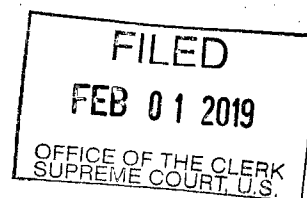


No. 18-7849

IN THE
SUPREME COURT OF THE UNITED STATES



JESUS PACHECO ESTUDILLO — 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 EIGHT CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

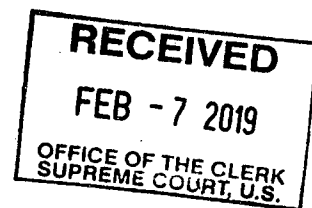
PETITION FOR WRIT OF CERTIORARI

JESUS PACHECO ESTUDILLO
(Your Name)

P.O.DRAWER 55050 McRae Correctional Facility
(Address)

McRae Helena, GA 31055
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

- I. Whether Petitioner's Sixth Amendment Right To The Effective Assistance was Violated When Counsel Failed to File A Direct Appeal.
- II. Whether The Court Erred When It Failed To Grant The Petitioner An Evidentiary Hearing For The Development of Relevant Facts Relating To Petitioner's Sixth Amendment of Law Violation Claim.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

1. David S. Doty, United States District Judge
2. Mr. Bradley M. Endicott, U.S. Attorney
3. Ms. Kate M. Fogarty, U.S. District Clerk
4. Jesus Pacheco Estudillo, Pro se
5. Robert A. Lengeling, Attorney At Law
6. Shannon R. Elkins, Federal Public Defender

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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 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☒ is unpublished.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☒ is unpublished.

☐ For cases from **state courts**: **N/A**

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 January 09, 2019.

☐ 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: October 27, 2018, 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. § 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).

IN THE SUPREME COURT OF THE UNITED STATES

NO. _____

JESUS PACHECO ESTUDILLO,

Appellant/Petitioner,

Vs.

USCA No.18-2471

USDC Civil No. 018-CV-00065-DSD

USDC Criminal No.15-278(1) (DDSD/TNL)

UNITED STATES OF AMERICA,
Appellee/Respondent.

_____/

PETITION FOR WRIT OF CERTIORARI

Jesus Pacheco Estudillo, (hereinafter “Petitioner”), acting pro se, and do hereby respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eight Circuit. In support thereof, Petitioner shows unto the Supreme Court as follow:

JURISDICTION

The Court of appeals entered its judgment as mandate on January 09, 2019. See (Appendix #1). This Court has jurisdiction under **28 U.S.C. § 1254(1)**.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

This case involves a federal criminal defendant's constitutional Rights under the Sixth Amendment provides in relevant 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 § 2253(c)**, which states:

1. Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from:
 - A) The final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court; or
 - B) The final order in a proceeding under **§ 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

After a timely guilty plea to count two (1) of the indictment, which charges Conspiracy to Possess with intent to distribute 5 kilograms or more of a mixture and substance containing a detectable amount of cocaine in violation of title 21 U.S.C. § 841(a) (1) and 841(b) (1) (A) and 846. The Petitioner appeared for sentencing in the District Court of Minnesota, before the Honorable Judge David S. Doty, the United States District Judge sentenced a Petitioner to a term of 120 **months** imprisonment as to count two and 5 years of supervised release.

Pacheco-Estudillo timely filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 in November of 2014. (DKT# 81). In that motion, he raised three issues, namely that his defense attorney rendered ineffective assistance of counsel by failing to file a direct appeal; 2) Ineffective Assistance of counsel for failing to argued for a safety valve reduction; 3) Ineffective assistance of counsel because grossly misrepresented his possible sentence.

The government thereafter moved to dismiss his petition by arguing that Pacheco-Estudillo voluntary waived his right to collaterally attack his conviction and sentence. Pacheco-Estudillo shortly after filed a reply. The district court subsequently issued a Memorandum Opinion and Final Order dismissing the Petition and denying a certificate of appeal ability on June 05, 2018. (Dkt#308). The district court found that Pacheco-Estudillo claims is baseless. Pacheco-Estudillo thereafter filed a notice of appeal on July 02, 2018. (Dkt# 312).

The Court of appeals entered its judgment as mandate on January 09, 2019. See (Appendix #1).

REASON FOR GRANTING THE PETITION

1. The Petition Should Be Granted Because Pacheco-Estudillo's Sixth Amendment Right to the Effective Assistance of Counsel Was Violated When Defense Counsel Failed to file a Direct Appeal.

In this case Pacheco-Estudillo's claim for relief stemmed from his attorney complete failure to file a Notice to appeal. In fact, Pacheco-Estudillo alleged that his attorney failed to file a Notice to appeal, to prevail on an ineffective assistance of counsel claim, a petitioner must meet the **Strickland** standard; specifically, a petitioner must show both deficient performance by counsel and prejudice. **Strickland v. Washington**, 466 U.S. 668, 687, 104 Sc.D. 2052, 80 L.Ed.2d 674(1984). "Surmounting **Strickland's** high bar is never an easy task." **Padilla v. Kentucky**, 559 U.S. 356, 130 S. Ct. 1473, 1485, 176 L.Ed.2d 284 (2010). A party raising an ineffective assistance of counsel claim in a § 2255 Petition holds the burden of proving his or claims. **Pough v. United States**, 442 F.3d 959. 964 (6th Cir. 2006) Petitioner must "sustain [] his contentions by a preponderance of the evidence. " **Pough**, 442 F.3d at. 964. The **Strickland's** test applies to claims that counsel was constitutionally ineffective for failing to file a notice of appeal. **Roe v. Flores-Ortega**, 528 U.S. 470, 477, 120 S. Ct. 1029, 145 L.Ed.2d 985 (2000)."[A] Lawyer who disregard specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable. "Id. This is because filing an appeal is a ministerial task, and a lawyer's failure to do so, at the request of his or her client, reflects inattention to the defendant's wishes rather than a strategic decision. Id. Accordingly, because the record is devoid that, Pacheco-Estudillo specifically asked his counsel to appeal his sentence through request. However, counsel failed to pursue the endeavor. Thus, counsel's failure to appeal therefore

constitutes constitutionally deficient performance. This conduct “mandates a presumption of prejudice because the adversary process itself has been rendered presumptively unreliable. “ **Roe, 528 U.S. at 471, 120 S. Ct. 1029.** Therefore, Pacheco-Estudilo’s certiorari Petition should be **GRANTED** on the aforementioned issue.

2. The Court Erred When It Failed To Grant Ibarra An Evidentiary Hearing For The Development Of Relevant Facts Relating To His Sixth Amendment Of Law Violations Claims.

Section 2255 states:

“ Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.” **28 U.S.C. § 2255** (emphasis added). In the case at bar, it was an error for the district court to have dismissed Ibarra’s claims without first having conducted an evidentiary hearing, mainly because he “alleges facts that, if true, would entitle him to relief.” **Holmes v. United States, 876 F.2d 1545, 1552 (11th Cir. 1989)** (“holding that the district court must hold an evidentiary hearing where court cannot state conclusively that the facts alleged by petitioner, taken as true, would present no ground for relief). Here, because the record sheds no light as to Pacheco-Estudillo’s claim that his defense attorney rendered ineffective assistance of counsel because he “failed to file a notice to appeal”. (Dkt# 81 (petition)). Thus, it was an abused of the district court’s discretion to have denied Pacheco-Estudillo the benefit to develop the claim in an open Court hearing. See, e.g., **Schriro v. Landrigan, 550 U.S. 465, 474, 127 S. Ct. 1933, 167 L.Ed.2d 836 (2007)** (“when deciding whether to grant a federal habeas petitioner’s request for an evidentiary hearing, ‘a federal court must consider

whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief"). In fact, there was no evidence in the record which could conclusively reveal if his allegations that his attorney failed to file a notice to appeal. Accordingly, because the district court abused its discretion in failing to hold an evidentiary hearing, then Pacheco-Estudillo's petition for certiorari should be granted, and the Eight Circuit's judgment vacated and the case remanded in light of **Wellons v. Hall, 558 U.S. 220, ---, n.3, 130 S. Ct. 727, 731 n. 3, 175 L.Ed.2d 684 (2010).**

CONCLUSION

THEREFORE, for all the above stated reasons, Pacheco-Estudillo's petition for writ of certiorari to the United States court of Appeals for the Eighth Circuit and his motion for leave to proceed in forma pauperis should be **GRANTED**; wherein the judgment should be **VACATED**, and the case remanded to the Eighth Circuit for further development of the record in light of **Wellons v. Hall, 558 U.S. 220, ---, n. 3, 130 S. Ct. 727, 731 n.3, 175 L.Ed.2d 684 (2010).**

Respectfully Submitted,

JESUS PACHECO ESTUDILLO

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