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 judg

OPINIONS BELOW

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

The opinion of the United States court of appeals appears at Appendi the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

[ ] For cases from **state courts**:

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[ ] is unpublished.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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

No. 18-7026

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Bryan Coats — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Bryan Coats #26822-058
(Your Name)

Montgomery Federal Prison Camp
Maxwell Air Force Base
(Address)

Montgomery, AL 36112
(City, State, Zip Code)

N/A
(Phone Number)

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was June 22, 2017.

[ ] 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: September 5, 2018, and a copy of the order denying rehearing appears at Appendix C.

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

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

[ ] For cases from **state courts**:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1.	18 U.S.C. § 1956(h)	The relevant statute in force at the time of the Petitioner's conviction on money laundering conspiracy was supplanted in May 2009. There is no copy of the "old" statute available at the Federal Prison Camp Montgomery law library.
2.	28 U.S.C. § 2255	This statute permits a prisoner in federal custody to move his or her sentencing court to vacate, set aside or otherwise correct a previously imposed term of incarceration on the grounds that "the sentence was in excess of the maximum authorized by law or it was otherwise subject to collateral attack."
3.	U.S. Const., Art. 1, Amendment 6	The Sixth Amendment to the Constitution that "In all criminal prosecutions, the accused shall ... have the Assistance of Counsel for his defence."

STATEMENT OF THE CASE

This is a Petition for Writ of Certiorari based upon the Court of Appeals' dismissal of Petitioner Bryan Coats' § 2255. Coats' Petition sought to vacate, in whole or in part, his conviction based upon a plea of guilty to both counts of a two-count information.

Coats was one of a number of hedge fund managers connected with a foreign currency trading program known as Black Diamond. The Founder and "controlling person" of Black Diamond was Keith Simmons. Simmons received assistance from his trusted CPA, Jonathan Davey, also known in the informations as Mr. D. At its inception, Coats did not know that Black Diamond and Simmons were involved with an illegal Ponzi scheme, and as such, he invested $313,781 of his own retirement funds and $125,000 of his immediate family's funds into Black Diamond.

Around June 2008, and with specialized legal advice, Coats set up accounts into which new investors' funds would be placed instead of directly into Black Diamond accounts. Coats asserted in his § 2255 Petition that he was advised by three separate attorneys that this was the proper legal platform, a separate hedge fund. Coats then followed that advice, hired and paid a Florida attorney specializing in this type of work to create the Coats hedge fund and to conduct due diligence concerning Simmons and Black Diamond.

According to the information filed against Coats, he was both inducing investors into Black Diamond by "false representations, omissions of fact, and deceptive half-truths" and violating anti-money laundering statutes via the Coats hedge fund by the payment of referral fees from investor monies and payment of costs exceeding 80% of expected profits. The seven financial transactions which constituted the money laundering charge against Coats occurred in 2008 and early 2009.

Subsequent to receiving the two informations, Coats was represented by attorney Frederick Winiker III. Winiker improperly advised Coats that in order to enter a plea of guilty, Coats was required to admit the correctness of all allegations combined therein and to waive any objections to the charging document. On the advice of counsel, and with what obviously was not even a minimal investigation of the facts and law by Winiker, Coats pled guilty to both counts on July 11, 2012. On November 16, 2012, Coats was sentenced to the maximum 5 years on Count I and 10 years consecutive on Count II, for a total sentence of 15 years.

Roughly three years later, in September 2015, Coats was notified by a fellow inmate of an appellate decision involving Simmons, the Black Diamond mastermind, in which the money laundering convictions of his sentence were overturned. U.S. v. Simmons, 737 F.3d 319 (4th Cir. 2013). It was explained to Coats that Simmons had argued successfully on appeal that, consistent with existing 2008 case law in U.S. v. Santos, 553 U.S. 507

(2008), payments to co-conspirators and to prior investors in a Ponzi scheme could not be money laundering, but instead were necessary and essential expenses of the underlying financial scheme.

Thus, at the time of Coats' guilty plea, Simmons already had been charged, tried by jury, and convicted in December 2010. As such, Coats' attorney should have discussed the case with Simmons' counsel, reviewed witness statements and trial transcripts from the Simmons trial, and familiarized himself with potential plea, sentencing and/or trial strategies and defenses used by both the government and the defense should Coats decide to go to trial. Most importantly, however, had attorney Winiker made even a cursory inquiry into case law, he would have been privy to the ultimately successful defenses to money laundering used by Simmons based on 2008 Supreme Court precedent. Sadly, Winiker never informed Coats of the Santos decision.

Shortly after learning of the Simmons decision, and based on Santos, Coats began attempting to communicate with Winiker. When Coats finally received his file from Winiker in 2016, it contained no research regarding possible defenses., no copy of Santos, no information about the 2009 change to the statutory definition of money laundering, and no research concerning any double jeopardy and/or merger case law or defenses to prevent "punishing a defendant twice for the same offense." See Simmons at 324. In his § 2255 petition, Coats confirmed that Winiker had

discussed any of the foregoing with him. To that end, had Winiker reviewed existing case law, he would have discovered a plethora of relevant Fourth Circuit decisions including U.S. v. Halstead, 634 F.3d 270 (4th Cir. 2011), U.S. v. Cloud, 680 F.3d 396 (4th Cir. 2012), and U.S. v. Abdulwahab, 715 F.3d 521, (4th Cir. 2013), each of which comported with the holding of Santos that Coats' repayment of expenses to investors did not constitute money laundering. See Abdulwahab at 531, where the Court concluded that payments "were for services that played a critical role in the underlying fraud scheme." Thus, the same merger problem presented in Santos was present herein and barred Coats' money laundering conviction.

In order for Coats to prevail on his claim that attorney Winiker provided ineffective assistance of counsel, he must show that 1) counsel's performance was deficient and 2) he (Coats) was prejudiced as a result of that dificient performance. Strickland v. Washington, 466 US 668 at 687 (1984). By allowing Coats to plead guilty to a crime that did not exist, attorney Winiker's representation fell far "outside the wide range of professionaly competent assistance." 466 US at 690. Because of Winiker's inactions, the question of timeliness as to when Coats discovered or should have discovered his attorney's failure to familiarize himself with the elements of money laundering and the existence of possible defenses thereto raise a bright beacon in his favor as to when the issue of timeliness arose in this case. At a

minimum, the District Court and the Court of Appeals both erred by ruling that Coats had failed to state a claim for relief as to his money laundering conviction.

Had Bryan Coats been properly advised of the correct status of the law, that is that his purported money laundering acts were not in fact money laundering, he would not have pled guilty to same. The Government's assertion that "ignorance of the law is no excuse" for a failure to timely seek relief is patently absurd. Coats relied on the advice of his attorney. Absent a legal degree, Coats could not be expected to know that he had been ill advised and misled by his attorney. Thus, timeliness in this case began when Coats, with the reasonable exercise of diligence, knew or should have known of his attorney's ineptitude and misfeance. Criminal defendants retain counsel because they are not fully aware of the nuances of the law. Simply stated, the Government's position that Coats was supposed to be fully versed in the complexities of double jeopardy and merger law and their application to the money laundering statutes in force both before and after Santos and Simmons is ridiculous.

Based upon the foregoing, Petitioner Bryan Coats humbly prays that this honorable Court will consider and grant the instant Petition and allow him the opportunity to reverse the lower court rulings of untimeliness and failure to states claim and remand his case for further proceedings, including a full evidentiary hearing on the merits of his money laundering conspiracy conviction.

REASON FOR GRANTING THE PETITION

Petitioner Bryan Coats was charged under and convicted of a money laundering conspiracy under a provision of 18 U.S.C. § 1956 that had been invalidated by this Court in U.S. v. Santos, 553 U.S. 507 (2008) prior to when his alleged criminal conduct occurred. In spite of this existing precedent, Coats was allowed to plead guilty by defense counsel who wholly and completely failed to identify and prepare an absolute defense to the above enumerated charge.

Based upon Santos, Coats' co-conspirator Keith Simmons had his conviction on money laundering conspiracy overturned from funds that also were used to convict Coats. As established in U.S. v. Simmons, 737 F.3d 319 (4th Cir. 2013), the Fourth Circuit determined from a review of the evidence presented at Simmons' trial that the allegedly laundered funds were in fact essential expenses of an ongoing fraud scheme that was dependent upon payments to earlier investors to perpetuate a Ponzi scheme. The Fourth Circuit specifically cited the same reasoning used in Santos to establish that payments of purported profits by Simmons (and Coats) to early investors were essential expenses of a Ponzi scheme and not disbursements that dispensed profits of a Ponzi scheme.

In spite of the availability of the foregoing, Coats' counsel did not allow his client to assert the merger defense in Santos.

Coats relied on the advice of counsel in pleading guilty to money laundering conspiracy. He had a very real expectation that his counsel not only knew existing case law, but also that counsel had examined all facets of his case and all available defenses. Coats certainly never would have pled guilty to this charge if he knew that it was not the law of the land and thus unsustainable.

Even though there is no doubt that the performance of Coats' counsel was overwhelmingly deficient and that Coats relied to his detriment on his counsel's inept representation, which is the standard of review for ineffective assistance of counsel in Strickland v. Washington, 966 U.S. 668 (1984), the District Court denied Coats' claim for relief as untimely. Coats only learned of the Simmons decision by chance several years after his guilty plea. However, propmptly upon discovery of the Simmons case, Coats initiated legal proceedings to reverse his conviction on an unsupported, nonexistent charge. Coats is not a lawyer and he should not be held to a standard of knowledge of both case law and procedural law that even his own counsel did not know.

Having established the foregoing, it is imperative to show this Court why this matter is important not only to Petitioner Bryan Coats, but also to similarly situated defendants. Whether retained or appointed, counsel employed by defendants to guide them through the criminal maze and with the expectation that counsel possesses knowledge of the case law and the court system

that they do not have. This Court in U.S. v. Cronic, 466 U.S. 648, 656 (1984) recognized that the Sixth Amendment requires that "counsel act €ß in the role of an advocate." Further, that "a presumption of prejudice arises when defense counsel fails to subject the prosecutor's case to meaningful adversarial testing." Id at 659. To that end, people hire mechanics to fix broken cars, but they employ doctors to perform surgery. Conversely, they do not expect a mechanic to perform heart bypass surgery or a doctor to replace the alternator in their car. No defendant imagines that his or her lawyer does not know the underlying elements of the charge(s) for which representation is being provided, nor that the lawyer does not make even a cursory review of applicable case and statutory law, nor that the lawyer performs no relevant research.

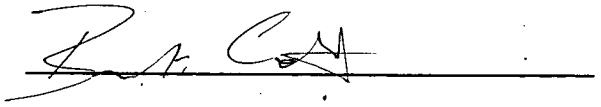
When, as in this case, counsel's representation fell well below any objective standard of reasonableness and the grossly deficient representation prejudiced Petitioner Coats by taking his liberty for 10 additional and consecutive years, the ineffective assistance of counsel test set forth in Strickland at 687-88 has been met and exceeded. Coats was advised and allowed to plead guilty to a crime of money laundering conspiracy that the established case law and statute in force at the time could not and did not support, thus adding an additional 10 years to his sentence that he began serving more than a year ago. For Bryan Coats, justice has been delayed for more than six years,

but reversing his conviction and/or granting him an evidentiary hearing thereon will ensure that his justice is not denied. Coats' counsel's conduct "so undermined the proper functioning of the adversarial process" that the underlying proceedings "cannot be relied on as having produced a just result." Strickland at 686. Accordingly, this Court must not let his money laundering conviction stand and set aside his sentence thereon or otherwise correct same in accordance with the arguments made herein, as Coats did not receive his constitutionally guaranteed assistance of effective counsel. Further, Coats prays for such other or further relief as is just and proper in the premises and that he be appointed counsel in this matter should such be appropriate.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: DECEMBER 3 2018