

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

I Lynce P. Foster — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S Court of Appeal For the Sixth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lynce P. Foster

(Your Name)

Butner Federal Medical Center

(Address)

F.O. Box 1600 Butner, NC 27509

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- I. WHETHER COUNSEL WERE INEFFECTIVE FOR NOT REPRESENTING PETITIONER ACCORDING TO A COUNSEL GUARANTEED TO THE PETITIONER BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION, ON ARGUMENT ONE THROUGH NINE.

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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Title 21 U.S.C. Section 841(a)(1)(b)(1)(c)

OTHER

United States Sentence Guideline Section 4B1.1

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 B to the petition and is

reported at Sixth Circuit, NO# 17-6247; 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[] is unpublished.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 A 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 is unpublished.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[] is unpublished.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[] is unpublished.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

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 3rd 2018.

No petition for rehearing was timely filed in my case.

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

An extension of time to file the petition for a writ of certiorari was granted to and including NA (date) on NA (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

Eighth Amendment of The United States Constitution

Sixth Amendment of The United States Constitution

Fifth Amendment of The United States Constitution

STATUTORY PROVISIONS

Title 28 U.S.C. Section 2255

Title 28 U.S.C. Section 2253(c)(2)

Title 21 U.S.C. Section 841(a)(1)(b)(i)(c)

Title 18 U.S.C. Section 922(g)(1)

Title 18 U.S.C. Section 924(c)(1)(A)

STATEMENT OF THE CASE

In 2010, a jury convicted Petitioner of Conspiracy to Distribute and to possess with intent to Distribute Cocaine, two Counts of Possession of a Firearm in furtherance of a Drug Trafficking Offense, and being a convicted felon in possession of Firearm, Petitioner was enhanced to Career Offender Status according to U.S. Sentence Guideline Section 4B1.1 and sentenced to a Draconian sentence of 622 Months in a United States Federal Prison where he now resides in a Prison Medical Center in Butner, North Carolina. Petitioner now files this Writ of Certiorari to The United States Supreme Court for Relief.

REASONS FOR GRANTING THE PETITION

Petitioner fully understands that this Honorable Court has discretion as to whether or not it wants to grant and or accept a Writ of Habeas Corpus. However Petitioner states that this Writ of Certiorari is of National Importance, because of the major trial violations of the Petitioner's Fifth, Sixth, and Eighth Amendment Rights, under the United States Constitution. And also because of Dimaya, vs Sessions, 137 S.ct.11204(2018), Unconstitutionally Vague Predicate violations. Petitioner therefore hopes and prays that this Writ of Certiorari will be granted by The Honorable U.S. Supreme Court.

Petitioner states the following arguments:

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lynce Foster

Date: 7/26/2018

WHETHER COUNSELS WERE INEFFECTIVE FOR NOT REPRESENTING THE
PETITIONER ACCORDING TO A COUNSEL GUARANTEED TO THE PETITIONER BY THE SIXTH
AMENDMENT OF THE UNITED STATES CONSTITUTION ON ARGUMENTS ONE THROUGH NINE.

ARGUMENT ONE

Petitioner states that the admission of testimony concerning a Jario Campo's statement to Law Enforcement violated Petitioner's Fifth Amendment right to Due Process to have witness Campos Testify in a Court of Law before the jury under oath. According to Crawford v. Washington, 541 U.S. 36,61(2004); Melendez-Diaz v. Massachusetts, 557 U.S. 305(2009); and Bullcoming v. New Mexico, 564 U.S.647, 660(2011). The Sixth Amendment of the United States Constitution demand that Petitioner be given the right to cross-examine the witness against him. The lower Courts therefore, violated Petitioners Sixth Amendment right to confront Mr. Campos, whom never testified under oath in a Court of Law, to his testimonial statement. The only indicium of reliability sufficient to satisfy Constitutional demands is confrontation, such as in Petitioners case in point.

Petitioner was therefore, not treated fairly under the Constitution of the Sixth Amendment when he was not allowed to confront witness Campos, a witness against him, based on witness in itself did not comply with the requirements of the Sixth Amendment of the United States Constitution to confront a witness against him. Counsel was therefore, ineffective in violation of the Petitioners Fifth Amendment rights for not objecting to the government being allowed to allow out of Court Statements into the court in regards to witness Campos testimonial statement to be used against Petitioner without the Petitioner being able to confront witness Campos under oath in a Court of Law whom never testified before a jury, nor on the witness stand. Counsel's Ineffectiveness in allowing the government and the Court to proceed against Petitioner's Fifth amendment, and Sixth amendment right to confront witness

Campos, violated Petitioners Sixth Amendment right to confront a witness against the Petitioner and Petitioner's Sixth Amendment right to Effective Assistance of Counsel. Petitioner was prejudiced by Counsels refusal to object to the unconstitutionality of Petitioners Sixth Amendment confrontational rights to confront a witness against him. Counsels prejudice, not only caused Petitioner to be unconstitutionally convicted, but also to receive a 622 month sentence in violation of the constitution of the United States under the Sixth and Fifth Amendment. Strickland v. Washington, 466 U.S. 668-687(1994); United States v. Cronic, 466 U.S. 648(1984); Florida v. Nixon, 543 U.S. 175(2004); Crawford v. Washington; Melendez-Diaz v. Mass; and Bullcoming v. New Mexico, Supra.

ARGUMENT TWO

THE PROOF PRESENTED AT TRIAL VERIED IMPERMISSIBLY FROM THE CHARGES IN THE THE ORIGINAL INDICTMENT

Counsel represented Petitioner below standards of a counsel guaranteed to him by the Sixth Amendment of the United States Constitution. Counsel failed to object to the constructive amendment of the indictment in his case and therefore allowed the jury to be instructed based on erroneous and Fundamental defective jury instructions. Firstly Petitioner was charged with Title 21 U.S.C. section 841(a)(1) and title 18 U.S.C Section 924(c) and with a Hobbs Act Robbery. Petitioner was given an Overt act for robbery got charged with Section 924(c) and Title 21 U.S.CSection 841(a)(1), but the government constructively amended the Indictment as if the Petitioner was charged within furtherance of a drug trafficking offense. Thereby constructively amending the indictment and jury instructions to the jury in furtherance of a robbery rather than the charge of in furtherance of a drug trafficking offense under section 924(c). In other words, the government was allowed to turn and constructively amend the Petitioner's jury instructions and the indictment without any objections from ineffective counsels, in this case. A constructive

amendment of the indictment occurs such as in petitioner's case, the language of the indictment is in affect altered by the presentation of evidence and jury instructions such as in petitioners case in point. When the jury instructions which so modify the essential elements of the charged offense such as was the case in point, that there was a sub stantial likelihood that petitioner was convicted of offenses other than the ones charged in the indictment, such as was the case in petitioners case in point. Counsels were ineffective and represented the petitioner below ~~s~~ tandards of a counsel guaranteed to petitioner by the sixth amendment of the United States Constitution. Counsels prejudiced petitioner in this case when they did not object to the constructive amendment of the indictment. These fundamental errors prejudiced the petitioner and caused him 622 months in a Federal Prison in violation of the petitioners sixth amendment rightsa to a counsel guaranteed to the petitioner by the sixth amendment of the United States Constitution Strickland v. Washington, United States v. Cronic; Cuyler v. Sullivan, and Florida v. Nixon, Supra

ARGUMENT THREE

**DIMAYA v. SESSIONS ,138 S.ct 1204(2018) INVALIDATED THE RESIDUAL CLAUSE.
IN REGARDS TO PETITIONER'S STATE PRISON INPERSPECTIVE TO PETITIONER'S UNCONSTITUTIONAL CAREER OFFENSE STATUS.**

Petitioner's state of Tennessee facilitation of robbery. A robbery for which petitioner had no violence nor was there any evidence involved for which was used as a predicate to unconstitutionally career the petitioner in violation of Dimaya v. Sessions, and Title 18 U.S.C Section 16(b) Also Petitioners aaggravated robbery also violated Dimaya v. Sessions, in regards to Title 18 U.S.C section 16(b). Both state priors for the state of Tennessee, Dockets 98-1065/ 98-A-504, both violated Dimaya v. Sessions requirements under the Residual Clause of 16(b). According to Petitioner's aggravated robbery for which he pled guilty to a lesser offense and petitioners facilatition of

robbery offense, but in the state of Tennessee, were not eligible for career offender status, because neither were violent offenses according to their State Statutes in the State of Tennessee based on Dimaya v. Sessions, in regards to Title 18 U.S.C. Section 16(b) residual clause in regards to the State Statute of Tennessee. Because both of the two State Tennessee Statutes do not have "Use, Attempted Use, or Threatened Use of Physical Force" as elements, plus petitioner pled to a lesser enhanced based on the original arresting offenses of both state priors, for which he pled to lesser offenses of, also there was no Sheppard Documentation to verify the legitimacy of these two states priors, that were unconstitutional used to enhance the petitioner in violation of his fifth amendment right to his Shepard documentation according to Shepard v. United States, 544 U.S. 13, 26, (2005): a precedence report is not evidence, but only general description of which the petitioner was charged with, Counsel was totally ineffective for not challenging those two state priors for which there was no valid documentation of verification of proof of what the petitioner pled too based on these two state priors. There was no Descamps v. United States, 133 S.ct. 2276-2283(2013) divisible nor indivisible element approach conducted in this case for the element cause to a jury before a responsible doubt based on these two Tennessee State priors. Petitioner never received his Shepard documentation rights to challenge the government on his career offender statuts. Counsels were ineffective for not challenging petitioners unconstitutional statuts especially based on Shepard documentation requirements according to the petitioners fifth amendment rights to Due Process to these state required documents, as verification of which the petitioner actually pled guilty to in these two Tennessee state priors, according to Mathis v. United States, 136 S.ct 2243-2248(2016). Petitioners two state r robbery offenses violate the ways, means and conduct of how the petitioner

was unconstitutional enhanced for these two state priors. Rather than the element clause to a jury beyond a reasonable doubt as is required in Mathis Descamps, using the categorical modified approach. Petitioner was not enhanced to career offender status based on these two state priors in regards to the element clause, nor according to divisible or indivisible elements approach in regards to Descamps, nor Mathis, nor Shepard. Petitioner was therefore unconstitutional careered based on a Tennessee State Statute for two robberies, for which he pled guilty to the lesser offense of, that were indivisible to his unconstitutional career offender status, see Mathis, 136 S.ct 2243-2249 (2016). Petitioner's career offender status in regards to Dimaya v. Sessions, is also unconstitutionally vague under title 18 U.S.C Section 16(b). Petitioner is therefore, serving a unconstitutional career offender sentence. But for Counsel's ineffectiveness and below the standard of representation, the proceedings would have been so much different. Counsel's prejudiced the petitioner by not objecting to petitioner's unconstitutional career offender status, and causes the petitioner 622 months in a Federal Prison, Strickland v Washington United States v. Cronic; and Cuyler v. Sullivan, Supra

ARGUMENT FOUR

PRETRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO INFORM THE GOVERNMENT THAT PETITIONER WAS WILLING TO ACCEPT THE ACCEPTANCE OF A PLEA OFFER.

Counsel rendered Ineffective assistance of Counsel when Counsel took too long to inform the government that petitioner was willing to accept the ten year plea. Petitioner's fiance called to government and informed them that petitioner was willing to accept a plea that she was informed that the government was willing to give to the petitioner for a Ten Year Plea. The Government informed Petitioner's fiance that they have the call, they had received the call she had also called Counsel as well asking Counsel if they

contacted the government to inform them that Petitioner was willing to accept the Plea that had been offered by the government to Petitioner. Yet Suddenly the government no longer wanted to allow Petitioner the Plea even though he had been willing to accept it. See Missouri v. Frye, 132 S.ct. 1399(2012). It was Counsel not the petitioner who allowed the time to expire in accepting the plea. Therby rendering Ineffective assistance of Counsel that prejudiced the petitioner in not allowing him to be able to take advantage of the government plea, even though suddenly the assistant U.S. Attorney stated his boss would never have allowed it anyway. It is petitioners position, that because of Counsel's ineffectiveness and below the standard of representation , that petitioner was prejudiced by Counsel's Ineffectiveness in not being on time to accept the plea when it was offered to inform the government that petitioner was entitled to have competent Counsel during such plea bargaining process, for which petitioner did not receive Lafler v. Cooper, 132 S.Ct. 1376(2012). Counsel's performance was therefore ineffective and deficient and petitioner was represented below standards of a Counsel guaranteed to him by the Sixth amendment of the United States Constitution. This loss of opportunity by Counsel on the petitioner's behalf led to the imposition of a 622 Month sentence in a federal prison, which is a very severe sentence, based on Counsel's below standards of representation, as for the government boss that may or may not or probably would have never approved the deal, then why was it ever offered to Petitioner? by the government in the first place and who really knows if the Assistant U.S.Attorney's Boss would have rejected or accepted, when it was the government itself that offered the plea to petitioner from the start. Petitioner was therefore prejudiced, Schemed and duped into believing he was going to receive a Ten Year plea from the government by Counsel. When in fact the Assistant U.S. Attorney States that suddenly his Boss would never have

approved such a deal. Thereby misleading the petitioner into a false and misleading, fake plea agreement that was never going to transpire. Thereby committing Cruel and Unusual Punishment, in misleading the petitioner into believing something that was all along based on false pretense by the government and petitioners Counsel. Petitioners sixth amendment rights to effective assistance of Counsel was violated, petitioner was also prejudiced based on false pretense of a plea deal by the government and Counsel. This prejudice caused petitioner 622 months in a United States Federal Penitentiary. Cuyler v. Sullivan, 446 U.S. 350(1980): and Florida v. Nixon, 543 U.S. 175(2004)

ARGUMENT FIVE

TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE BY OPENING THE DOOR TO TESTIMONY CONCERNING GANGS AND AGREEING TO ALLOW THE GOVERNMENT TO SHOW PICTURES OF GANG TATTOOS

Counsel was ineffective and represented the petitioner below standards of Counsel guaranteed to the petitioner by the Sixth amendment of the United States Constitution when Counsel Ineffectively allowed the government to violate petitioners Fifth and Sixth amendment rights to allow and not object to the prejudice of allowing the government to testimony and showing pictures of tattoos on gang members. Counsel's below the standards of representation prejudiced petitioner and caused him 622 Months in Prison. Strickland v. Washington; United States v. Cronic; Cuyler v. Sullivan; and Florida v. Nixon, Supra.

ARGUMENT SIX

COUNSEL FAILED TO OBJECT TO TESTIMONY CONCERNING CAMPOS'S STATEMENT TO LAW ENFORCEMENT.

Counsel was again and again ineffective and represented the petitioner below standards of a Counsel guaranteed to him by the sixth amendment of the United States Constitution when Counsel did not object to the witness stand testimony of Statements to law enforcement, not testified too by Campos himself

Thereby violating again and again petitioners Sixth amendment Constitutional rights to cross examine and confront the witness himself (Campos) who made the statement, rather then having it testified too by Law Enforcement. Petitioner has a Fifth and Sixth amendment right to confront and cross-examine the witness against him. Crawford v. Washington; Bullcoming v. New Mexico; and Melenez-Diaz v. Massachusetts, Supra See also Cuyler v. Sullivan, and Florida v. Nixon; but for Counsel's prejudice inallowing Law Enforcement to Testify on the witness stand on Campus behind the proceeding would have been so much different and petitioner would have had a different outcome. Counsel's Ineffectiveness not only prejudiced the petitioner but, also caused petitioner 622 months in a Federal Prison.

ARGUMENT SEVEN

COUNSEL FAILED TO RAISE A DOUBLE JEOPARDY CHALLENGE TO THE SUPERCEDING INDICTMENT

Counsel was ineffective for not challenging the Superceding Indictment against petitioner of the exact same charge he had already been exposed too, in the first indictment. Thereby indicting the petitioner twice on the exact same charge twice. Counsel was ineffective for not challenging the Fifth and Sixth amendment violations that caused petitioners trial to be unfair and in violation pf Fifth and Sixth amendment rights to the elements and charges and counts, to the judge based on double jeopardy. But for Counselors Constant ineffectiveness the Proceedings would have been so much different. Counsels ineffectiveness prejudiced the petitioner in regards to his double jeopardy claim and caused him 622 Months in a Federal Prison Strickland v. Washington, United States v. Cronic; and Cuyler v. Sullivan, Supra

ARGUMENT EIGHT

TRIAL COUNSEL FAILED TO PRESENT AN OPENING STATEMENT PREPARE A DEFENSE, AND OR ASK THE COURT FOR MORE TIME TO PREPARE A DEFENSE.

Counsel was so ineffective in this case, that he failed totally in his duty as a Counsel guaranteed to petitioner by the Sixth amendment. He refused to present an opening statement to the jury and to prepare even a defense on the Petitioners behalf, a total and perfect example of ineffective assistance of Counsel under the Sixth amendment of the United States Constitution. But for Counsels ineffectiveness in his representation the proceeding would have been different. The Petitioner received 622 Months in a Federal Prison due to Counsel's Ineffective performance, see *Strickland v. Washington*; and *United States v. Cronic*.

Argument nine

COUNSEL PREJUDICED THE PETITIONER BY ADVISING HIM TO TAKE THE WITNESS AND REFUSING TO PREPARING A DEFENSE.

Counselor advised the Petitioner to take the witness stand, knowing that Petitioner did not know how to testify on the witness stand, nor was Counsel even willing to prepare his client for the witness stand on how to testify, and or what questions to answer, and or what to testify too. All Counsel wanted Petitioner to do is just take the stand without preparing a defense and or what or how Petitioner should answer the questions posed to him. Counsel's unpreparness caused ineffectiveness and below the standard of representation.

Strickland v. Washington; and United States v. Cronic, Supra

Petitioner has made a denial of a substantial showing in this case of his Fifth, Sixth, and Eighth Amendment Rights to the United States Constitution 28 U.S.C. Section 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322,336(2003) Petitioner has demonstrated that reasonable jurist would find the District Courts assessment of the ~~pet~~petitioners assessment of the petitioner's Constitutional claims debatable and wrong. *Slack v. McDaniel*, 529 U.S. 473,484(2000) Petitioner has demonstrated that jurist or reasonable People would find it

debatable that this Writ of Certiorari of Petitioners Constitutional claims and rights, that jurist of reason would find it debatable whether the lower courts were correct in its ruling for which Petitioner states that they were not and that they violated constantly his Fifth, Sixth, and Eighth Amendment Rights under the United States Constitution Petitioner is therefore, actually innocent of various claims in this Writ of Certiorari and even the government and law of courts know this to be in fact true. See also Buck v. Davis, 137 774 (2017). These claims of the petitioner certainly deserve more encouragement from the United States Supreme Court and Therefore to proceed further.

Petitioner hopes and prays that the Honorable Justice will grant him relief, based on all of the above stated reasons in this Writ of Certiorari.

Respectfully



LYNCE P. FOSTER