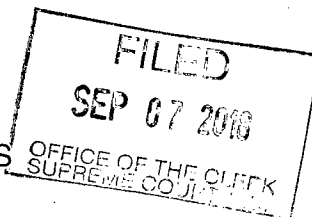


No. 18-7880

IN THE
SUPREME COURT OF THE UNITED STATES



Terrance Jerome Clarke — PETITIONER
(Your Name)

vs.
United States District Court
Middle District of Georgia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Terrance Jerome Clarke
(Your Name)

United States Penitentiary Hazelton
P.O. Box 2000
(Address)

~~Bruceton~~ Mills, W.V 26525
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

- 1.) Are the elements of 18 U.S.C.S 924 C satisfied, if a unloaded Firearm and drugs were sold at the same time and no other Firearm was involved during the transaction? ~~and the unloaded Firearm~~
Is the Firearm still used or carried to protect or facilitate drugs in furtherance of the crime? Does this constitute Title 18 U.S.C.S 924 C?
- 2.) If Attorney refuses or neglects to file any type of motions in his clients defense, is that granting defendant his sixth Amendment right to effective assistance of counsel?
- 3.) During a plea acceptance hearing, if the judge ask the defendant is he on any drugs and the defendant states that he is on mental health medication, does the judge suppose to or allowed to still go through with the plea acceptance hearing?
- 4.) If a defendant informs the courts verbally or in writing that his Attorney is being ineffective and unprofessional and ask the judge to make Attorney step down from his case during the conviction proceedings in lower courts and also in the court of appeals on his appeal to provide defendant with a effective attorney. Is ~~was~~ it constitutional or erroneous to order the same attorney to continue representing the defendant?

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:

1. United States District Court For the Middle District of Georgia (Athens)
2. United State Attorney Michael J. Moore
3. United State Attorney Daniel Edward Bennet
4. United State Attorney Lindsay Bozicevich Feinberg
5. United State Assistant Attorney Tamara A. Jarret

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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Barley v. United States (1995)	133 L. Ed. 2d. ^{at} 472
United States v. O'Brien (2010)	176 L. Ed. 2d. ^{at} 979
Timmons (1997)	283 F.3d at 1252
United States v. Tyus (bitcher) (2010)	379 Fed Appx 450, 451-52

Nicely v. Butcher, 81 W. Va., 247, 94 S.E. 147

STATUTES AND RULES

- 1) 924 C "In furtherance of" and "Possession"
- 2) Fed. R. Crim. P. 11 (b) (3)

- 4) Federal Rules of Criminal Procedures 11 (b) (1) (A-D)

OTHER

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 722 Fed. APPX. 973; 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 May 16, 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. ____ 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. 924 C Specifically "the in Furtherance Prong" does trading of one unloaded Firearm with drugs to a government agent satisfy the in Furtherance Prong of 924 C, the weapon did not facilitate the transaction by any means.

Question 2) and 4.) Sixth Amendment Challenges to the effectiveness of Client's Attorney,

3.) Federal Rules of Criminal Procedures 11(b)(1)(A-D)

RECEIVED

SEP 18 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

STATEMENT OF THE CASE

1) Factual basis on Plea agreement: On August 28, 2014, an undercover ATF agent and defendant Clarke agreed to meet at the Golden Pantry/Exxon gas station located at 424 Prince Avenue, Athens Ga. Defendant arrived in a green 1996 Honda Accord, with Georgia Tag # PJW9829. The undercover ATF Agent purchased a Fabrika Militar (FM) Fray Luis beltran, Model Hi-Power, .44mm Firearm serial # 398512 for \$450 and a quantity of cocaine for \$450. The agent called later to complain to defendant Clarke that the dose was light. Defendant Clarke apologized and said he grabbed the wrong bag and that Clarke would make it right later. A crime lab later confirmed the purchased substance to be cocaine with a net weight of 9.51 grams.

Things not mentioned in Factual basis on Plea agreement: On August 28, 2014 defendant Clarke sold a unloaded Firearm Fabrika Militar mentioned above and cocaine to undercover ATF agent. The Firearm was not possessed or carried or used to protect or facilitate the drugs being sold. There were no other firearms involved in this transaction besides the firearm sold above. The Firearm sold was apart of the drug sell. Defendant never possessed the Firearm while drugs were being sold because the Firearm was sold at the same moment the drugs were sold.

2) Attorney Alfred E. Fargione Filed a notice of Appearance on March 01, 2016. On June 21, 2016 defendant Plead out to the charge. During this time period ~~between~~ between March 01, 2016 - June 21, 2016 Attorney Alfred E. Fargione refused and neglected to file any motions in the court for the defendants defense. Defendant Clarke informed Attorney Alfred E. Fargione to file motions, to suppress, dismiss indictment, for a preliminary hearing and etc. During this period of time, Defendant Filed prose motions himself because Attorney Alfred E. Fargione refused to do so, these motions were filed on March 23, 2016 and more were filed on September 30, 2016 as well as a letter to the courts informing Judge Royal of the Violations of defendant's Clarke's sixth Amendment right to effective assistance of counsel on November 16, 2016.

3) On June 21, 2016, at or around 9:30 AM a Plea hearing was conducted ~~in~~ ⁱⁿ in the courts by Judge Royal. Defendant informed the courts on record during defendant Clarke's Plea hearing that he was on drugs (Remeron) a mental health medication when Judge Royal asked defendant was he on any drugs. Judge Royal still continued the Plea hearing and accepted the Plea agreement knowing the defendant was on a psychotic drug and under the influence, side effects of this medication can cause hallucination and drowsiness. Therefore the Plea entered could not have been entered knowingly and voluntarily because the medication altered defendants train of thought so defendant could not fully understand the agreements set in the Plea.

STATEMENT OF CASE

4.) On September 30, 2016 defendant Clarke Filed a Motion to Withdraw Plea because of Attorney Alfred E. Fargione's ineffective assistance of Counsel. On November 16, 2016 defendant informed Judge Royal direct through a letter addressed to the courts of Attorney Alfred E. Fargione's ineffective assistance of Counsel along with the motions that Attorney refused to File. On June 07, 2017 defendant informed the court of ~~the~~ Appeals in a letter requesting a Prose notice of Appeal because Attorney Alfred E. Fargione refused to ~~and~~ do so, and that he was violating his sixth Amendment right to effective assistance of Counsel and that he did not ~~trust~~ ^{want} or ~~trust~~ his attorney to represent him effectively and Professionally. On June 26, 2017 defendant Filed a Motion For leave to appeal Informa Pauperis. This Motion was denied by Judge Royal on June 30, 2017. Judge Royal ordered that Attorney Alfred E. Fargione to continue representing defendant, knowing defendant informed the courts on numerous occasions of his Attorney's ineffective assistance of Counsel.

REASONS FOR GRANTING THE PETITION

- ① To decide the "In Furtherance" Prong of the 924 (c) because the courts have not agreed on the issue to this day.
- ② To decide whether selling a lone unloaded Firearm along with drugs for money ~~considered~~ satisfies the elements of the 924 (c) statute.
- ③ To decide if the mere possession of a lone unloaded Firearm that is sold for money is considered "use" or "possession" for protection of drugs, drug proceeds or to facilitate drugs.
- ④ To decide if a plea is "voluntarily" given, if the defendant is under the influence of mental health drugs that causes drowsiness and hallucination.
- ⑤ To decide if a district court judge is supposed to accept a plea if he becomes aware that the defendant is under the influence of drugs during the acceptance of the plea.
- ⑥ To decide if an attorney is effective if he is aware that the defendant is under the influence of drugs and still convinces the defendant to take a plea and allows the defendant to take a plea under the influence of drugs that causes drowsiness and hallucination.
- ⑦ To decide if an attorney is effective if he threatens defendant to take a plea of 5 years or he will get 60 years if he doesn't.
- ⑧ To decide if an attorney is effective if he does not file any motion to dismiss/suppress or any motion in defendant's defense at all.
- ⑨ To decide if an attorney is effective when attorney fails to file defendant's direct appeal and fails to state the grounds defendant wanted to appeal for.
- ⑩ To decide the congress's intent of 924 (c) 1.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Terrance Jerome Clarke

Date: 09/04/2018