

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Eric V. Bartoli — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Sixth Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Eric V. Bartoli
(Your Name) Federal Register # 61329-060

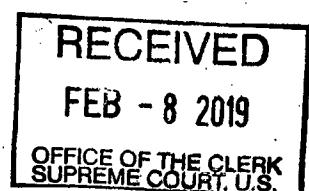
Federal Correctional Institution

(Address) P.O. Box 1000

Loretto, PA 15940-1000

(City, State, Zip Code)

Not Applicable
(Phone Number)



Question Presented

1) Did the 6th Circuit Court of Appeals go against Supreme Court precedent (Peugh v. U.S., 569 US 530; Class v. U.S., 2018 LEXIS 1378; Calderon v. Thompson, 523 US 538; and Rosales-Mireles v. U.S., 2018 BL 214344), its own stare decisis (U.S. v. Beurayas-Nunez, 91 F.3d 826, 830 (6th Cir. 1996)), and in the process create a circuit split by failing to recall its mandate, vacate the underlying sentence, and remand the case in question to a new District Court judge given:

(i) The District Court judge in the underlying case was directed by the 6th Circuit's Special Investigative Committee (SIC) on February 22, 2016 to divest himself of all current cases pending, and that same judge held four hearings and the Petitioner's Sentencing proceedings subsequent to that date, and:

(ii) Appellate Counsel admitted to the 6th Circuit Court of Appeals that they and District Counsel, separate from Appellate Counsel, were ineffective for failing to recognize that the same District judge gave the Petitioner an illegal sentence in violation of the ex post facto Clause of the US Constitution.

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:

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

[x] 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 Case No. 16-4748; 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.

Not Applicable

[] 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 Dec. 29, 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).

Statement of the Case - Page 1

This is a complex case with very unusual circumstances requiring the appellate jurisdiction of the Supreme Court under Article III of the US Constitution. It involves a Circuit split and the fact that the 6th Circuit Court of Appeals did not follow Supreme Court precedent, including recently decided Supreme Court cases, even though it was brought to their attention. Also, the 6th Circuit Court of Appeals ignored appellate counsel's admission they were ineffective as well as the fact that a District Judge violated an SIC order to hand over his current cases to other judges. That same District Judge compounded the error by handing down a government admitted illegal sentence to the Petitioner. The 6th Circuit refused to rule on the ineffective assistance of counsel, the plain error, or the Ex Post Facto violation that would have required the vacating of Petitioner's sentence, and possibly the vacating of the Plea Agreement and the Petitioner's Indictment. (See Appendix A)

Background

The Petitioner is currently serving a 20 year sentence at the Federal Correctional Institution in Loretto, PA. The sentence stems from what was originally a ten count Indictment (Case: 5:03-cr-00387-JRA) handed down on October 15, 2013 by a Federal Grand Jury in the Northern District of Ohio. All charges against the Petitioner were derived from his formation and management of an off-shore mutual fund, Cyprus Trust, in 1992. In late 1994 he moved from his home in Lima, Perú to Ohio in order to be close to his US partners and grow the business. Problems took root in mid 1998 and surfaced in January 1999, causing the SEC to intervene in August of that year, forcing the Petitioner out of business. Using his US passport, the Petitioner left the country in late 2000, returning to his home in Perú shortly thereafter.

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The Petitioner was unaware the US indicted him in 2003 and later petitioned Perú for his extradition in 2010. On December 11, 2013 he was arrested in Lima, Perú and incarcerated in the Miguel Castro Castro maximum security prison. The petitioner was held there until his extradition to the US on October 25, 2015. Two days later he was arraigned in Federal Court in Akron, Ohio, with Judge John R. Adams presiding, and charged with eight counts (the two money laundering charges were dropped).

Judicial Misconduct

Dating back to February 2013 there were four complaints filed against Judge Adams alleging misconduct and this information was never related to the Petitioner by his District Court appointed attorney, Barry Ward. Appellate Counsel, different from District Counsel, did notify the Petitioner of these complaints as well as the SIC's Order and Memorandum (In re Complaint of Judicial Misconduct No. 06-13-90009, Feb. 22, 2016) but failed to include it as an issue in the Direct Appeal filing. The SIC review was to determine if Judge Adams suffered "from mental or emotional disability that renders him unable to discharge his duties of office." (Id at pg 1, Appendix B).

The 6th Circuit's SIC had to expand the investigation on several occasions, and on February 22, 2016 they issued an order that in part read:

"2. Sufficient evidence exist to merit further investigation into whether Judge Adams suffers from a mental or emotional disability that renders him unable to discharge the duties of his office. Accordingly, no new cases shall be assigned to Judge Adams for a period of two years, and his present docket will be transferred to other judges. This action is necessary to protect the public and

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the judiciary from the possibility of Judge Adams engaging in inappropriate or embarrassing behavior while the investigation continues." (Id at pg 29, see Appendix C).

Clearly, as of February 22, 2016 Judge Adams was not allowed to hear pending cases or receive new cases. Yet Judge Adams heard motions on March 18, 2016 and June 16, 2016, a change of plea hearing on July 13, 2016, and a sentencing hearing on November 9, 2016. Given the fact the SIC ordered Judge Adams to transfer his docket to another judge, the Petitioner questions the right of Judge Adams to hold the above mentioned hearings. Judge Adams refused to conform with SIC requirements of psychological testing which would determine his ability to conduct himself in a judicial manner. The absence of said ability would help explain why a judge with so much experience would give the Petitioner a government admitted illegal sentence.

Ineffective Assistance of Counsel

The Petitioner is claiming ineffective assistance of counsel (IAC) at the Appellate level, a claim confirmed by Appellate Counsel's own admission.

"From inception of this case through the filing for the Petition for Rehearing on April 30, 2018 (refiled on May 1), undersigned appellate counsel, predecessor trial counsel, the government, Probation, and the District Court itself had all overlooked this issue." (Motion to Stay the Resolution. pg 1, Appendix D).

The fact that Petitioner had IAC at the Appellate level is a clear violation of the 6th Amendment to the US Constitution. The "issue" Appellate Counsel is referring to is the fact Petitioner currently has an illegal sentence resulting from a constitutional violation of the Ex

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Post Facto Clause. Imposing a sentence on the Petitioner in excess of the statutory maximums in effect at the time of his offense violates the Ex Post Facto Clause of the US Constitution. See U.S. v. Lanham, 617 F.3d 873 (6th Cir. 2010).

Throughout proceedings Appellate Counsel, along with all other parties, acted on the erroneous assumptions that the applicable statutory maximum sentence for wire, mail, and securities fraud was 20 years (See Plea Transcript, R.53, pg.10 ##330-332 (The Court erroneously advised that maximum sentences for wire, mail, and securities fraud was 20 years)). All three of the Petitioner's concurrent 20 year sentences are by the government's own admission, illegal. See Appendix E. At the time of his offense conduct, 1995-1999, the statutory maximum sentence for the relevant counts of conviction were 5 years (count 4: wire fraud, 18 USC § 1343 (2001); count 5: mailfraud, 18 USC §1341 (2001)) and 10 years (count 2: securities fraud, 15 USC § 78ff(a) (2001)) and were charged by statute in 2002.

Conclusion

The power of the Court of Appeals to recall and reform their mandate, even after issuance is, though not specifically provided in the rules, well established, and no motion is required for a Court of Appeals to hear or rehear a case en banc. See Sparks v. Duval County Ranch, 604 F.2d 976 (5th Cir. 1979) affd sub nom Dennis v. Sparks, 494 US 24, 66 (1980). The Second Circuit has said that when the judicial process has been subverted, then recall of the mandate is proper since it bears upon the outcome of the Federal proceedings. See Nnebe v. U.S., 534 F.3d 87, 91 (2nd Cir. 2008). The 6th Circuit has said it has the inherent authority to recall its mandate. See Patterson v. Haskins,

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470 F.3d 645, 661-662 (6th Cir. 2006). The Petitioner believes that the combination of a District Court judge presiding over a case when he was directed by SIC not too, and admitted ineffective assistance of counsel regarding the issue of an illegal sentence are issues that should have been heard. In light of the Supreme Court's recent decision in Rosales-Mireles v. U.S., (138 S.Ct. 1897, (2018)) the Petitioner believes the 6th Circuit Court of Appeals had the obligation to recall the mandate given that these issues involved constitutional violations and call into question the fairness, integrity, and public reputation of the judicial proceedings.

The petition for writ of certiorari should be granted.

Respectfully submitted



Eric Bartoli, Pro Se

Date: January 31, 2019