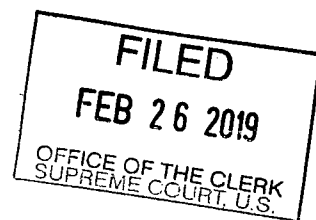


18-8299 ORIGINAL
No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

WALTER RAYNARD LINGARD — 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 FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

WALTER RAYNARD LINGARD #99356-071
(Your Name)

P.O. Box 699 Federal Correctional Inst.
(Address)

ESTILL, SOUTH CAROLINA 29918
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

DID THE COURT OF APPEALS ERR IN ITS DETERMINATION THAT THE DISTRICT COURT DID NOT ERR IN DECLINING TO VARY DOWNWARD BASED UPON LINGARD'S STATE PROBATION REVOCATION SENTENCE?

DID THE COURT OF APPEALS ERR IN ITS DETERMINATION THAT THE DISTRICT COURT DID NOT ERR WHEN IT FAILED TO GIVE LINGARD THE OPPORTUNITY TO SPEAK TO THE COURT AT SENTENCING?

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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TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

- 18 U.S.C. § 924(g)(1)
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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☒ is unpublished.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☐ is unpublished.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**:

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 November 21, 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

STATEMENT OF THE CASE

On June 14, 2017, a grand jury seated in the United States District Court, District of South Carolina, Charleston Division, returned a one-count indictment charging Lingard with being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2).

On October 24, 2017, Lingard entered a plea of guilty to the one count indictment without the benefit of a plea agreement.

On March 23, 2018, the district court sentenced Lingard to a term of seventy seven (77) months imprisonment, followed by three (3) years supervised release, and a \$100.00 felony assessment. The district court entered the judgment on March 23, 2018.

Lingard filed a timely notice of appeal on April 5, 2018, appealing his judgment and sentence to the United States Court of Appeals for the Fourth Circuit. On June 20, 2018, appellate counsel filed an ANDERS brief pursuant ANDERS V. CALIFORNIA, 386 U.S. 738 (1967).

On July 10, 2018, Lingard filed a motion for enlargement of time to file a supplemental pro se Initial Brief. On that same date, Lingard filed n for leave to supplement counsel's ANDERS brief, filing his supplemental pro se Initial Brief.

REASONS FOR GRANTING THE PETITION

The record is very clear that during Lingard's sentencing hearing, the district court inquired as to Lingard's employment history. It was during this employment inquiry that Lingard requested leniency and a second chance. After this inquiry, the district court afforded Lingard's mother the opportunity to allocute in his behalf. After Lingard's mother allocuted on his behalf, the district court stated, "It was my intention to give you all eight years. I've heard you. I'm going to go to the bottom of the guideline...I'm giving you a break."

Against the Government's recommendation, the district court sentence Lingard to the bottom of the advisory guideline. After pronouncing sentence, the district court made the following statement in its reasoning for the sentence imposed, "It is at the bottom of the guideline term rather than longer--you can thank your mother, who I believe will provide you some good guidance."

The problem with this issue lies with the court's failure to give Lingard the opportunity to advocate for himself an adjustment pursuant to U.S.S.G. § 5G1.3, so the court could have considered the 363 days he spent in state custody for conduct relating to his instant federal charge.

The sentencing court must "address the defendant personally and determine if the defendant wishes to make a statement and to present any information in the mitigation of the sentence." Fed. R. Crim. P. 32(a). Mere affording a third party the

opportunity to speak on behalf of the defendant does not fulfill the requirements of Rule 32(a). See GREEN v. UNITED STATES, 365 U.S. 301 (1961).

In this case, it is clear that there was a violation of Rule 32(a)(1)(C). The Supreme Court has said, "trial judges should leave no room for doubt that the defendant has been issued a personal invitation to speak prior to sentencing." GREEN, 365 U.S. at 304-05. There is some room for doubt in this case as to whether, Tell me what kind of work you do, Mr. Lingard," and the colloquy that followed, prior to the pronouncement of sentence, could be construed as fulfilling the requirements of Rule 32(a).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Walter Lingard

Date: 2-25-19