

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MALCOLM JARREL HARTLEY - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT(S)

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

PETITION FOR WRIT OF CERTIORARI

MALCOLM JARREL HARTLEY #30015-058

UNITED STATES PENITENTIARY - HAZELTON

P.O. Box 2000

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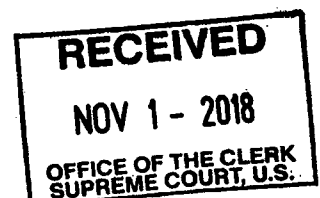


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Court of Appeals, No. 17-4304

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:

QUESTIONS PRESENTED

A. WAS Mr. HARTLEY'S guilty plea free from COERCION, thus, voluntarily given, after he was told by the United States Attorney, and his counsels, that his co-defendant — whom has young children and a wife, and whom had already chosen life by pleading guilty — would have his plea rescinded and FACE BEING put to death, if he did not plead guilty and answer all questions regarding the voluntariness issue affirmatively?

TABLE OF AUTHORITIES CITED

<u>CASES</u>	<u>PAGE NUMBER</u>
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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from Federal Courts:

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States District Court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was July 31, 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: _____, 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. ____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This request for a Writ of Certiorari involves a defendant's Fifth Amendment Due Process right to be free from coercive threats by the Government in a capital case regarding his or her plea, and the lower court's obligation to be absolutely positive that the plea was not coerced by such threats, pursuant to Federal Rules of Criminal Procedure, Rule 11(b)(2).

STATEMENT OF THE CASE

In accordance with a written plea agreement, Malcolm Jarrel Hartley pled guilty to: RICO Conspiracy, 18 U.S.C. §§ 1962(a), (d) (2012) (Count One); two counts of murder in aid of racketeering, 18 U.S.C. § 1959(a)(1) (2012), and two counts of using or carrying a firearm during a crime of violence resulting in death, 18 U.S.C. §§ 924(c), (g)(1) (2012). Hartley was sentenced to life in prison on each count.

Hartley timely filed a Notice of Appeal arguing that 1. "When a provision of a plea agreement in a potentially capital case requires both co-defendants to waive their right to trial, that provision must be explored at the Rule 11 hearing in order to ascertain that the choice to plead guilty was not coerced by the knowledge that failure to plead guilty would expose the co-defendant to the risk of a death sentence."

Hartley's appellate counsel argued the issue in three parts: (A) When plea agreements are packaged with those of co-defendants, the district court must exercise special care during the Rule 11 colloquy concerning the impact of the wired condition in the agreement on the voluntariness of the plea. (B) The lack of any inquiry during the Rule 11 colloquy concerning the impact of the wired plea provision on Mr. Hartley's decision to plead guilty resulted in a failure to ascertain whether

Mr. Hartley's plea was voluntary or coerced. And (C) Appellate evaluation of whether Mr. Hartley's agreement to a general appeal waiver should be enforced is based on whether the scope of the waiver in his case was constitutional.

The Government moved to dismiss the appeal based on the waiver-of-appellate-rights provision contained in the plea agreement, and Hartley's counsel adamantly opposed the motion, yet the Fourth Circuit Court of Appeals, in an unpublished per curiam opinion, dismissed the appeal by granting the Government's motion to dismiss.

The Fourth Circuit reviewed de novo the terms of the appeal waiver provision of the plea agreement, discussing all of the relevant facts and points of law, ultimately finding that Hartley's plea-based on the record before the court - was binding.

No request for Rehearing/Rehearing en banc was filed.

The instant petition for a writ of Certiorari is timely filed with 90 days of July 31, 2018, the date on which the Fourth Circuit affirmed the judgment of the district court and its sentence.

REASONS FOR GRANTING THE PETITION

Mr. Hartley, the Petitioner here, and his co-defendant were both presented with plea agreements which contained a provision that the plea agreement would be null and void if either of them chose to rescind his plea agreement for whatever reasons. By the time Petitioner Hartley was informed of the terms of the plea offer, his co-defendant Mr. Curston had already entered a guilty plea. The terms of the plea were that by pleading guilty, a life sentence would be imposed instead of a possible death sentence if they lost trial. Mr. Curston, by pleading guilty, chose life fearing the chance.

of death, as he has small children and a wife. However, Mr. Hartley - by the time the plea offer was presented to him - bore the weight of not only choosing between accepting a plea or facing a capital trial himself, but of also facing a possible capital trial, with the possibility of an execution of his co-defendant's children's father.

Petitioner Hartley had a constitutional due process right to be free from being forced, threatened, or coerced by threats, into pleading guilty, under the Fifth Amendment of the Constitution. The district court had an obligation to, under Rule 11 of the Federal Rules of Criminal Procedure, inquire as to whether he had been

forced or threatened into pleading guilty. See:

United States v. Cross, 57 F.3d 588, 590 (7th Cir.

1995), see also, United States v. Davis, 1996 WL

343030 at *2 (4th Cir. June 24, 1996) (unpublished)

(acknowledging government's concession that the district

court failed to ask the defendant if he had been

threatened or forced into pleading guilty). The

district court failed to ask about the plea

agreement's codicil regarding his co-defendant's

plea of guilt requirement, and the possible pressure he felt from it.

"Although the procedures embodied in Rule 11

have not been found to be constitutionally

mandated, they are designed to assist judges

in making the constitutionally required determination that a defendant's guilty plea is truly voluntary" and is further "intended to produce a complete record, at the time of the plea being entered, of the factors relevant to the voluntariness... determinations." McCarthy v. United States, 349 U.S. 459, 465 (1969). See - United States v. Russell, 1997 WL 87234 at *1 (2nd Cir. March 3, 1997) (unpublished) ("We do not see in the record any indication that, in the original plea proceeding, the court made the Rule 11(d) [now (b)(2)] determination in any manner."). Likewise here, in Mr. Hartley's case, the district court did not ask him a single question regarding the pressure he

may or may not have felt by the code.
That if he pled not guilty, and went to trial,
his co-defendant's plea agreement would be
rescinded exposing his co-defendant to the
death penalty, and the pressure he may or
may not have felt about how his plea decision
could impact the lives of innocent parties, i.e.,
his co-defendant's family, small children and a
wife.

This violation of Rule 11 negated an essential
part of Mr. Hartley's plea process, due process, one
that has been recognized by the Fourth Circuit for
nearly 90 years. Fogus v. United States, 34 F.3d
97, 98 (4th Cir. 1929) ("Before receiving a plea of guilty

IN A CRIMINAL CASE, THE COURT SHOULD SEE THAT IT IS MADE BY A PERSON OF COMPETENT INTELLIGENCE, FREELY AND VOLUNTARILY..."). THIS SUPREME COURT HAS SIMILARLY REMARKED ON THE IMPORTANCE OF PLACING ON THE RECORD ANY THREAT OR ASSURANCE LEADING TO THE PLEA. SEE SANTOBELLO V. NEW YORK, 404 U.S. 257, 261-62 (1971) ("THE PLEA MUST, OF COURSE, BE VOLUNTARY AND KNOWING, AND IF IT WAS INDUCED BY PROMISES, THE ESSENCE OF THOSE PROMISES MUST BE IN SOME WAY BE MADE KNOWN."). IN PETITIONER HARTLEY'S CASE THE THREAT OF HIS CO-DEFENDANT RECEIVING THE DEATH PENALTY, AND THE FACT OF HIS CO-DEFENDANT'S FAMILY, KEPT HIM FROM GOING TO TRIAL. PETITIONER HARTLEY WANTED TO GO TO TRIAL DESPITE THE DEATH PENALTY FACTOR.

Thus, he was not free from threats or coercion. His every thought were swarming with indecision in the face of what may happen to his co-defendant if he went to trial as he really wanted to do. He should not have been faced with such a decision, and for the government to place him in that situation is a violation of his constitutional right to be free of such governmental conduct. Accordingly, not only was there constitutional error, but given the charge of the Rule 11(b)(2) requirement and this long standing precedent, the error was plain. See - United States v. Vonn, 535 U.S. at 68 (2002).

Because Petitioner Hartley did not seek to withdraw his plea, and no objection was otherwise

raised to the validity of his guilty plea proceeding. The appellate court reviewed the district court's handling of the plea hearing for plain error. United States v. Dominguez-Benitez, 542 U.S. 74, 76 (2004); United States v. Sanga, 774 F.3d 812, 815 (4th Cir. 2014); United States v. Martinez, 277 F.3d 517, 524 (4th Cir. 2002). Accordingly, Petitioner Hareley must have shown appeal, that the district court committed error that was plain and that affected his constitutional rights substantially. United States v. Alamo, 507 U.S. 725, 732 (1993). In the guilty plea context, Mr. Hareley established that the error affected his substantial rights by demonstrating a reasonable probability that he would

NOT HAVE pleaded guilty but for the error. IN
THIS CASE THE ERROR WAS THE COERCIVE, THREATENING
POSITION THE GOVERNMENT WAS ALLOWED TO PLACE
HIM IN. MR. HARTLEY DEFINITELY WANTED TO GO TO TRIAL
AND FIGHT HIS CASE, DESPITE THE POSSIBILITY
OF DEATH - AS HE PERSONALLY WOULD RATHER DEATH,
THAN A LIFE OF IMPRISONMENT, YET HE DID NOT HAVE
THE UNIMPEDED ABILITY - WITH CLEAR CONSCIENCE
TO MAKE THAT DECISION FOR HIMSELF BECAUSE OF
THE GOVERNMENT'S THREAT THAT IF HE WENT TO
TRIAL HIS CO-DEFENDANT WOULD HAVE TO ALSO,
PLACING HIS CO-DEFENDANT AND HIS FAMILY IN THE SAME
POSITION. Thus, Petitioner Hartley DID NOT ENTER HIS

plea freely and voluntarily of his own free will,
he was coerced by his counsel[s], by the United
States Attorney, and by his co-defendant's desire
to choose life, and by the thoughts regarding
his co-defendant's family, into pleading guilty
in violation of his constitutional right to be
free of such under the Fifth Amendment
of the Constitution.

Petitioner Hartley submits this problem
affects many throughout the circuits and his
case is the perfect case to set the standard
for the years and cases to follow.

The Petition for Writ of Certiorari should be granted.

CONCLUSION

The petition for Writ of Certiorari should
be granted.

Respectfully Submitted,

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Date: 10/24/18