

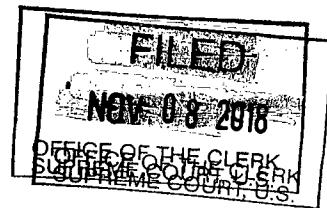
18-8458

IN THE
SUPREME COURT OF THE UNITED STATES

Oniel Winston Scarlett,
petitioner,

versus

United States of America,
respondent.



ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Oneil Winston Scarlett #13119-104
Federal Correctional Complex
P.O. Box 1031 (Low custody)
Coleman, Florida 33521-1031

QUESTIONS PRESENTED

The Eleventh Circuit Court of Appeals denied Mr. Scarlett's application for a certificate of appealability and reconsideration of the COA decision, but its denial consisted of a boilerplate order that failed to identify the factual predicates or legal premises necessary for its ruling. The Eleventh Circuit's perfunctory order not only forecloses meaningful review, but prevents any court from determining whether the Eleventh Circuit complied with this Court's ruling in **Buck v. Davis**, 137 S. Ct. 759 (2017).

Should the Eleventh Circuit provide a sufficient explanation of its order denying a COA in order that a reasonable jurist could ensue its reasoning did not improperly include the substantive merits?

A federal appeals court should decide whether to grant a certificate of appealability based on a cursory assessment of the merits, and then only to the extent necessarily to determine if reasonable jurists would find the district court resolution debatable. The appeals court, without briefing, reviewed the district court record and denied a COA despite sentencing counsel's failure to identify that the district court violated U.S.S.G. § 1B1.3 and U.S.S.G. Guideline Amendment 790.

Jurists of reason would find the district court's assessment of trial counsel's performance debatable and the appellate court functionally performing a pre-COA merits analysis wrong.

Should the appellate court have granted a certificate of appealability before deciding an COA application?

LIST OF PARTIES INVOLVED

The parties involved appear in the case caption on the cover page.

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The opinion of the United States Court of Appeals for the Eleventh Circuit appears at Appendix "1".

The opinion of the United States District Court for the Southern District of Florida appears at Appendix "2".

The opinion of the United States District Court for the Southern District of Florida motion for reconsideration appears at Appendix "3".

The grant for an extension of time by this Court appears at Appendix "4".

Transcripts of the Sentencing Hearing where the government admits Scarlett's involvement was limited or non-existent appears at Appendix "5".

JURISDICTION

The date on which the United States Court of Appeals decided my case was on September 11, 2018, (Appendix "1") and denied reconsideration on June 15, 2018. (Appendix "3"). Justice Thomas granted an extension of time to file this petition on September 12, 2018, extending the date for filing until November 12, 2018. (Appendix "4").

Therefore jurisdiction is invoked in this Court under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Oneil Scarlett helped a man change a tire. That man befriended Mr. Scarlett, and used Mr. Scarlett as an unwitting patsy. As demonstrated when law enforcement, pretextually, stopped Mr. Scarlett and discovered a computer and the accoutrements of identity theft in the trunk of the automobile that the befriended stranger had purchased, and "given" to Mr. Scarlett's name. Of course, the "friend" had also purchased the computer and the names. Ultimately, the United States arrested Mr. Scarlett and charged him with crimes he did not commit.

An inference of innocence, which can be drawn directly from the government's admissions at sentencing. Notably, a significant basis for the government's theory of the case amounts to nothing more than racial prefiling. (Doc. 21-4, p27)

AUSA Mr. Carlton: The Glades area, meaning Belle Glade area, is an area that's rife with this type of fraud. Everyone seems to know everybody out there. His testimony that he doesn't really know the names of who he was involved in, I don't believe it's credible.

(App. ____ at ____); (Doc. 21-4, p.27). Additionally, the government admits Mr. Scarlett did not benefit from the scheme. For example:

The Court: Mr. Carlton, just so I understand your position in terms of Mr. Scarlett's involvement, do you have any evidence to suggest that he was one who stole the identities?

AUSA Mr. Carlton: I do not.

The Court: Okay. And even though you don't have any evidence, do you even think that he was the one? I mean, do you have any--

AUSA Mr. Carlton: No. I will concede that the Government does not believe that this defendant had access to that information. We believe that it was another person who, at one time, was employed by the Palm Beach County School District, and I will tell you that this defendant was never employed by the Palm Beach County School District to be in a position to have access to that information. He didn't--he was not the one that stole those IDs.

The Court: Okay. And do you think that he was the one that filed -- had anything to do with filing the false taxes returns?

(App. ____ at ____); (Doc. 21-4, 29). The government's comments on the evidence and Mr. Scarlett's own statements (both on and off the record) should have resulted in defense counsel refusing to sanction and support Mr. Scarlett's guilty plea. Counsel's implicit vouching for the facts in an unexplained breach of counsel's duty to the court to ensure the court rules only on reliable evidence.

At sentencing the district court failed to follow the Guidelines procedure for determining relevant conduct (e.g., **U.S.S.G. Amend. 790**). Defense counsel did not object to the district court's truncated sentencing process. Stated differently, defense counsel should not have allowed the district court to sentence Mr. Scarlett without making a particularized finding on the scope of the jointly undertaken criminal activity; (2) the foreseeability to Mr. Scarlett of the other conspirators' misconduct; and (3) when and for what duration Mr. Scarlett was involved in the criminal activity. Despite errors which were remediable even under plain error on direct appeal, the district court refused to find counsel's failure to file a notice of appeal constitutionally, deficient. Further, the district court refused or failed to explain why defense

counsel's failure to raise these plain errors was not itself a constitutional failure.

REASONS FOR GRANTING THE WRIT

This Court has repeatedly instructed the lower courts to state the factual predicates and legal premises that support their rulings. And this Court has recently emphasized why this is of paramount importance. The Court reversed the Fifth Circuit's denial of a certificate of appealability because the Fifth Circuit improperly took jurisdiction of a habeas appeal even though a certificate of appealability had not issued. **Buck v. Davis**, 137 S.Ct. 759 (2017); see **Miller-El v. Cockrell**, 537 U.S. 322, 336-37 (2003)(warning against side-stepping the process by justifying denial of a COA on the lack of substantive-claim merits). This Court explicitly recognized the appellate courts' "troubling" habit of evaluating the merits of a petitioner's claims without granting a certificate of appealability and without the benefit of full briefing. See **Jordan v. Fisher**, 135 S.Ct. 2647, 2652 n.2 (2015)(Sotomayor, J., dissenting from the denial of certiorari).

In the spectre of this court's previous admonishments and remands, the appellate courts have created a strategy to skirt the certificate of appealability process generated by **28 U.S.C. § 2253**, while avoiding this court's remand. The appellate courts shroud their merits decision in silence. Axiomatically, a boilerplate order, containing only conclusory premises to support the holding, prevents meaningful review of a court's opinion. Thereby, allowing the appeals court to side-step the process and usurp jurisdiction with impunity. See **Buck**, 137 at ____.

Succinctly, Mr. Scarlett claimed that out-of-court, off-record misadvice by counsel caused him to abandon his direct appeal. A claim that the evidentiary hearing showed could not be conclusively proved or disproved since his former attorney did not recall the events in the same manner as Mr. Scarlett. Although a subjective factual finding rested in equipoise, the record did reveal that a rational defendant would have sought an appeal. Hence, under an objective test, Mr. Scarlett's attorney was constitutionally ineffective. Objectively, Mr. Scarlett should have appealed.

The government admitted that Mr. Scarlett did not receive any proceeds from the conspiracy and that he likely joined the conspiracy—if at all—after the vast majority of the criminal conduct concluded. Yet, the district court attributed to Mr. Scarlett all the conspiracy's actions and losses. In other words, the district court sentenced Mr. Scarlett based on relevant conduct that did not qualify as relevant conduct. See **U.S.S.G. Amendment 790**. An error reviewable on appeal even if no contemporaneous objection was made in the district court. Any rational defendant would have appealed.

Moreover, even if the "relevant conduct" claim had not been preserved, a competent attorney would have raised the issue on appeal for plain error review. See **Fed. R. Crim. P. 52(b)**. Significantly, this Court recently identified this type of error as meeting the four criteria for plain error review. **Rosales-Mireles v. United States**, 138 S.Ct. 1897 (2018) ("[i]n the ordinary case, failure to correct a plain Guidelines error that affects a defendant's substantial rights will seriously affect the fairness, integrity, and public reputation of [the] judicial proceedings."

The issue of whether an objective test should have been applied to Mr. Scarlett's ineffective assistance claim was never briefed, let alone addressed, because the Eleventh Circuit skirted the certificate of appealability process and then sealed that skirting with a boilerplate order bereft of substantive explanation.

CONCLUSION

This Court should grant the writ of certiorari, vacate the Eleventh Circuit's order, and remand the case with directions to reconsider whether a certificate of appealability should issue; especially in the light of this Court's decisions that show reasonable jurists could debate whether Mr. Scarlett's attorney was objectively ineffective in not ensuring Mr. Scarlett's direct appeal.

Prepared with the assistance of Frank L. Amodeo and respectfully submitted by Oniel Winston Scarlett on this 8th day of November, 2018.

Oniel Scarlett by next friend
Oniel Scarlett *Frank L. Amodeo will*
express authority.

Oniel Scarlett 12/17/18