

18-8889

No. _____

In The
SUPREME COURT OF THE UNITED STATES

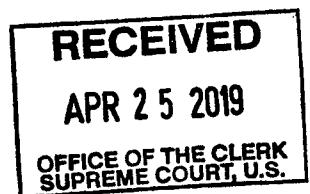
In re Lavont Flanders Jr.,
Petitioner

Petition for Writ of Certiorari To The
United States Court of Appeals
For The Eleventh Circuit

SUPPLEMENTAL BRIEF

LAVONT FLANDERS JR., Pro Se

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OPINIONS BELOW

The Judgment of the Original Denial of the COA and the Judgement from the Denial of Reconsideration of the COA is set forth in the Appendices J and K.

JURISDICTION

The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The decision of the Court of Appeals was entered on February 28, 2018. This petition is timely filed pursuant to Sup. Ct. R. 13.1. The United States District Court for the Southern District of Florida had jurisdiction has jurisdiction over the federal criminal laws which petitioner was charged under, even though he committed no federal crime. The alleged crimes are actually state crimes of a local sexual assault. This Court should first examine the jurisdiction of the federal courts as it pertains to this case at hand. Moving forward, The United States Court of Appeals for the Eleventh Circuit had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that Courts of Appeals shall have appellate jurisdiction of all final decisions of United States district courts.

QUESTIONS PRESENTED

The question of whether an initial appearance can be a critical stage is a case of first impression on this Court. Criminal defendants from every State, and from every Circuit within the United States are appearing before County, State, and Federal Judges without the aid of counsel during their initial appearances. During these initial appearances criminal defendant's are being subjected to crafty Public Prosecutors, and Judges who violate the lone criminal defendant's rights because counsel is not present to protect the rights of the criminal defendant. In some cases, like the case at bar, the criminal defendant is appearing before the court for an initial appearance on a sealed criminal indictment, with no counsel present, and no federal public defender present to protect the rights of the criminal defendant. In many federal districts around the country, this is normal procedure in courtrooms around the United States.

Without counsel at a criminal defendant's initial appearance, errors of constitutional magnitude can occur, and go undetected throughout the criminal defendant's trial, and for years to come. Criminal defendant's with felony cases should never appear before any judge, the public prosecutor along with the FBI, US Marshal Agents, and Police Officers who are all involved in the criminal case and who are present, without the aid of counsel during his initial appearance.

The Petitioner in this sealed matter required aid in coping with legal problems, and help in meeting his expert adversary. The Petitioner in this case was facing death by incarceration, and he received 13 consecutive life sentences as a result of counsel being completely absent during his

initial appearance because no counsel was present to detect the constitutional errors that occurred during his initial appearance while uncounseled.

The constitutional errors went undetected throughout the trial, and for 8 years afterwards. The Supreme Court has no precedent acknowledging, and identifying that an initial appearance can be a critical stage within the framework set out in the United States v. Cronic. 466 U.S. 648, 658-59, 104 S. Ct. 2039, 2046-47, 80 L. Ed. 2d 657 (1984), if counsel is completely denied during a initial appearance in which criminal defendant's rights maybe violated, or are violated. A criminal defendant who is appearing before any federal or state court on a sealed criminal indictment should never appear before any court without the guiding hand of counsel. And the sealed criminal indictment should never be unsealed until counsel for the criminal defendant is present in order to protect the rights of the criminal defendant. If the criminal defendant can not afford counsel, then counsel must be appointed for the limited purposes of unsealing the criminal indictment. It's time that this Honorable Court include "Initial Appearances" as being a critical stage of the proceedings as it has done with preliminary hearings, the entry of a plea, arraignment, etc...

STATEMENT

The petitioner was convicted and sentenced to 13 consecutive life terms of imprisonment after a jury trial. During the pretrial stage of the initial appearance, Petitioner was indicted and arrested on a sealed indictment on

August 17, 2011. Upon being arrested, Petitioner was processed by the FBI, the United States Marshals Service, and the Miramar Police Department. During processing which included being fingerprinted and photographed, Petitioner asked the arresting agents and officers why he was being arrested. They all responded and said for multiple sex crimes against minors.

Petitioner was then transported to Miami-FDC were he asked again what the charges were against him. The FBI agent Regino E. Chavez advised him for multiple sex crimes against including child pornography, the sex trafficking of children, and the enticement of minors. Petitioner was then escorted to the United States Marshals holding cell to be interviewed by Pretrial Services Officer Maria Monge. She advised the same charges as The FBI, and the United States Marshals Service who were part of the arrest team.

Petitioner was then taken before Magistrate Judge Ted E. Bandstra for his initial appearance. Judge Bandstra announced that this is a sealed case, and he was going to now unseal the indictment. Petitioner had no counsel present, but the AUSA was present, the Pretrial Services Officer was present, the Arresting FBI Agents were present, the arresting United States Marshals Service Agents were present, and the arresting Miramar Police Detectives were present at the initial appearance. After Judge Bandstra unsealed the indictment, and began to read the indictment, he read the counts to the unsealed indictment as the sexual exploitation of minors, and the sex trafficking of children before being interrupted by AUSA Roy K Altman. The AUSA advised the Judge

that there were no allegations of minors. The Judge and the AUSA exchanged documents while counsel was not present, and the Judge read one drug count pertaining to Petitioner and his co-defendant. The purported indictment contained 22 counts, and it contained a forfeiture count as well. The initial appearance on August 17, 2011 was a critical stage of the proceedings, and Petitioner's conviction was in violation of the Sixth Amendment and the Supreme Court's holding in *United States v. Cronic*, 466 U.S. 648, 659 (1984). A violation of Cronic concerning a complete denial of counsel during a critical stage is a structural error that creates a presumption of prejudice, and requires a new trial when counsel is denied during a critical stage of trial.

QUESTIONS PRESENTED

The Questions presented for the Supreme Court are as follows: (1) In reference to obtaining a certificate of appealability, is it at least debatable that trial counsel was ineffective under the Sixth Amendment for his failure to dismiss the indictment, and superseding indictment based on Cronic error regarding Petitioner's initial appearance, because it was a critical stage within the framework set out in *United States v. Cronic*, 466 U.S. 648, 659 (1984), and the *United States v. Roy*, 855 F.3d 1133, 1144 (11th Cir. 2017) (en banc); (2) If the indictment is amended directly after it's unsealed by the Assistant United States Attorney, and the District Court while defense counsel is absent during the entirety of the initial appearance proceeding, does that

constitute a critical stage of the proceedings, and is that a structural error which requires reversal of the conviction?

(3) Is an initial appearance a critical stage under the framework set out in the United States v. Cronic, and Rothgery v. Gillespie County if the District Court fails to fully advise the criminal defendant of the nature and cause of an indictment pertaining to multiple alleged victims, with a forfeiture count included, all while counsel has been completely denied during the initial appearance? Does the initial appearance qualify as a critical stage, and does the Sixth Amendment violation that occurred while counsel was completely absent, require reversal of the conviction? (4) Was counsel required under the Sixth Amendment to be present with the criminal defendant during the unsealing of a sealed indictment at his initial appearance, to ensure that the criminal defendant's rights are not violated? (5) Based on the facts listed above regarding the constitutional violations that occurred while counsel was absent at Petitioner's initial appearance, was it a critical stage within the framework set out in United States v. Cronic, 466 U.S. 648, 659 (1984), and in the United States v. Roy, 855 F.3d 1133, 1144 (11th Cir. 2017) (en banc), does this Sixth Amendment violation require automatic reversal of the conviction? (6) In the context of a certificate of appealability, is it at least debatable that appellant counsel was ineffective under the Fifth Amendment for failing to argue Cronic error when the record clearly demonstrates that the District Court violated the criminal defendant's Sixth Amendment rights when it aided in constructively amending his indictment after unsealing the

indictment, while defense counsel was completely absent?

(7) When the District Court violated the criminal defendant's Sixth Amendment Right to be fully informed as to the nature and cause of the accusations of the indictment to which he was indicted while defense counsel was completely absent? And when the record clearly demonstrates that the criminal defendant required the aid of counsel in coping with legal problems or help in meeting his adversary, did these events constitute a critical stage, and did counsel's absence require reversal of the conviction"?

ARGUMENT

Under Supreme Court Rule 15.8, a party may file a supplemental brief at any time while a petition for a writ of certiorari is pending, calling attention to new cases, new legislation, or other intervening matter not available at the time of the party's last filing. Petitioner is filing this supplemental brief calling attention to a new case that was decided in the Eleventh Circuit concerning concerning the doctrine of structural error, and what the Eleventh Circuit must presume when structural error exists.

The case is United States v. Garcia, 906 F.3d 1255 (11th Cir. 2018). The case was not assigned a federal citation number under "LexisNexis" until now, which is why I'm bringing this case to this Honorable Court's attention.

Petitioner suffered from a structural error due to being completely deprived of counsel during his initial appearance on August 17, 2011. When the AUSA and the District

Court amended his indictment, the error eroded the fundamental integrity of the entire trial process. And the Eleventh Circuit is required to presume prejudice, "the doctrine of structural error which requires us to presume prejudice in the face of certain, exceptional errors, that erode the fundamental integrity of the entire trial process". United States v. Garcia, 906 F.3d 1255 (11th Cir. 2018). Due to the amendment of the indictment while counsel was completely denied, the framework within which the trial proceeds was broken/affected.

The Eleventh Circuit refuses to apply it's own precedent apparently because of the nature of the case. The Eleventh Circuit is applying the U.S. Const. amend VI guarantee of the right to counsel on a sliding scale based on the gravity of the Petitioner's offenses. The Eleventh Circuit has commented against this sliding scale in the United States v. Roy, 855 F.3d 1133 (11th Cir. 2017) (en banc) by saying, "The U.S. Const. amend VI guarantee of the right to counsel does not apply on a sliding scale based on the gravity of the defendant's offenses". Yet, this is exactly what the Eleventh Circuit is doing in the case at bar.

Also, in regards to the amendment that occurred during the uncounseled initial appearance. The District Court and the Government has attempted to conceal the structural error by saying that, "Perhaps relying on that error in the pretrial services report or title of the statute, the Magistrate Judge at Flanders' initial appearance made the same mistake when he first advised Flanders of the nature of the charges against him. The prosecutor immediately corrected the judge and

advised that "there is no allegation that there were any minors involved." See R&R of Magistrate Judge Chris McAliley.

This can easily be debunked as a lie to help conceal the structural error that occurred while counsel was completely denied. First and foremost, The FBI (FD-515) Supplemental Page to the Accomplishment Report details vital information on what the primary criminal activity was that resulted in the indictment.

Please see attached FBI (FD-515) report at Appendix (L). This report names the subject, and the "Criminal Activity" in sections A,D, and F that indicate the primary criminal activity which resulted in the reported indictment and/or conviction. (Indicate only one activity.)

The activity selected is marked other, and specified the criminal activity that resulted in the reported indictment as (IINI) which is the acronym for the FBI'S National Child Porn Task Force called, "Innocent Images National Initiative". This is the FBI'S National Initiative to combat computer and other crimes against children. So, there was no mistake, the AUSA attempted to conceal ~~the~~ fact that an error of constitutional magnitude had just occurred, and the District Court followed suite. And, Judge Chris McAliley also attempts to conceal this structural error by misstating the facts. When the Judge Bandstra read the charges, he quoted them directly from the indictment he had just unsealed. The charges were, "THE COURT: Mr. Flanders, you are charged in a, both of you are charged in an indictment which names you both as defendants, and it is the only defendants in this case. The charges are summarized as sexual exploitation of a minor and

sex trafficking of children by force, fraud, or coercion".

Now the Supreme Court knows without a doubt that the indictment was amended from crimes against minors, to crimes against adults while counsel was completely denied. The (FD-515) form informs the reader of the exact criminal activity that lead to the reported indictment, and that activity was for computer crimes against minors, and other crimes against minors. Also, if this court needs more information then they need to only look to the FBI investigative report dated 8/5/2011 under case number 305C-MM-114915. This report states, "The case has been prepared for indictment before the federal grand jury in the Southern District of Florida on August 16, 2011". The case that was being prepared consisted of ("at least three minor females"). This case is a travesty of justice, and Mr. Flanders has lost his liberty and life due to this structural error.

The precise effects of the amendment/structural error that occurred to the indictment while counsel was completely denied are unmeasurable. The superseding indictment that came two months after the initial appearance is rendered void under the doctrine of structural error. The superseding indictment can not reliably be trusted to serve its function because the constitutional safeguards were violated when the freshly unsealed indictment was amended while counsel was completely denied. The framework within which the trial proceeds was affected, and the error that occurred are to hard to measure. See McCoy v. Louisiana, 138 S. Ct. 1500 (2018) ("An error might also count as structural when its affects are too hard to measure.").

The structural error of the amended indictment affected and contaminated the entire criminal proceeding. "Structural error exists when the deprivation of the right to counsel affected-and contaminated- the entire criminal proceeding. The Sixth Amendment cases finding structural error generally involve a complete denial of counsel during the entire criminal proceeding". Mr. Flanders was denied counsel during the entire criminal proceedings involving his initial appearance on August 17, 2011.

Although AUSA Roy K. Altman attempted to cure the structural error by superseding the indictment two months later, he fails because when a structural error occurs during a complete denial of counsel when the indictment is unsealed and amended, the precise effects are unmeasurable, and prejudice is therefore presumed. See *United States v. Garcia*, 906 F.3d 1255 (11th Cir. 2018).

Petitioner has more than met the "Critical Stage" requirements listed in the *United States v. Roy*, 855 F.3d 1133, 1144 (11th Cir. 2017). Petitioner's initial appearance was a step of a criminal proceeding that held significant consequences for the accused. Petitioner's initial appearance for Cronic purposes was a qualitatively distinct, discrete, and separate phase or step of a criminal proceeding where the defendant has a right to counsel, such as an arraignment, a post-indictment lineup, a preliminary hearing, a plea hearing, closing arguments as a whole, or a sentence proceeding as a whole. Petitioner's initial appearance was in fact a critical stage within the framework of Cronic, and a structural error occurred that violated the constitutional safeguard "whose

precise effects are unmeasurable".

The Eleventh Circuit's decision in the case at bar is inconsistent with Supreme Court precedent, Eleventh Circuit Precedent, and precedent from all the rest of the federal circuits in this America. The Eleventh Circuit is refusing to hold that an initial appearance can be a critical stage within the framework set out in the *United States v. Cronic*, 466 U.S. 648, 658 (1984). The type of errors that occurred during the initial appearance while counsel was completely denied, "necessarily render[s] a trial fundamentally unfair. "Rose v. Clark, 478 U.S. 570, 577 (1986).

In-light of the facts and legal authority concerning the structural errors that occurred while petitioner was completely denied counsel during a critical stage of the proceedings in this case, and the holdings in the *United States v. Garcia*, 906 F.3d 1255 (11th Cir. 2018), *United States v. Roy*, 855 F.3d 1133 (11th Cir. 2017), *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), *Acosta v. Raemisch*, 877 F.3d 918 (10th Cir. 2017), *Bell v. Cone*, 535 U.S. 685, 694, 122 S. Ct. 1843, 152 L. Ed. 2d 914 (2002), and *Overstreet v. Warden*, 811 F.3d 1283, 1287 (11th Cir. 2016), this claim is not just merely "debatable". It is now clear that Petitioner will prevail on the issue in the Supreme Court, as well as the Eleventh Circuit if the follow and abide by Supreme Court precedent, as well as their own precedent. Obviously, a certificate of appealability should issue under such circumstances.

A reasonable jurist could debate whether petitioner was deprived of his constitutional right to effective

assistance of counsel on appeal.

CONCLUSION

Based upon the forgoing petition, the importance to the public concerning whether an initial appearance can be a critical stage within the framework set out in Cronic, it's my prayer that this Court will grant a writ of certiorari to review the Eleventh Circuit's denial to issue a COA in this case. The Powerful Court has the power to sua sponte apply Cronic's categorical rule of presumed prejudice, and reverse and vacate the judgment against the Petitioner in order to save judicial resources.

Respectfully Submitted,



Lavont Flanders Jr., pro se

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Supplemental Page to the Accomplishment Report (FD-515)

For Indictments/Convictions only:

Subject related to an LCN, Asian Organized Crime, Italian Organized Crime, Russian/Eastern European, Caribbean, or Nigerian Organized Crime Group- Complete FD-515a, Side 1 Blocks A-E mandatory, F-H as appropriate.
 Subject related to an OC/Drug Organization, a VCMO Program National Gang Strategy target group, or a VCMO Program National Priority Initiative target group- Complete FD-515a, Side 1 Blocks A-C only

A. Name of Subject Lavon Planders, Jr. B. Field Office MM Field Office File No. 3050-MM-114915

C. Role Leadership (L) Member (M)
 Associate (A) Other (O)

D. Criminal Activity - Indicate the primary criminal activity which resulted in the reported indictment and/or conviction. (Indicate only one activity.)

Labor Racketeering (LR) (See Section F and H if applicable) Extortion (EX)
 Corruption (CR) (See Section G if applicable) Loansharking (LS)
 Illegal Gambling (IG) Drugs (DR)
 Other (OT), specify INI

E. Organized Criminal Group

1. LCN: Member (MEM) Associate (ASO)

BF KC
 CG LA
 CV MW
 DN NK-De Cavalcante
 DE NE-New England-Patriarca

NO
 NY-Bonanno (BO)
 NY-Colombo (CO)
 NY-Gambino (GA)
 NY-Genovese (GE)

NY-Luchese (LU)
 PH
 PX
 PG
 PI-Pittson-Bufalino

RC-Rochester
 SF
 SO-San Jose
 SL
 TP

Position:

Boss (1F) Consigliere (1E)
 Underboss (1G) Acting Boss (1J)
 Capo (1K)
 Soldier (1L)

2. Other Non-LCN OC Groups, specify _____ Member (M) Associate (A)

F. Business Influenced/Affected (If applicable) Indicate below if the subject's criminal activity influenced or affected a particular trade or industry:

Toxic Waste (TW) Building Trades (BT) Entertainment (ET) Hotel/Restaurant (HR)
 Carting (CR) Meat/Poultry/Fish (MF) Garment (GR)
 Vending (VN) Shipping (SH) Trucking/Trans (TT)

Other (OT), specify Interstate Commerce / Internet

Name of company subject connected with _____

G. Elected/Appointed Public Officials - Complete if subject was a public official at time of indictment and/or conviction. Indicate one from each category.

Level - Federal (FD) State (ST) Local (LO)
 Branch - Executive (EX) Legislative (LE) Judicial (JD)

Position/Title:

Governor (6J) Mayor (6R) City (6Y) House of Rep/Staff (6C) Prosecutor (6E), (6N), (6U)
 Lt. Governor (6K) County Comm (6X) Senator/Staff (6B) Judge/Magistrate Law Enforcement Officer
 Other (6Q), (6W), specify _____ (6D), (6M), (6T) (6F), (6P), (6V)

H. Union Members or Officials - If the subject was a Union member or official at the time of indictment and/or conviction, indicate the highest position the subject held/holds in the Union and the Union's name.

Name of Union _____

Union Affiliation:

Teamsters (TM) Hotel and Restaurant Employee (HR) Laborers International (LI) Longshoremen's Association (LA)

Other (OT), specify _____

Level - International (IN) Conference (CF) Council (CN) Local (LC)-Local No. _____

Position:

Pres (5D) Sec/Treas (5G) Repr (5J) Fin Sec (5M) Clerk (5Q) Trustee (5T)
 Vice Pres (5E) Ex. Brd Memb (5H) Orgzr (5K) Rec Sec (5N) Shop Stew (5R)
 Tres (5F) Bus Agt (5L) Bus Mgr (5L) Off Mgr (5P) Memb (5S)
 Other (5U), specify _____

DISRUPTION OR DISMANTLEMENT OF AN ORGANIZATION

Supplemental Page to the Accomplishment Report (FD-515)

This supplemental page is ONLY required with the FD-515 when a field office is claiming either a disruption or dismantlement of an organization.

A. Definitions:

An *organization* is a group of individuals with an identified hierarchy engaged in significant criminal activity. These organizations often engage in multiple criminal enterprises and have extensive supporting networks.

A *disruption* occurs when the usual operation of an identified organization is significantly impacted so that it is temporarily unable to conduct criminal operations for a significant period of time. This disruption must be the result of an affirmative law enforcement action, including, but not limited to, an arrest, indictment, or conviction of the organization's leadership, or a substantial seizure of the organization's assets.

A *dismantlement* occurs when an identified organization is incapacitated to the point that it is no longer capable of operating as a coordinated criminal enterprise. The dismantlement must be the result of an affirmative law enforcement action, including, but not limited to, the arrest, indictment and conviction of all or most of its principal leadership, the elimination of its criminal enterprises and supporting networks, and the seizure of its assets. The organization must be impacted to the extent that it is incapable of re-forming with its original ability to conduct criminal activity.

B. Reporting limitations:

More than one organization may be investigated under the same file number; however, each organization must be individually identified. An organization can only be dismantled once. A dismantled organization cannot subsequently be disrupted. An organization cannot be disrupted more than once on the same day. An affirmative law enforcement action resulting in multiple arrests, seizures, indictments, or convictions of an organization's members should be reported as one disruption or one dismantlement of that organization, depending on the impact on the organization.

C. Identity of organization:

Lavont Plandier Jr.

b6
b7c

Disrupted

Dismantled

The organization must be identified by a specific name, which may be the proper name of the organization's leader or the organization's identifying title. The organization's name must not describe a specific geographic region. After the organization has been named, the same name must be used each time a disruption or dismantlement is claimed.

D. Identify the scope of the organization disrupted or dismantled:

International (I)

National (N)

Regional (R)

Local (L)

E. Terrorism Disruptions N/A

Terrorism Disruptions occur when an intelligence or a law enforcement action alters or impedes the normal and effective operations of an individual, group, organization or enterprise engaged in terrorism or activities in preparation or in support thereof.

Types

Plot

Material Support

Other

Homeland

Non Homeland

F. Describe the event(s) and how they disrupted or dismantled the targeted organization. For a claim of disruption or dismantlement, an affirmative law enforcement action must impact the organization, not just an individual. Simply listing individuals arrested, indicted or convicted, property seized, assets forfeited, etc., is not sufficient. A concise narrative describing the relevant affirmative law enforcement action AND the resulting impact on the organization must accompany each disruption and each dismantlement.