

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

PAULA VILLALVA-PATRICIO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

*PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS
FOR THE FIFTH CIRCUIT*

PETITION FOR WRIT OF CERTIORARI

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February 4, 2019

QUESTIONS PRESENTED

1. Whether the Defendant received ineffective assistance of counsel when Appellant wished to testify or otherwise introduce pertinent information and her attorney failed to do so?
2. Whether the Defendant received a fair trial if the translation of proceedings was deficient?

LIST OF PARTIES

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

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PETITION FOR A WRIT OF CERT

Petitioner, Paula Villalva-Patricio, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled proceeding on November 7, 2018.

CITATION TO OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit has not been reported and is reprinted in the appendix hereto, Appendix A, infra.

The judgment of the United States District Court for the Southern District of Mississippi (Ozerden, S.) has not been reported and is reprinted in the appendix hereto, Appendix B, infra.

JURISDICTION

Petitioner Paula Villalva-Patricio was found guilty after a jury trial violation of Title 18, United States Code, Section 371 (one count, Title 18 United States Code Section 554 (five counts) and 18 United States Code Section 922(a)(5). She was sentenced to One Hundred Sixty months imprisonment by the Honorable Halil Suleiman Ozerden, United States District Judge for the Southern District of Mississippi.

Ms. Villalva-Patricio appealed and a judgment dismissing her appeal was entered by the United States Court of Appeals for the Fifth Circuit on November 7, 2018. No petition for rehearing was sought. This Petition has been timely filed within ninety (90) days of that Judgment. Sup. Ct. Rule 13.1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fifth Amendment which provides in part: "...nor shall any personbe deprived of life, liberty, or property, without due process of law..."

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 371; 18 U.S.C. § 534, 18 U.S.C. § 554 and 18 U.S.C. § 922(a)(5)

STATEMENT OF THE CASE

On May 2, 2017, the Grand Jury sitting in and for the Southern District of Mississippi returned a first superseding four count indictment charging Paula Villalva-Patricio with violations of 18 U.S.C. § 371; 18 U.S.C. § 534, 18 U.S.C. § 554 and 18 U.S.C. § 922(a)(5). After a four day jury trial, with Honorable District Court Judge Sul Ozerden presiding, Ms. Villalva-Patricio was found guilty on all counts on July 19, 2017. On October 26, 2017, the district court sentenced Villalva-Patricio to 180 months imprisonment, \$ 5,000 fine, three years of supervised release, and a \$400 special assessment. Judgment was entered on November 2, 2017. Timely Notice of Appeal was filed on November 02, 2017. Previously, on July 27, 2017, Ms. Villalva-Patricio sent a handwritten letter to the Chief District Judge for the Southern District of Mississippi, Honorable Louis Guirola, expressing her desire to appeal her conviction and setting forth the basic reasons why she wrongfully convicted.

REASONS FOR GRANTING THE WRIT

I.

This case represents an excellent vehicle for the Court to clarify that the Defendant received ineffective assistance of counsel when she wished to testify or otherwise introduce pertinent information and her attorney failed to do so and that defective or deficient translation of proceedings results in a defendant being unable not only to understand events at trial but also unable to fully participate in her own defense.

Ms. Villalva-Patricio received ineffective assistance of counsel and therefore not a fair trial. Because at trial, she was not able to testify or introduce relevant evidence in her defense or otherwise assert her innocence. Further, during her trial, she had trouble understanding the proceedings being translated from English into Spanish for her by an interpreter.

Generally, an ineffective assistance of counsel claim is analyzed under the two-prong analysis set forth in *Strickland v. Washington*, 466 U.S. 668 (1984); *United States v. Willis*, 273 F.3d 592, 598 (5th Cir. 2001). To prevail, counsel's performance was both: 1) deficient and 2) prejudicial and outside the broad range of what is considered reasonable assistance and that the deficient performance led to an unfair and unreliable conviction and sentence. *United States v. Dovalina*, 262 F.3d 472 (5th Cir. 2001).

Counsel who disregards specific instructions from a represented defendant acts in a manner that is professionally unreasonable. See generally: *United States v. Bernal*, 2014 U.S. App. Lexis 313 (5th Cir. 2014).

Failure to introduce at trial relevant and material evidence in whatever form identified by Ms. Villalva-Patricio or sponsor her testimony was ineffective assistance of counsel. Failure of counsel to put on evidence as desired by a defendant at trial, as here, or otherwise follow a requested strategy that could have refuted the government's evidence or at least cast doubt upon it was ineffective assistance of counsel. *Richards v. Quartermar*, 556 F.3d 553 (5th Cir. 2009). If this is so, and there is no evidence to the contrary from her attorney, prejudice must be presumed. *Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

Clearly, she had the right and therefore her counsel the duty to put on a defense with testimony, witnesses and otherwise sponsoring pertinent information that Ms. Villalva-Patricio

considered critical to her case; that certainly appears to be viable in theory. Her testimony may have countered the government's key witness against her, Javier Molina, and cast credible doubt concerning her guilt. The jury may well have believed her. Her counsel's failure to follow her instructions and do so equated to ineffective assistance of counsel. *Richards v. Quartermann*, 556 F.3d 553 (5th Cir. 2009).

Ms. Villalva-Patricio did speak at her sentencing strongly advocating her lack of knowledge of any criminal activity, culpability and asserting her innocence. Certainly, she had a right and her counsel a duty to allow her to present the same testimony during her trial to the jury which she asserts she wished to do. Failure to do so resulted in prejudice attaching. As her testimony alone may have altered the outcome of her trial; as the jury may have very well have believed her instead of the witnesses who testified against her.

The Court Interpreters Act, 28 U.S.C. § 1827, requires a certified or otherwise qualified interpreter for non-English speaking defendants. The Court Interpreters Act protects the rights of federal litigants with limited English proficiency by requiring that courts utilize the services of certified interpreters in proceedings instituted by the United States when the failure to do so would inhibit the party's ability to participate fully in the proceedings.

A criminal defendant's "right to be present at all stages of the trial where his absence might frustrate the fairness of the proceedings" is guaranteed by the Sixth Amendment and the due process clause of the Fourteenth Amendment to the U.S. Constitution. (Citation and punctuation omitted.) *Tennessee v. Lane*, 541 U.S. 509, 523 (124 SC 1978, 158 LE2d 820) (2004). The due process clause also precludes trial and conviction of an accused while he or she is mentally incompetent. *Pate v. Robinson*, 383 U.S. 375, 378 (86 SC 836, 15 LE2d 815) (1966).

It is only logical that there is little difference between trying a mentally incompetent defendant and trying a defendant who cannot understand the proceedings against him because he does not understand the language as when non-English speaking defendants confront same barriers as those who are mentally incompetent.

Defendant's Fifth Amendment, Sixth Amendment, and Due Process rights may be violated where an interpreter is improperly denied or an interpretation is inadequate. *United States v. Mayans*, 17 F.3d 1174, 1181 (9th Cir. 1994).

A non-English speaking defendant who is deprived of critical contemporaneous interpretation of events at trial is deprived of fundamental Fifth and Six Amendment rights and protections. A defendant who cannot communicate effectively or otherwise understand the English language is rendered effectively absent at trial without properly interpreted proceedings that equates to violation of foundational due process protections. As Ms. Villalva-Patricio was incompetent due to deficiencies in her ability to speak or understand English, she was deprived of her right to be present at trial and competent to fully participate in her defense- absent understandable translation into her native language of Spanish. Therefore, without understandable interpretation, her ability to understand the nature and object of the proceedings against her, to consult with counsel, and to fully and competently assist in her defense at trial was severely prejudiced. See: *Drope v. Missouri*, 420 U.S. 162 (1975).

Interpreters play an important role in protecting the rights of non-English speaking persons. Over 60 million people in the United States speak a language other than English at home. *U.S. Census Bureau, Language Use in the United States: 2011* at 3 (Aug. 2013).[1] Of that number, 15.4% speak English "not well" and 7% (over 4 million) speak English "not at all." *Id.* Effective language assistance is necessary to ensure that these individuals have meaningful

access to government entities and programs. See: *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41455, 41457 (June 18, 2002). Such assistance is of particular importance in the courtroom where individuals must communicate in "precise language" under stressful conditions and key determinations affecting the individual's personal liberty or financial well-being are often "made based on credibility." *Id.* at 41471. This is especially so in criminal proceedings.

At her sentencing, the court employed a different interpreter (Ms. Balbina Caldwell) than during her trial (Ms. Dora Sanchez) and Ms. Villalva-Patricio spoke at length setting forth her innocence and alibi defenses which she asserts she desired to present to the jury at trial.

CONCLUSION

Ms. Villalva-Patricio was denied the right to fully participate in her own defense by testifying and providing other relevant and critical evidence in her defense when she desired to do so because of ineffective assistance of counsel. Additionally, her ability to fully participate and as importantly understand the trial proceedings against her was severely impaired due to ineffective interpretation.

For the foregoing reasons, Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully Submitted, this the 4th of February, 2019.

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