18-6926

No. 18-10859

IN THE
SUPREME COURT OF THE UNITED STATES

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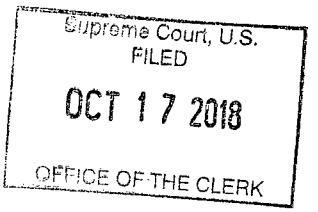

JAMES VALENTINE - PETITIONER,

vs.

UNITED STATES OF AMERICA - RESPONDENT.

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

PETITION FOR WRIT OF CERTIORARI

JAMES VALENTINE #06383-017
PENSACOLA FEDERAL PRISON CAMP
P.O. BOX 3949
PENSACOLA, FLORIDA 32516

QUESTION(S) PRESENTED

(1) DID THE HONORABLE ELEVENTH CIRCUIT COURT OF APPEALS IN ATLANTA, GEORGIA COMMIT **"PLAIN AND OBVIOUS ERROR"** BY ALLOWING THE UNITED STATES DISTRICT COURT, IN THE NORTHERN DISTRICT OF FLORIDA, TO APPLY THE **ILLEGAL SENTENCE ENHANCEMENT** PURSUANT TO **21 U.S.C. §851(a)(1)** WHICH CHANGED PETITIONER'S SENTENCE FROM **10 YEARS TO A 20 YEARS MANDATORY MINIMUM SENTENCE,** WITHOUT APPLYING **21 U.S.C. §851(b) ?**

(2) DID THE HONORABLE ELEVENTH CIRCUIT COURT OF APPEALS IN ATLANTA, GEORGIA COMMIT **"PLAIN AND OBVIOUS ERROR"** BY ALLOWING THE UNITED STATES DISTRICT COURT, IN THE NORTHERN DISTRICT OF FLORIDA, TO **FAIL** TO APPLY THE **NEW CHANGE IN THE LAW FOR CALIFORNIA PRIOR FELONY DRUG CONVICTIONS** PURSUANT TO "UNITED STATES v. LUIS OCAMPO-ESTRADA, aka. LUIS ENRIQUE OCAMPO, 2017 U.S. App. LEXIS 16511; No. 15-50471 (August 29, 2017, Filed in the 9th Circuit Court of Appeals)" WHICH USES "MATHIS v. UNITED STATES, 136 S.CT. 2243, 2249, 195 L.Ed.2d 604 (2016)" TO **SUPPORT** PETITIONER'S ARGUMENT THAT PETITIONER'S PRIOR CONVICTIONS UNDER CALIFORNIA HEALTH & SAFETY CODE SECTIONS 11359 AND 11360 (CASE NUMBER: FWV17882) **DO NOT QUALIFY AS A "CONTROLLED-SUBSTANCE OFFENSE ?"**

(3) DID THE HONORABLE ELEVENTH CIRCUIT COURT OF APPEALS IN ATLANTA, GEORGIA COMMIT **"PLAIN AND OBVIOUS ERROR"** BY ALLOWING THE UNITED STATES DISTRICT COURT, IN THE NORTHERN DISTRICT OF FLORIDA, TO **DENY** PETITIONER'S **INEFFECTIVE ASSISTANCE COUNSEL'S CLAIM** PURSUANT TO STRICKLAND v. WASHINGTON, 466 U.S. 668 (1984) ?

(4) IS THERE A **CONFLICT BETWEEN** THE ELEVENTH CIRCUIT COURT OF APPEALS IN ATLANTA, GEORGIA CASE "UNITED STATES v. JERMON SHANNON, JR., aka. WINFIELD WINCHESTER ROYE, 631 F.3d 1187 (January 26, 2011, Filed in the 11th Circuit Court of Appeals)" AND THE NINTH CIRCUIT COURT OF APPEALS IN CALIFORNIA CASE "UNITED STATES v. LUIS OCAMPO-ESTRADA, aka. LUIS ENRIQUE OCAMPO, 2017 U.S. App. LEXIS 16511; No. 15-50471 (August 29, 2017, Filed in the 9th Circuit Court of Appeals)" based on **"What constitute a "controlled substance offense" under §4B1.2(b).1 ?"**

LIST OF PARTIES

A list of all parties to the proceedings in the Court whose judgment is the subject of this petition is as follows:

Canova, Christopher P., United States Attorney;

Couch, Clinton A., Former Trial Counsel for Defendant/Appellant;

Davies, Robert G., Assistant United States Attorney;

Kahn, Jr., Charles J., United States Magistrate Judge;

Knight, Edwin F., Assistant United States Attorney;

Rhew-Miller, Karen, First Assistant United States Attorney;

Valentine, James, Pro se Defendant/Petitioner; and

Vison, Roger, Senior United States District Judge.

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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 issues to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix **"C" and "D"** to the petition and is unpublished to Petitioner's Knowledge.

The opinion of the United States district court appears at Appendix **"A" and "B"** to the petition and is unpublished to Petitioner's Knowledge.

JURISDICTION

The date on which the United States Eleventh Circuit Court of Appeals decided Petitioner's case was June 7, 2018.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 24, 2018, and a copy of the order denying rehearing appears at Appendix "D".

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

CONSTITUTIONAL AND SATAUTORY PROVISION INVOLVED

STATEMENT OF THE CASE

On October 7, 2003, a "COMPLAINT" was filed in behalf of Petitioner, in The United States District Court, Northern District of Florida, Pensacola Division, for Magistrate Judge Case Number: 03-mj-00206-MCR.

On November 19, 2003, Petitioner was "Indicted" in The United States District Court, Northern District of Florida, Pensacola Division, for Count 1 (21 U.S.C. §§ 841(a)(1)(b) and 846) and Count 2 (21 U.S.C. §§ 841(a)(1(b)& 846) District Court Case No: 03-cr-00134/RV-1.

On July 21, 2004, a "Superseding Indictment" was filed in behalf of Petitioner, in The United States District Court, Northern District of Florida, Pensacola Division, for Count 1s (21 U.S.C. §§ 841(a)(1)(b) and 846) and Count 2s (21 U.S.C. §§ 841(a)(1)(1)(b) and 846), for District Court Case No: 03-cr-00134/RV-1.

On May 22, 2006, The Government filed a "Notice of Enhancement pursuant to 21 U.S.C.-§851(a)(1)" in behalf of District Court Case No: 03-cr-00134/RV-1.

On June 2, 2006, Petitioner's "Change of Plea Hearing" was set for June 6, 2006, for District Court Case No: 03-cr-00134/RV-1.

On June 6, 2006, Petitioner "Pled Guilty" to Count 1s of the Superseding Indictment", in The United States District Court, Northern District of Florida, Pensacola Division for violating 21 U.S.C. §§ 841(a)(1)(b) and 846, for District Court Case No: 03-cr-00134/RV-1.[1]

On August 29, 2006, Petitioner's "Sentencing Hearing" was held for the violation of Count 1s (21 U.S.C. §§ 841(b)(1) and 846), in which The District Court Judge sentence Petitioner to the custody of the Bureau of Prisons to a term of 240 months. S/R: 10 years. FINE: $500.00. SMA: $100.00. SEE FORMAL JUDGMENT. Count Two of the Superseding Indictment dismissed upon motion of the Government, for District Court Case No: 03-cr-00134/RV-1.

On January 16, 2018, Petitioner filed a "Pro se 28 U.S.C. §2255 Motion to Vacate, Set Aside or Correct Movant's (James Valentine) Sentence for District Court Case No: 03-cr-00-134/RV-1.

(1) Please note that Petitioner (James Valentine) was never arrested with any drugs, nor ever video recorded talking to anyone about drugs, nor was there any video recording of Petitioner (James Valentine) with any drugs, nor was anybody around Petitioner ever arrested with any drugs, in behalf of District Court Case No: 03-cr-00134/RV-1, in which said **"Plea" was and is based on "Words Only."**

On January 30, 2018, The Honorable United States Magistrate Judge Charles J. Kahn, Jr. filed a "Report and Recommendation" in behalf of Petitioner's "Pro se 28 U.S.C. §2255" which stated in part:

"...Accordingly, it is respectfully **RECOMMENDED:**

1. Defendant's motion under 28 U.S.C. §2255 to vacate, set aside, or correct sentence by a person in federal custody (ECF No. 86) be summarily **DENIED and DISMISSED** as untimely.

2. A certificate of appealability be **DENIED...**" (See Appendix-**"A"**).

On February 6, 2018, Petitioner filed a "Pro se Motion for Reconsideration and/or Objections to The United States Magistrate Judge Charles J. Kahn, Jr.'s January 30, 2018, Report and Recommendation. (See Appendix-

On February 13, 2018, The Honorable Senior United States District Judge Roger Vinson, filed a "Order" in behalf of Petitioner's "Pro se 28 U.S.C. §2255" which stated in part:

"...Accordingly, it is now ORDERED as follows:

1. The magistrate judge's Report and Recommendation is adopted and incorporated by reference in this order.

2. Defendant's motion under 28 U.S.C. §2255 to vacate, set aside, or correct sentence by a person in federal custody (ECF No. 86) is summarily **DENIED and DISMISSED** as untimely.

3. A certificate of appealability is **DENIED...**" (See Appendix-**"B"**).

On February 26, 2018, Petitioner mailed Petitioner's "Pro se Notice of Appeal and/or Certificate of Appealability" to The Honorable United States Court of Appeals For The Eleventh Circuit, in behalf of District Court Case No: 3:18cv156/RV/CJK and 3:03cr134/RV/CJK. (See Appendix-

On April 16, 2018, Petitioner mailed Petitioner's "Pro se Motion for Permission to Appeal "In Forma Pauperis" and Affidavit Accompanying said Motion to Proceed" to The Honorable United States Court of Appeals For The Eleventh Circuit, in behalf of Court of Appeals Case No: 18-10-859-E; District Court Case No: 3:18cv156/RV/CJK and 3:03cr134/RV/CJK. (See Appendix-

On June 7, 2018, The Honorable United States Court of Appeals For The Eleventh Circuit, filed an "ORDER" that **DENIED** Petitioner's "Certificate of Appealability" and **DENIED AS MOOT** Petitioner's "Motion for Leave to Proceed "In Forma Pauperis"." (See Appendix-**"C"**).

On June 15, 2018, Petitioner mailed Petitioner's "Pro se Rehearing and/or Pro se Rehearing En banc Brief" to The Honorable United States Court of Appeals For The Eleventh Circuit, in behalf of Court of Appeals Case No: 18-10859-E; District Court Case No: 3:18cv156/RV/CJK and 3:03cr134/RV/CJK.

On July 24, 2018, The Honorable United States Court of Appeals For The Eleventh Circuit, filed an "ORDER" that **DENIED** Petitioner's "Motion for Reconsideration of the denial of Petitioner's Motion for Certificate of Appealablity and Leave to Proceed "In Forma Pauperis" in behalf of Petitioner's Appeal of The District Court's denial of Petitioner's 28 U.S.C. §2255 Motion to Vacate, Set Aside or Correct Petitioner's Sentence." (See Appendix-**"D"**).

REASONS FOR GRANTING THE PETITION

(1) DID THE HONORABLE ELEVENTH CIRCUIT COURT OF APPEALS IN ATLANTA, GEORGIA COMMIT **"PLAIN AND OBVIOUS ERROR"** BY ALLOWING THE UNITED STATES DISTRICT COURT, IN THE NORTHERN DISTRICT OF FLORIDA, **TO APPLY THE ILLEGAL SENTENCE ENHANCEMENT** PURSUANT TO **21 U.S.C. §851(a)(1)** WHICH CHANGED PETITIONER'S SENTENCE FROM **10 YEARS TO A 20 YEAR MANDATORY MINIMUM SENTENCE,** WITHOUT APPLYING **21 U.S.C. §851(b) ?**

Petitioner[2] would like the **records** to reflect that The District Court **Never** applied **21 U.S.C. §851(b),** in Petitioner's behalf before **Sentencing,** in which The District Court committed **"Plain and Obvious Error"** by **Not** allowing Petitioner to **Affirm or Deny** the prior "Superior Court of Calif County of San Bernardino California, State Prior Convictions under California Health & Safety Code sections 11359 and 11360 [Case Number: FWV17882], in which said Mandatory Minimum Sentence of **240 Months (20 Years) for Count One of the Indictment is a "Illegal Sentence",** in which can be challenged at **anytime,** because **21 U.S.C. §851(b),** states in part:

"...the district court **shall**[3]...inquire of the Petitioner (James Valentine)...whether Petitioner **affirms or denies** [the prior "Superior Court of Calif County of San Bernardino, California, State Prior Convictions under California Health & safety Code sections 11359 and 11360 [Case Number: FWV17882]... and **shall** inform Petitioner that **any challenge to a prior conviction" is waived if not made before sentence.** Id. 851(b)(emphasis added). In which The District Court is required strict compliance with the procedural aspects of **section §851(b)** and the **section §851(b) colloquy is not merely a procedural requirement.** It serves a functional purpose to place the procedural onus on the District Court to ensure Petitioners are fully aware of their rights." United States v. Rodriguez, 851 F.3d 931, 946 (9th Cir. 2017)(internal quotation marks and citation omitted).

Petitioner would like the reocrds to reflect that The District Court **"Lack Subject Matter Jurisdiction"** to use the "Superior Court of Calif County of San Bernardino, California, State Prior conviction under California Health & Safety Code sections 11359 and 11360 [Case Number: FWV17882] to **Enhance** Petitioner's Federal Sentence from a **Statutory Mandatory Minimum Sentence of Ten (10) Years,** to a **Statutory Mandatory Minimum Sentence of Twenty (20) Years,** pursuant to **21 U.S.C. §851,** in which is a violation of Petitioner's 5th, 6th, and 14th United States Constitutional Amendment Rights. See Hampton v. Mow Sun Wong, 426 U.S. 88, 48 L.Ed.2d 495, "The due process clause of the Fifth Amendment authorizes traditional equal protection analysis of federal rules, and therefore the clause has a substantive as well as a procedural aspect."

(2) Haines v. Kerner, 30 L.Ed.2d 652 (1972), "Pro se litigants pleadings are to be construed liberally and held to less stringent standards than formal pleadings drafted by lawyers; if Court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigants unfamiliarity with pleading requirements..."

(3) Please note that the word **"shall"** is used as an **auxiliary to express a command, what seems inevitable or likely in the future, simple futurity, or determination.** (See "The Merriam-Webster Dictionary, page 661").

Petitioner would like the records to reflect that The Honorable Eleventh Circuit Court of Appeals in Atlanta, Georgia Committed **"Plain and Obvious Error"** by allowing The United States District Court, in The Northern District of Florida to apply the **Illegal Sentence Enhancement** pursuant to **21 U.S.C. §851(a)(1),** which changed Petitioner's Sentence from **10 Years to a 20 Year Mandatory Minimum Sentence, WITHOUT Applying 21 U.S.C. §851(b),** in which The District Court **Did Not Advise** Petitioner that Petitioner was required to make a timely challenge to the proposed enhancement in order to avoid a statutory waiver under **21 U.S.C. §851(c)(2),** in which Petitioner **Did Not Waive this challenge,** because The District Court **Never Advised** Petitioner of said statute requirement, in which is a **"Plain and Obvious Error",** and a complete violation of Petitioner's 5th, 6th, and 14th United States Constitutional Amendment Rights. See Rochin v. California, 342 U.S. 165 (1952), "Substantive due process refers to certain actions that the government may not engage in, no matter how many procedural safeguards it employes."

Petitioner would like the records to reflect that "This Honorable United States Supreme Court **must** accept allegations in pleadings as true." Cooper v. Pate, 378 U.S. 546, 12 L.Ed.2d 1030 (1964).

(2) DID THE HONORABLE ELEVENTH CIRCUIT COURT OF APPEALS IN ATLANTA, GEORGIA COMMIT **"PLAIN AND OBVIOUS ERROR"** BY ALLOWING THE UNITED STATES DISTRICT COURT, IN THE NORTHERN DISTRICT OF FLORIDA, TO **FAIL** TO APPLY THE **NEW CHANGE IN THE LAW FOR CALIFORNIA PRIOR FELONY DRUG CONVICTIONS** PURSUANT TO "UNITED STATES v. LUIS OCAMPO-ESTRADA, aka. LUIS ENRIQUE OCAMPO, 2017 U.S. App. LEXIS 16511; No. 15-50471 (August 29, 2017, Filed in the 9th Circuit Court of Appeals)" WHICH USES "MATHIS v. UNITED STATES, 136 S.CT. 2243, 2249, 195 L.-Ed.2d 604 (2016)" TO **SUPPORT** PETITIONER'S ARGUMENT THAT PETITIONER'S PRIOR CONVICTIONS UNDER CALIFORNIA HEALTH & SAFETY CODE SECTIONS 11359 AND 11360 (CASE NUMBER: FWV17882) **DO NOT QUALIFY AS A "CONTROLLED -SUBSTANCE OFFENSE ?"**

Petitioner would like the records to reflect that Petitioner's **Prior Convictions Do Not Qualify as Felony Drug Offenses,** in which to determine whether Petitioner's convictions under California Health & Safety Code sections 11359 and 11360 would qualify as felony drug offenses this Honorable Court of Appeals should look to the statutory elements under which Petitioner was previously convicted, rather than the underlying conduct of facts giving rise to those convictions. See United States v. Hollis, 490 F.3d 1149, 1157 (9th Cir. 2007), abrogated on grounds by DePierre v. United States, 564 U.S. 70, 131 S.Ct. 2255, 180 L.Ed.2d 114 (2011) according United States v. Hernandez, 312 F. App'x 937, 939 (9th Cir. 2009)(unpublished)(applying the categorical comparison between the predicate offense of convcition and the federal definition. First, "This Honorable United States Supreme Court should ask "whether the statute of convictions is a categorical match to the generic predicate offense; that is, if the statute of conviction criminalizes only as much (or less) conduct than the generic offense." Medina-Lara v. Holder, 771 F.3d 1106, 1112 (9th Cir. 2014).

Petitioner would like the records to reflect that if a predicate statute is divisible - i.e., it lists alternative elemental versions of the offense within the same statute, rather than simply separate means for committing a single offense-then the modified categorical approach is used to determine which elemental version of the offense was committed. See Mathis v. United States, 136 S.Ct. 2243, 2249, 195 L.Ed.2d 604 (2016). In such a case, like this, "the sentencing court should look to a limited class of documents" from the record of the prior conviction(s) to determine which version of the offense was the basis for that conviction. Id. (citing Shepard v. United States, 544 U.S. 13, 26, 125 S.Ct. 1254, 161 L.Ed.2d 205 (2005)). The limited class of documents includes "the terms of the charging document, the terms of the plea agreement or transcript of colloquy between judge and petitioner in which the factual basis for the plea was confirmed by the petitioner, or to some comparable judicial record of this information." Shepard, 544 U.S. at 26. In the context of a guilty plea, that inquiry is "limited to assessing whether the defendant 'necessarily admitted' the elements of the particular statutory alternative that is a categorical match" with the federal definition. United States v. Sahagun-Gallegos, 782 F.3d 1094, 1100 (9th Cir. 2015)(quoting Descamps v. United States, 133 S.Ct. 2276, 2284, 186 L.Ed.2d 438 (2013)).

Based on the **New Case-law** "United States v. Luis Ocampo-Estrada, aka. Luis Enrique Ocampo, 2017 U.S. App. LEXIS 16511; No. 15-50471 (August 29, 2017, Filed in the 9th Circuit Court of Appeals)", This Honorable United States Supreme Court should **"GRANT"** Petitioner's **"WRIT OF CERTIORARI"** and **"VACATE"** Petitioner's Sentences and **"REMAND"** Petitioner's Case for **Re-sentencing,** in which Petitioner challenge the District Court's determination that Petitioner's prior convictions under California Health & Safety Code sections 11359 and 11360 [Case Number: FWV17882] **does not constitute a "controlled-substance offense."** Petitioner contends that "United States v. Luis Ocampo-Estrada, aka. Luis Enrique Ocampo, 2017 U.S. App. LEXIS 16511; No. 15-50471 (August 29, 2017, Filed in the 9th Circuit Court of Appeals)" which held that section (California Health & Safety Code sections 11359 and 11360) is **No Longer a Qualifying Predicate Ofense as a "Controlled-Substance Offense"** because "Mathis v. United States, 136 S.Ct. 2243, 2249, 195 L.Ed.2d 604 (20160, compels the conclusion that the statute is indivisible."[4]

Petitioner would like the records to reflect that "This Honorable United States Supreme Court **must** accept allegations in pleadings as true." Cooper v. Pate, 378 U.S. 546, 12 L.-Ed.2d 1030 (1964).

(4) Petitioner would like the records to reflect that for the District Court to continue to use the "California Drug Priors (California Health & Safety Code sections 11359 and 11360)" against Petitioner, is a complete violation of Petitioner's 5th, 6th, and 14th United States Constitutional Amendment Rights.

(3) DID THE HONORABLE ELEVENTH CIRCUIT COURT OF APPEALS IN ATLANTA, GEORGIA COMMIT **"PLAIN AND OBVIOUS ERROR"** BY ALLOWING THE UNITED STATES DISTRICT COURT, IN THE NORTHERN DISTRICT OF FLORIDA, TO **DENY** PETITIONER'S **INEFFECTIVE ASSISTANCE COUNSEL'S CLAIM** PURSUANT TO STRICKLAND v. WASHINGTON, 466 U.S. 668 (1984) ?

Petitioner would like the records to reflect that the 6th Amendment guarantees the Petitioner the right to effective assistance of counsel in criminal prosecutions. Now for Petitioner to obtain reversal of the sentence, the Petitioner must prove that **(1)** Counsel's performance "fell below an objective standard of reasonableness" and **(2)** Counsel's deficient performance "prejudiced the defendant, resulting in an unreliable or fundamentally unfair outcome in the proceeding." See Strickland v. Washington, 466 U.S. 668 (1984).

Now, in judging whether a lawyer's performance was constitutionally deficient, this Honorable United States Supreme Court should apply the two prong test established by Strickland v. Washington, 466 U.S. 668 (1984). First, the Court must determine whether the lawyer's preformance was reasonable under prevailing professional norms. Id. at 688, 104 S.Ct. at 2065. The Petitioner must prove by a preponderance of the evidence that his counsel's performance was unreasonable. Putman v. Head, 268 F.3d 1223, 1243 (11th Cir. 2001). Second, the Court must determine whether the lawyer's deficient performance was prejudicial. In order to satisfy the prejudice prong, the Petitioner "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. The Court must consider the totality of the evidence before the fact finder in making this prejudice determination. See Id. at 695, 104 S.Ct. at 2069.

Petitioner would like the records to reflect that Counsel (Clinton Alan Couch) was Completely **"Ineffective"** for **Failing To:**

(1) File a Motion to Object to the Government's "Notice of Enhancement" that used Petitioner's California convictions for Case Number: FWV17882, in which Counsel (Clinton Alan Couch) actions are in complete violation of Petitioner's 5th, 6th, and 14th United States Constitutional Amendment Rights;

(2) File a Motion to Object to the Presentence Investigation Report (PSI), which **Erroneously** alleged that Petitioner should be held accountable for five (5) kilograms or more of cocaine, when the True Facts is that the Government had less than five (5) kilograms of cocaine,

in their possession, in which Counsel (Clinton Alan Couch) actions are in complete violation of Petitioner's 5th, 6th, and 14th United States Constitutional Amendment Rights; and

(3) File Petitioner's **"Requested Appeal"** in behalf of **Issues (1) and (2)** of Petitioner's "Ineffective Assistance Claims" in which the Strickland v. Washington, 466 U.S. 668 (1984), test applies to claims of ineffective assistance based on counsel's failure to file an appeal, Roe v. Flores-Ortega, 528 U.S. 470, 476-77, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000). Counsel acts in a constitutionally unreasonable manner when he "disregards specific instructions from [A] defendant to file a notice of appeal." Id. at 477, 120 S.Ct. at 1035. When this happens, the Court should presume the defendant was prejudiced even if he signed an Appeal Waiver as part of his plea agreement. Gomez-Diaz v. United States, 433 F.3d 788, 790 (11th Cir. 2005).

Now even when a Petitioner does not give specific instructions to Appeal, his Attorney has a constitutional duty to consult with him about an appeal if **(1)** "a rational defendant would want to appeal," or (2) the "particular defendant reasonably demonstrated to counsel that he was interested in appealing." Flores-Ortega, 528 U.S. at 480, 120 S.Ct. at 1036. In determining whether a lawyer had a duty to consult his client about an appeal, the Court "must take into account all the information counsel knew or should have known." Id., Further, one "highly relevant factor" is whether the defendant pleaded guilty, "both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id.

Petitioner would like the records to reflect that Petitioner **Requested that Counsel (Clinton Alan Couch) File a Appeal in Petitioner's behalf of the above Issues (1) and (2), but it is Evident Counsel (Clinton Alan Couch) REFUSED and ABANDON Petitioner's Issues, in which is complete violation of Petitioner's 5th, 6th, and 14th United States Constitutional Amendment Rights.**

Petitioner would like the records to reflect that "This Honorable United States Supreme Court **must** accept allegations in pleadings as true." Cooper v. Pate, 378 U.S. 546, 12 L.-Ed.2d 1030 (1964).

(4) IS THERE A **CONFLICT BETWEEN** THE ELEVENTH CIRCUIT COURT OF APPEALS IN ATLANTA, GEORGIA CASE "UNITED STATES v. JERMON SHANNON, JR., aka. WINFIELD WINCHESTER ROYE, 631 F.3d 1187 (January 26, 2011, Filed in the 11th Circuit Court of Appeals)" AND THE NINTH CCIRCUIT COURT OF APPEALS IN CALIFORNIA CASE "UNITED STATES v. LUIS OCAMPO -ESTRADA, aka. LUIS ENRIQUE OCAMPO, 2017 U.S. App. LEXIS 16511; No. 15-50471 (August 29, 2017, Filed in the 9th Circuit Court of Appeals)" based on **"What constitute a "controlled substance offense" under §4B1.2(b).1 ?"**

Petitioner would like the records to reflect that on **January 26, 2011, The Honorable Eleventh Circuit Court of Appeals in Atlanta, Georgia,** stated that **"A Florida's First Degree Felony of "TRAFFICKING" (Florida Statute §893.135) is NOT a "controlled substance offense"** in "United States v. Jermon Shannon, Jr., aka. Winfield Winchester Roye, 631 F.3d 1187 (11th Cir. 2011)" **but now the exact same Honorable Eleventh Circuit Court of Appeals REFUSE to except the Case-law from The Honorable Ninth Circuit Court of Appeals in California that states Petitioner's prior Supreior Court of Calif County of San Bernardino, California, State Prior Convictions under California Health & Safety Code sections 11359 and 11360 [Case Number: FWV17882] is NO-Longer Qualified as a "Controlled Substance Offense."** See United States v. Luis Ocampo-Estrada, aka. Luis Enrique Ocampo, 2017 U.S. App. LEXIS 16511; No. 15-50471 (August 29, 2017, Filed in the 9th Circuit Court of Appeals).

Petitioner would **Request** of This Honorable United States Supreme Court to **"GRANT"** Petitioner's **"WRIT OF CERTIORARI"** and **"VACATE"** Petitioner's Sentence and **"REMAND"** Petitioner's Case for **Re-sentencing,** because Petitioner's prior California Health & safety Code sections 11359 and 11360 [Case Number: FWV 17882] **Do Not Constitute as a "Controlled Substance Offense"**, in light of United States v. Luis Ocampo-Estrada, aka. Luis Enrique Ocampo, 2017 U.S. App. LEXIS 16511; No. 15-50471 (August 29, 2017, Filed in the 9th Circuit Court of Appeals).

Petitioner would like the records to reflect that "This Honorable United States Supreme Court **must** accept allegations in pleadings as true." Cooper v. Pate, 378 U.S. 546, 12 L.-Ed.2d 1030 (1964).

CONCLUSION

The petition for a writ of certiorari should be **granted.**

Respectfully submitted,

James Valentine

Date: **November 16th, 2018**