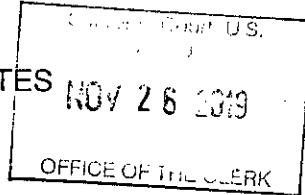


No. 16-7859

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Prose Frank D. Monsegue - PETITIONER  
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, Eleventh Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Frank D. Monsegue sr.  
(Your Name)

(FPC) Federal Prison Camp  
(Address) 2680 S US Hwy 301

Jesup, GA 31599  
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether evidence used to Secure a True Bill from a defective summons/subpena (No Authorizing Authority Name or Signature) attached hereto render the indictment defective?
- 2) Whether appointed counsel in a Federal Criminal case, who specialize in Family Law meet the requirements of the 6<sup>th</sup> Amendment "To have the assistance of counsel for his defense" and 18 USC 3006A, Adequate representation with investigative, expert and other services necessary for adequate representation?
- 3) Whether money and property referred to under 18 USC 641 are the same and established ownership by the government can be transferred to victims under 18 USC 1028A for mandatory and enhancement of sentencing Constitutionally valid?
- 4) Whether a warrantless arrest, without search or arrest warrant to enter a home without exigent circumstances is a constitutional violation under the 4<sup>th</sup> Amendment?

QUESTION(S) PRESENTED

- 5) Whether the absent of a Plea Agreement under Rule 11(c)(2)(A) is constitutionally valid to up-hold a Guilty Plea?
- 6) Whether the court finds that the moving party did not receive notice under Federal Rule 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry; and the failure Defense Counsel to inform the defendant of his right to appeal and his right to have counsel appointed on appeal, is in violation of the defendant Constitutional right under the 6<sup>TH</sup> Amendment?
- 7) Whether a plea agreement/contract that do not exist waives constitutional Rights and continue to waive constitutional Rights under the 4<sup>TH</sup>, 5<sup>TH</sup>, 6<sup>TH</sup>, 8<sup>TH</sup> and 14<sup>TH</sup> Amendment, after the date of a Guilty Plea and the No Plea Agreement constitutionally valid?

## 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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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 B 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 September, 06, 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: OCT-2, 2018/OCT-19, 2018, and a copy of the order denying rehearing appears at Appendix 3.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. 3.

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. 3.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION

FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION

SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION

EIGHT AMENDMENT OF THE UNITED STATES CONSTITUTION

FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

## STATEMENT OF THE CASE

On Feb 13, 2014 defendant was arrested @ his home about 04:15 am. This arrest took place absent a warrant, the defendant and co-defendant Campbell was told that were indicted Feb-6-2014 for Conspiracy to commit wire Fraud, Conspiracy of theft of government money, aggravated identity theft and aiding and abetting and that the indictment was sealed.

1. Defendant was not made aware of superseeded indictment dated 5-March-2014 in court or elsewhere other than reading from the PSI which indicated Co-defendant Campbell was NOT named in the superseeded indictment.
2. On PSI report, page 4, "on June 12-2014 on a Saturday two business days before trial, count 3, 4, 9, 17, 18, 20, 31, 32 and 34 of the superseeded indictment were dismissed without prejudice as to Monsegue." None of this information was made available to the defendant until AFTER the trial date of June-16-2014, As defendant still was under the impression and pressure that all of these charges were going to be brought against him this pressure was a determined and orchestrated effort unchallanged by defense

attorney Fisher, which lead to the defendant being coerced until defendant enter an improper Guilty Plea without benefit of due process and proper representation of counsel.

3. After the court accepted the Guilty Plea with no discussion of a Plea Agreement. The proffer, criminal investigator Hernandez took the stan and was questioned by the prosecutor then the judge. Judge then asked defense counsel Fisher if she had any questions for Mr. Hernandez, she replied No. Judge then asked the defendant Monsegue if he had any questions for Mr. Hernandez defendant replied yes your honor. And it was then through his questions the defendant as well as the court learned that Criminal Investigator Hernandez violated Monsegue's Right to Financial Privacy Act of 1978 by not having the summons/subpoena signed or authorized by anyone in authority (NOTE: IN A CRIMINAL INVESTIGATION) this section of the summons/subpoena was left Blank, but prosecutor was able to use the personal bank information from a defective summons/subpoena in front a Grand Jury to obtain a True Bill.

4. My attorney Ms. Fisher, then informed me that I was right and she was wrong, for telling me that the government can do what ever they want and without

investigating my claim to her, under Right to Financial Privacy Act of 1978 and she, Ms. Fisher now will help me do a withdrawal of a guilty plea I just entered into and be ready to go in front of the judge to answer questions

### WITHDRAWL OF GUILTY PLEA

5. From June-16-2014, After defense counsel failed to do as promised, I wrote my own withdrawal of Guilty plea (5 months BEFORE SENTENCING) and distribute a copy to my attorney's Fisher office, Probation office and the judge secretary. Before I could make it back home the probation office called and informed me that was improper procedures and he will be mailing me back the packets for withdrawal of Guilty plea
  - a) In July 2014 2nd attempt to turn-in copy of withdrawal of Guilty Plea @ the clerks office hereto I was turned back, The Clerk went to the back for several minutes and when she returned she informed that their was a pending withdrawal motion for my defense counsel Ms. Fisher to withdraw off my case and after the judge rule on it. I can come back and file the withdrawal of a guilty plea.
  - b) Later in September, 2014 I actually learned thru

an attorney on line that the court had denied my motion to withdraw the Guilty Plea. I was perplexed, because back in June 2014, counsel informed me that we would have to go in front of the judge and defend the withdraw of a guilty Plea, this never happened.

## COURT RECORDS

6. As I look back as court records will support No Notice of 10 charges dismissed from superseding indictment 2 days before trial, 16-June-2014, No Notice of a withdraw of Guilty Plea denied by court sept-2014, No Notice of sentencing hearing while on bond with a valid active phone, E-mail and home address Dec-3-2014  
The lack of notice and response from the court compounded with my counselor, Ms. Fisher failure to investigate and communicate with me, spawned U.S. Marshal's at my door on 3-Dec-2014 @ about 11:00 am to arrest me for failing to appear for a 3-Dec-2014 at 10:00 am sentencing hearing. Here to without warrant to enter the home or to arrest defendant.

REASONS FOR GRANTING THE PETITION

PROCEDURAL HISTORY AND BACKGROUND

This certiorari from the denial of Monsegue's Prose motion rehearing 06-Sept-2018, for his actual innocent of the charges

Request for Writ of Certiorari from this Honorable Court for the following constitution Right's, violation. The District Court, Southern District of Georgia, Savannah Divison denied said motion, COA certificate of Appealability, in Forma pauperis status and appointment of counsel, June, 27, 2017 Doc 143.

Monsegue moves this Honorable court to GRANT Monsegue a certificate of Appealability on the following grounds.

1. Monsegue has or can make a sufficiently substantial showing of denial of constitutional rights.
2. Monsegue Fourth Amendment Right to be secure in their person, house, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized. Was violated on account potential of

## ARGUMENT

Payton V. New York 445 US 573, 63 L Ed 639, 100 S Ct 1371 and Hayes V. Florida 470 US 811, 84 L Ed 2d 705, 105 S Ct 1643. violations committed by the government.

3. Procedural ruling is beyond debatable and is meritorious claim under Payton and Hayes, Monsegue is entitled to a Certificate of Appealability.

4. Monsegue's Fifth Amendment Right to a Fair trial was violated on account potential of Youngblood, Brady, and Giglio violations committed by the government and suppressed by his defense counsel Ms. Fisher.

5. Procedural ruling is debatable and has potentially meritorious claims under Youngblood, Brady and Giglio, Monsegue is entitled to a certificate of Appealability. SEE United States Supreme Court decision: 197 L. Ed 2d 1, 2017 (No. 15-8049) Buck V. DAVIS

6- Illegal warrantless Arrest (2 TIMES) @ the petitioner's home, (1) Feb-13-2014 @ 3:30AM, (2) MAY-12- 2015 @ 4:15AM both in violation of Rule 41 Search and seizure (B) "Daytime" means the hour between 6:00 AM and 10:00 PM according to local time, (e) (2) (A) ii execute the warrant during daytime, and (f) Executing and Returning the

## ARGUMENT

warrant must enter on it the exact date and time it was excuted, All in Violation of Federal Rule 41 and Monsegue Fourth Amendment Right.

7. On the 12<sup>th</sup> of may 2015 on or about 3:30 AM US Marshal's Forced their way into the 3<sup>rd</sup> Floor apartment, From the Fire Escape thru a closed kitchen window, without a warrant to enter the bulding or a warrant to arrest the appellant, and by doing so violated several of Monsegue's CONSTITUTIONAL Rights under the 4<sup>TH</sup> amendment (SEARCH AND SEIZURES), the 5<sup>TH</sup> amendment (indictment of a Grand Jury), 6<sup>TH</sup> amendment (SPEEDY and public-trial, to be informed of the nature and cause of the accusation and to have assistance of counsel for his defense), and the 14<sup>TH</sup> amendment (No state shall deprive any person of life, liberty or property without due process of the law nor deny any person within it's jurisdiction the equal protection of the law) SEE EXHIBIT 1, New York court documents, case No. 15 M 4331 charging district case No. 4:14 Cr 19-01. This packet contain pages 1-8 and a 9<sup>TH</sup> page of an old Charge of a DUI. Page No.5 of this packet states that "copies of the indictment and the arrest warrant are attached hereto" This is a false and fake statement. IF this were to be true, this packet would be more than 8 pages long and their would not

## ARGUMENT

be a need to waiver the warrant and identity of the alledge warrant, SEE page No.1 of this packet.

(waiver of Rule 5 & 5.1 Hearing). Note appellant was illegally arrested in his home without a warrant.

This waiver form states "An identity hearing, production of the warrant, and any preliminary or detention hearing to which I may be entitled in this district. I request that those hearing be held in the prosecuting district, at a time set by that court."

To date, this hearing has not taken place (speedy trial violation)

This document (waiver of Rule 5 & 5.1 Hearing) the government has it docketed as Doc. 97 dated 05-13-2015, this form confirms the illegal arrest without a warrant after the fact and was withheld by the prosecutor/defense: Youngblood, Brady and Giglio evidence violation of Monsegue's Fourth Amendment constitutional rights.

REASONS FOR GRANTING THE PETITION

FOUNDATION IN SUPPORT OF PETITIONER'S REQUEST

1) The issue of whether as charged in the initial indictment under 18 U.S.C. 641 Theft of Government money, then property (superseding indictment) is a clear violation under 18 U.S.C. 641: Public money, property or records (Any record, voucher, money or thing of value of the United States or of any department or agency thereof or any property made or being made under contract for the United States or any department or agency thereof,

If money = Property then there will be no need for the charge 18 U.S.C. 641 to contain the words records, voucher, money, or thing of value of the United States. (Just simply use the word "Property" of the United States.

If the property the indictment is referring to as a violation under 18 U.S.C. 641 (Property made or being made under contract for the United States or any department or agency thereof) Then whether the indictment is unclear, ambiguous, lack description, size, value, location, make, or proof of Government ownership of this vague property and violation of the 6<sup>th</sup> Amendment "TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION," resulting in a defective indictment?

2) Whether the District Court abuse of discretion by suppressing Brady evidence doc 97. Which the Brady decision requires the prosecution to disclosed

exculpatory evidence to the defense/defendant or whether defense counsel was ineffective by being armed with a copy of this Brady evidence Doc 97. and remained silent throughout sentencing, silence is complicity?

3) Whether under the court's OPINION, Pre-Plea Claims "Generally, a voluntary, unconditional guilty plea waives all nonjurisdictional defects in the proceedings."

i. Specific to my case:

A. The records indicate NO such voluntary, unconditional guilty plea, and if there were? whether this would only highlight the ineffective assistance of counsel?

B. Whether the court can deny or uphold the defendant claim under "voluntary, unconditional guilty plea waives all nonjurisdictional defects", when the District Court, in open court under Rule 11(c)(2)(A) proceedings failed to accept, deny, or defer a decision until the court has reviewed the presentence report, of the Plea Agreement, established procedures not followed (both court and defense counsel) failed to ensure a written Plea Agreement/contract indicating and acknowledge by both sides

what rights are being waived and what rights are preserved?

4) In Response to Appeal Court's Opinion, Page #2 court words "AFTER RESPONSE AND THREE MOTIONS FROM MONSEGUE DEMANDING RELEASE UNDER 18 USC 3145 (b), and magistrate Judge ENTERED A REPORT AND RECOMMENDATION ("R&R") THAT HIS CLAIMS WERE ALL WAIVED BY HIS GUILTY PLEA" This opinion by the court was misled by the original respondent and lack credibility for the following reasons:

1. "After Response and three motions" This is misleading Government never respond, but only in the footnote of the 2255 R&R dated march-24-2017 Doc.136 and this footnote came 1 year and 1 week later (docketed date 3/7/16) of the 18 USC 3145 motion

2. Under 18 USC 3145 states "This motion shall be determined PROMPTLY" Court have ruled promptly is 30 days or less.

3. SEE Default motion filed 7-14-2016 Doc.132 also went un-answered by the District Court SEE EXHIBIT 2 Default motion 18 USC 3145 (b).

4. Hereto court opinion, page 5 "he was not entitled to a copy of a Plea Agreement that did not exist." This gives rise to the question, Whether a Plea Agreement that did not exist is sufficient to establish waiving of Constitutional rights?. Under Rule 11(c)(2)(A) a procedurally correct executed Guilty Plea coupled with a valid Plea Agreement may only waive certain constitutional rights up to the date of the Plea Agreement, In this Case the majority of the constitutional violations came after the Guilty Plea and No Plea Agreement, to include the Fourth Amendment violation 12-may-2015, No Arrest warrant or search warrant, suppression of Brady evidence doc. 97, Ineffective assistance of counsel, conviction of conspiracy with no co-conspirator, Right to be heard in Court, speedy Trial 12-may-15 to date, No hearing - "Physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed" see also *Gorh V. Ramirez*, 540 U.S. 551, 124 S. Ct. 1284, 157 L. Ed. 2d 1068 (2004) the right of a person to retreat into his home and there be free from unreasonable government intrusion stand at the very core of the Fourth Amendment. SEE *Payton V. NEW YORK* 445 U.S. 573, 590, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980) and *United States V. Kone* 591 F. supp. 2d 593, 601 (S.D.N.Y. 2008).

5) Response to court's opinion, page #5 "That the bargain he struck allowed him to plead guilty to only 3 counts in an indictment that originally contained 41 counts.

The 3 counts are:

- 1) Count 1: 18 USC 1349 Conspiracy = No Co-Conspirator, No overt act.
- 2) Count 19: 18 USC 641 Theft of Government Property = No proof of property or Government ownership.
- 3) Count 33: 18 USC 1028A Aggravated Identity Theft = No victims and No loss to any victim.

Two days before trial date 6-16-14, Order granting <sup>65</sup> motion to dismiss as to Frank D. Monsegue Sr. Count 3s, 4s, 9s, 17s, 18s, 20s, 31s, 32s, & 34s, defendant entered a coerced Guilty Plea without knowing these over charges were dismissed. After the Guilty Plea was entered, defendant was allowed to cross-examination of criminal Investigator Andres Hernandez doc <sup>75</sup> page 34-36. During the examination it became clear to me and the Court that Mr. Hernandez violated my right to financial privacy and that the government failed to respond to the Defense motion to withdraw a guilty plea (SEE motion in the records of case # 4:14-cr-00019-WTM-GRS-1) submitted July, Aug, and Sept 2014, No response well before sentencing, because the laws supporting Defendants Rights under 12 U.S.C. 35, 3405, 3401 and 3402.

## CONCLUSION

The question of whether the Court of Appeals should issue a certificate of appealability to review petitioner's claim, warrant's review. As stated in Slack v. McDaniel, 529 US 473, 484 (2000), the court held that when a district court rejects a prisoner's constitutional claim on the merits, a petitioner is entitled to a COA if he shows "reasonable jurist would find the district court's assessment of the constitutional claim debatable or wrong". (Defendant is actual innocent of the charges against him).

In Miller-Ed, the court held that when a claim is "debatable" a petitioner is not required to show that "some jurist would grant the petition;" rather " a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that [petitioner] will not prevail."

WHEREFORE, the petitioner, SSG/USA Retired Frank D. Monsegue sr. respectfully prays that Honorable court GRANT's Monsegue's petition in preservation of our United States  
CONSTITUTIONAL rights.

Respectfully submitted,

Frank D. Monsegue

Date: 1/31/2019

Wendy N. Howell  
Notary Public

My Commission Expires:

3/4/2021

