 2016. App. C, p. A9. Mr. Roundtree filed a motion requesting COA from the U.S. Court of Appeals for the Fifth Circuit on April 21, 2016. Roundtree v. United States, No. 16-50244 (5th Cir.). Mr. Roundtree reiterated his arguments for equitable tolling, asserting that the district court's ruling dismissing his motion to vacate as untimely was debatable amongst reasonable jurists. In conjunction with the substantial showing of a denial of a constitutional right as set forth below. Mr. Roundtree claimed entitlement to COA:

1. Breach of pea agreement by the government at sentencing, that is, a violation of the Fifth Amendment Due Process and Sixth Amendment [rights] Santobello V. New York - of particular impact because of the sentencing effects of the sentencing court's decision to calculate Mr. Roundtree's sentence under USSG §2A2.1, rather than §2A2.2;

2. Ineffective assistance of counsel at the plea negotiation and sentencing [in] violation of Roundtree's Sixth Amendment rights;

3. Ineffective assistance of counsel for not timely filing a Notice of Appeal - despite the evidence showing Mr. Roundtree's clear request to counsel to appeal and the sentencing court's repeated advisement that Mr. Roundtree enjoyed the right to appeal at sentencing. Id. Flores Ortega 528 US 470 (2000)

On May 9, 2016, Mr. Roundtree moved the Court for leave to file a supplement to his motion for COA. Roundtree v. United States, No. 16-50244 (5th Cir.). On March 29, 2017, the Fifth Circuit denied COA, generally noting that Mr. Roundtree "has not made the requisite showing" under Section 2253(c)(2). but granting Mr. Roundtree's motion for leave to supplement, App. A, p. A1.

On April 24, 2017, Mr. Roundtree sought reconsideration of the denial of COA, arguing that minimally his claim of ineffective assistance of counsel in connection with the filing of a notice of appeal, constituted a "substantial showing of a denial of constitutional right, " and that the denial of equitable tolling was debatable amongst jurists of reason in his counsel abandoned him with regard to his appellate rights Flores Ortega 528 U.S. 470. Roundtree v. United States, No. 16-50244 (5th Cir.). On April 27, 2017, a three-judge panel of the Fifth Circuit denied reconsideration. Stating a member of this panel ruled on Roundtree original petition therefore this motion is denied. Id.

Mr. Roundtree file a 60(B) at the district court 5:15-CV-1137 which was denied. Mr.Roundtree timely filed a notice to appeal and files a COA (60)(b) 18-50037 5th Circuit Jan 2018, which was denied 29 Aug 2018. Mr Roundtree filed a reconsideration in light of case No 18-100094 5th Circuit, August 22, 2018 US vs Ancelmo stating a member of the panel ruled on his original petition therefore your reconsidered is denied.

The instant petition is timely submitted within 90 days of the fifth circuit August 29, 2018 order denying COA pursuant to Rule 13, Rules of this Supreme Court.

REASONS OFR GRANTING THE WRIT

The lower courts' denial of COA is in tension with this Court's holding, mandating that pro se prisoner motions be liberally construed, and conflicts with the law in at least three Circuits, raising an issue of national significance: whether the criminal justice system will tolerate courts' abuse of a pro se prisoner's ignorance, to forever bar consideration of a constitutional claim pursued with diligence, due to that prisoner's failure to include the phrase "motion to vacate", or citation to 28 U.S.C. §2255, in his inartful pleading.

This Court has repeatedly stressed that pro se prisoner pleadings are to be liberally construed. See, Erickson v. Pardus, 551 U.S. 89 (2007); Haines v. Kerner. 404 U.S. 519 (1972); Estelle v. Gamble, 429 U.S. 97 (1976). Mr. Roundtree's motion to compel sought relief from the sentence imposed based on the Government's failure to adhere to the terms of the plea agreement, resulting in imposition of a harsher sentence, and arguing that the Court enjoyed authority to grant such relief pursuant to Santobello. At least three Circuits have held that Santobello claims may be presented in motions to vacate under 28 U.S.C. §2255. See, United States v. Al-Arian, 514 F.3d 1184, 1191 (11th Cir. 2008). Moreover, the Fifth Circuit Kernan Cuero 199LED2D 236 U.S. Nov 6, 2017 routinely considers Santobello claims cognizable under 28 U.S.C. §2255. See, e.g., United States v. Brown, 547 Fed. Appx. 637 (5th Cir. 2013).

The duty to liberally construe Mr. Roundtree's

pleading obligated the district court to construe his pleading under the only available authority which would allow the court to consider the same, 28 U.S.C. §2255. The Fifth Circuit has "frequently instructed district courts to determine the true nature of a pleading by its substance, not its label." Armstrong v. Capshaw, Goss & Bowers, LLP, 404 F.3d 933, 936 (5th Cir. 2005); see also Edwards v. City of Houston, 78 F.3d 983, 995 (5th Cir. 1996) (en banc) ("[W]e have oft stated that 'the relief sought, that to be granted, or within the power of the Court to grant, should be determined by substance, not a label' ") (quoting Bros. Inc. v. W.E. Grace Mfg. Co, 320 F.2d 594, 606 (5th Cir. 1963)) Ancelmo 5th Circuit No 18-10094, August 22, 2018.

In the context of Mr. Roundtree's initial motion to compel, this Court has provided direct instruction to lower courts concerning the steps to be taken when the mandate of liberal construance requires a court to recharacterize a pro se pleading as an initial §2255 motion. See, Castro v. United States, 540 U.S. 375 (2003). Had the district court adhered to this Court's guidance, Mr. Roundtree's motion to compel could have been heard on its merits - along with the other claims he would have predictably added upon receiving the Castro warning -, the result he has diligently sought for the more than three years since this court dismissed his motion to compel. The district court's failure to construe Mr. Roundtree's motion to compel as a motion to vacate under 28 U.S.C. §2255, is extraordinary within the meaning of the doctrine of equitable tolling.

For all these reasons, and these discussed more fully herein, certiorari should be granted.

ARGUMENT

1. Certiorari Should Be Granted Because Reasonable Jurists Could Unquestionably Debate the Extraordinariness of the Circumstances and ineffective assistance counsel identified by Mr. Roundtree.

This Court's precedent is clear: a COA involves only a threshold analysis and preserves full appellate review of potentially meritorious claims. Thus, "a prisoner seeking COA need only demonstrate 'a substantial showing" that the district court erred in denying relief. Miller - El v. Cockrell, 537 U.S. 322, 327 (2003) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000) and 28 U.S.C. § 2253(c)(2)). "At the COA stage, the only question is whether the applicant has shown that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Buck v. Davis, 137 S. Ct. 759, 773 (2017). A COA is not contingent upon proof "that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after COA has been granted and the case received full consideration, that petitioner will not prevail." Miller--El, 537 U.S. at 338.

In sum, the touchstone is "the debatability of the underlying constitutional claim [or procedural issue], not the resolution of that debate." Id., at 342: see also id. at 348 (Scalia, J., concurring) (recognizing that a COA is required when the district court's denial of relief is not 'undebatable"). Applying this standard in Buck, this Court reversed the Fifth Circuit's denial of COA in the context of a Rule 60(b) motion seeking relief from judgment denying habeas relief, explaining that the question for the Court of Appeals was not whether Buck had shown that his case is extraordinary: it was whether jurists of reason could debate that issue. Buck, 137 S. Ct. at 773-75.

EQUITABLE TOLLING / DUE DILIGENCE

Appellant is entitled to Equitable Tolling because I diligently and continuously pursued my appeal in compliance with Holland v. Florida, 130 S. Ct. 2549, 2560, 177 L. Ed 2d 130 (2010). A "petitioner is entitled to equitable tolling ... if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." id. at 2563. I was misled by my attorney erroneously telling me that I did not have the right to appeal (see Exhibit B). After my attorney sent me the response to my Letter of Intent (and request) To Appeal, he abandoned me by stopping taking my calls and not responding to my letters. The Supreme Court has held that complete attorney abandonment can constitute the kind of "extraordinary circumstances" necessary to supply cause for procedural default. See Maples v. Thomas, 132 S. Ct. 912, 924, 181 L. Ed. 2d 807 (2012). My attorney's inaction caused me to "forfeit" my appeal (18 U.S.C. § 3742 (c) (1) (a)]. This is the first extraordinary circumstance that prevented or delayed me from filing a "timely appeal". The second was failure of the Courts to construe my post-sentence "Motion for Specific Performance" (see Exhibit C). To which the relief I sought was to "Correct" my sentence. This Motion could have and should have been construed as a § 2255 (Motion to Vacate, Set Aside, or Correct) because of the relief that I was seeking.

Defendant "has made a substantial showing of the denial of a Constitutional Right" (See Wynn at 230). As Appellant has shown, he was denied Counsel at a critical stage of his court proceedings by Counsel's failure to file an appeal in violation of Appellant's 6th Amendment Right. Appellant should be entitled to proceed with a C.O.A. as the Supreme Court has stated, "we hold that when Counsel's Constitutionally deficient performance deprives a Defendant of an appeal that he would have otherwise taken, the defendant has made out a

successful Ineffective Assistance of Counsel claim, entitling him to an appeal. "United States v. Flores-Ortega, 528 U.S. 484, 145 L. Ed. 2d 985, 120 S. Ct. 1029 (2000). Appellant respectfully requests that this Honorable Court grant Appellant a C.O.A. so I can have a review of the denial of my 6th Amendment Constitutional Right to effective assistance of Counsel.

INEFFECTIVE ASSISTANCE OF COUNSEL

Appellant asserts that Counsel was ineffective and deficient for failing to file a notice of appeal and appeal defendant's sentence in Case No. 5:13-CR-00554. The sentence was appealable under 18 U.S.C. § 3742 (c) (1) (a) "the sentence imposed is greater than the sentence set forth in such agreement" and the District Judge's oral pronouncement that defendant, "has the right to appeal the Court's sentencing decision, " (See Exhibit A) (Sentencing Transcript, pg. 30 at 8-9) and again after the Court pronounced sentence the Court reaffirmed defendant's "Right to Appeal" (Exhibit A, see Sentencing Transcript pg. 35 at 13-14) "And, Mr. Roundtree, you have the right to appeal the Court's sentencing decision. "The Judge's oral pronouncement is controlling not a waiver in the plea "the oral pronouncement controls" see United States v. Garcia 604 F.3d 191 (5th Cir. 2010) quoting United States v. Bigelow, 462 F.3d 378, 381 (5th Cir. 2006) This conferred on defendant a right to appeal sentence and Counsel had a duty owed to Client to appeal sentence once I had instructed Counsel to do so (See Exhibit B). "Filing such a notice is purely a ministerial task that imposes no great burden on Counsel. "See Roe v. Flores-Ortega 528 US 474, 145 L. Ed 2d 985, 120 S. Ct. 1029 (2000). Counsel's inaction and failure to appeal sentence as instructed caused defendant to forfeit his appeal and caused an untimely filing of an appeal and violated defendant's 6th Amendment Right to Effective Assistance of Counsel. I felt that I had plead to one offense and was sentenced for the dismissed "greater offense". I had no reason not to appeal and it could not be considered a "strategic decision" for Counsel not to appeal after I informed him that I wanted to appeal. I plead to an Information pursuant to Title 18 U.S.C. § 111(a) (b) which is U.S.S.G § 2A2.2 Aggravated Assault for a guideline range of 70-87 months, but yet I was sentenced under U.S.S.G. § 2A2.1 (see Exhibit(s) A & D) based on erroneous information supplied by the Prosecutor that my offense Level was Level 43. This erroneous calculation was basically a "Constructive

Amendment" to the information (See Fed R. Crim. Proc. Rule 7(e)) by incorporating all of the elements of Title 18 U.S.C. § 113(b) into the sentencing guidelines for Title 18 U.S.C. § 111(a) (b). Not only was incorporating the provisions (or elements) of U.S.S.G. § 2A2.1 (Guidelines for Assault with Intent to Commit Murder; Attempted Murder) see also 18 U.S.C. § 113(a) (1) and then applying "those provisions" to the Guidelines offense to which a plead Guilty to, which is U.S.S.G. § 2A2.2 (Aggravated Assault) was not only an, "incorrect application of the sentencing guidelines" [18 U.S.C. § 3742(a) (2)] it was also not in compliance with Gall v. United States, 552 U.S. 38, 49 (2007) which held that a District Court that "improperly calculates" a defendant's guideline range, for example, has committed a "significant procedural error". Gall, supra, at 51. Although the guidelines are now advisory they are still the "starting point and . . . initial benchmark" Gall v. United States, 552 U.S. 38, 49 (2007). Federal Courts understand that they, "must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process" Peugh v. United States, 569 U.S. 10 (2013). This erroneous miscalculation of the Guidelines ranges from 78 - 97 months to basically a minimum of 240 months. This denied me Due Process and was also not in compliance with 18 U.S.C. § 3552(d) in which I should have received "10 days notice of a change in the Guidelines". Additionally, this erroneous calculation failed to give me my -3 points for "Acceptance of Responsibility, "which I was entitled to under U.S.S.G. § 3E1.1 (a) and § 3E1.1(b). For all of these issues I wanted to raise an appeal for what I felt was an unjust sentence. Therefore I had instructed Counsel to file an appeal on my behalf. His failure to do so constitutes Ineffective Assistance of Counsel. In Flores-Ortega the Supreme Court stated, "we have long held that a lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable. See Rodriguez v. United States, 395 U.S. 327, 23 L. Ed 2d 340, 89 S. Ct. 1715 (1969); of Peguero v. United States, 526 U.S. 23, 28, 143 L. Ed. 2d 18, 119 S. Ct. 961 (1999) "[W]hen Counsel fails to file a requested appeal, a defendant is entitled to (a new) appeal without

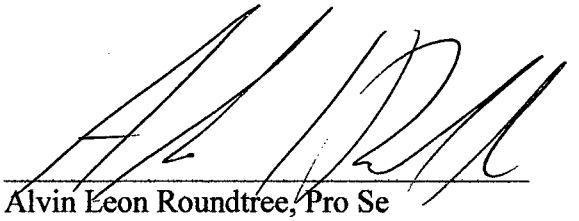
showing that his appeal would likely have had merit"). This is so because a defendant who instructs Counsel to initiate an appeal reasonably relies upon Counsel to file the necessary notice. Counsel's failure to do so cannot be considered a strategic decision; filing an appeal is a purely ministerial task, and the failure to file reflects the inattention to the defendant's wishes". See Flores-Ortega 528 U.S. 477, 145 L. Ed. 2d 985, 120 S. Ct. 1029 (2000). Appellant easily meets the first part of the "Strickland-prong" because Counsel's inaction cannot be considered "strategic" or "reasonable" and this also prejudiced the defendant by causing a forfeiture of defendant's right to appeal a sentence for 2 1/2 times more than I had plead Guilty to. After I had requested Counsel to appeal my sentence (see Exhibit B) and Counsel erroneously told me that I could not appeal, Counsel abandoned the defendant b y refusing to answer calls or respond to letters - essentially not acting as Counsel at all. Had Counsel just informed me that I could challenge my sentence, I would not have been time-barred and in need of a C.O.A. to proceed on appeal. "Counsel's deficient performance prejudiced the defendant" Strickland id, at 694, 80 L. Ed. 2d 674, 104 S. Ct. 2052. Under Flores-Ortega no specific showing of prejudice is required if Counsel failed to file an appeal after Client has requested that Counsel do so. "We believe the question whether Counsel has performed deficiently by not filing a notice of appeal is best answered by first asking a separate, but anecdotal question: whether Counsel in fact consulted with defendant about appeal. We employ the term "consult" to convey a specific meaning – advising a defendant about the advantages and disadvantages of taking an appeal and making a reasonable effort to discover the defendant's wishes. If Counsel has consulted with the defendant, the question of deficient performance is easily answered: Counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to appeal. "Flores-Ortega" at 528 U.S. 478. Appellant's case is very similar to the ineffective assistance of Counsel that the Courts prohibited in Flores-Ortega. Counsel's failure to do the "ministerial task" of filing a simple notice of appeal was unreasonable and this unreasonably deficient

performance greatly prejudiced defendant and deprived defendant of appeal altogether. "Today's case is unusual in that Counsel's alleged deficient performance arguably led to not a judicial in that Counsel's alleged deficient performance arguably led to not a judicial proceeding of disputed reliability, but rather to the forfeiture of a proceeding itself ; Assuming these allegations are true, Counsel's deficient performance has deprived respondent of more than a fair judicial proceeding; that deficiency deprived respondent of the appellate proceeding altogether. In Cronic, Penson, and Robbins, we held that the complete denial of Counsel during a critical stage of a judicial proceeding mandates a presumption of prejudice because "the adversary process itself" has been rendered presumptively unreliable". Cronic, supra, at 659, 80 L. Ed. 2d 657, 104 S. Ct. 2039. The even more serious denial of the entire judicial proceeding itself, which a defendant wanted at the time and to which he had a right similarly demands a presumption of prejudice. Flores-Ortega. Id. At 528 U.S. 482 (2000) It is irrefutable that had the right to appeal my sentence (see Exhibit A) and there is also undeniable proof that I had requested that my attorney file an appeal on my behalf (see Exhibit B) and my attorney's erroneous information and lack of motivation (Basically he wanted to be done with the case) constituted ineffective assistance of counsel as required. Appellant has met the Standard established in Strickland v. Washington, 466 U.S. 668, 80 L. Ed 2d 674, 104 S. Ct. 2052 (1984) (1) That Counsel's representation "fell below an objective standard of reasonableness and (2) that Counsel's deficient performance prejudiced the defendant." Appellant has proven he is entitled to a C.O.A. pursuant to 28 U.S.C. § 2253 (c) (2) because appellant has "made a substantial showing of the denial of a Constitutional Right" United States v. Wynn, 292 F. 3d 230 (5th Cir. 2002). Appellant humbly and respectfully requests this Honorable Court to issue a C.O.A. so Appellant can address the denial of a Constitutional Right.

CONCLUSION

For all the foregoing reasons, Mr. Roundtree is entitled to equitable tolling of his claims which set forth a substantial showing of a denial of a constitutional rights. At a minimum, reasonable jurists could so conclude, which means that a COA should issue. This Court's review is warranted to correct the lower courts' failures to adhere to its precedent and to ensure that pro se prisoner litigants within the Fifth Circuit receive the liberal construance mandated by such precedent and thereby enjoy the opportunity to have their claims heard on their merits, despite the inartful nature of the pleadings.

Dated: October 31, 2018
Respectfully submitted

By: 

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