

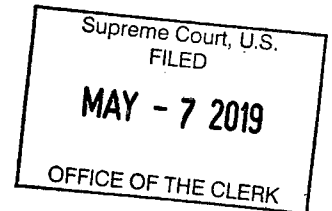
18-9206

No. 18-4498

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Mitchell Brooks - PETITIONER

vs.

United States of America - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

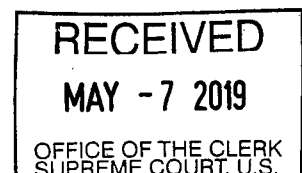
UNITED STATES COURT OF APPEALS (4th Cir.)

PETITION FOR WRIT OF CERTIORARI

MITCHELL BROOKS #24135-016

P.O. BOX 2000

Joint Base MDL, NJ 08640-5433



## 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:

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

United States v. McCarthy, 394 U.S. 459, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969)

United States v. Rodney Class, 138 S. Ct. 798, 200 L. Ed. 37, 2018 U.S. LEXIS

### STATUTES AND RULES

21 am Jur 2d, Criminal Law §§ 484-496

US L Ed Digest, Constitutional Law § 835; Criminal Law §§ 59, 60.5, 63

ALR Digests, Constitutional Law § 626; Criminal Law §§ 119.5, 140, 145, 149, 149.3, 152

L Ed Index to Anno, Constitutional Law; Criminal Law; Rules of Court

ALR Quick Index, Guilty Plea; Rules of Criminal Procedure

## TABLE OF CONTENTS

OPINIONS BELOW

1

JURISDICTION

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

REASONS FOR GRANTING THE WRIT

CONCLUSION

## INDEX TO APPENDICES

APPENDIX A (See: Exhibit A)

APPENDIX B (417 F. Supp. 126) "62 Interrogation Questions  
McCarthy Rule"

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

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 \_\_\_\_\_ to the petition and is

☒ unpublished.

## JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was March 18, 2019.

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

QUESTION(S) PRESENTED

- (1) Whether the District Court Judge abused its discretion in violation pursuant to Rule 11, United States v. McCarthy "62 interrogation questions" mandatory by the Supreme Court Law

## STATEMENT OF THE CASE

On December 7, 2016, the Defendant, Mitchell Felix Brooks was charged within a one-count indictment with Conspiracy to Distribute and Possess with Intent to Distribute Phencyclidine, in violation of 21 U.S.C. § 846. The offense began at least in or about February 2016 and continued through at least in or about December 12, 2016 in the District of Maryland and elsewhere.

On December 14, 2016, the Defendant was charged in a one-count Superseding Indictment with Conspiracy to Distribute and Possess with Intent to Distribute Phencyclidine, in violation of 21 U.S.C. § 846. The offense took place between at least in or about February 2016 and in or about December 2016, in the District of Maryland and elsewhere.

On August 8, 2017, the Defendant appeared before the Honorable Paula Xinus, U.S. District Judge, in the U.S. District Court in Greenbelt, Maryland and pled Guilty to the Superseding Indictment. A presentence report was ordered, and sentencing was scheduled for July 16, 2018, at 9:30 AM, in the U.S. District Court in Greenbelt, Maryland. The defendant was sentenced to 129 months imprisonment. A timely appeal was filed.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Criminal Law § 59, 60.5 - guilty plea - compliance with Federal Rule

1. Rule 11 of the Federal Rules of Criminal Procedure, which provides that the court shall not accept a plea of guilty without first addressing the defendant personally and determining that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea, and that judgment shall not be entered upon a guilty plea unless the court is satisfied that there is a factual basis for the plea, is not complied with by the District court in a federal criminal prosecution, and the defendant is entitled to plead anew, where the trial court did not inquire of the defendant personally whether he understood the nature and essential elements of the charge against him, notwithstanding that the defendant's attorney stated that he had advised the defendant of the consequences of his plea, or that the defendant, in response to the court's questions, expressed his desire to plead guilty, acknowledged his understanding of the consequences of such plea as explained by the court with regard to the waiver of a jury trial and the punishment involved, and stated that his plea had not been induced by any threats or promises.

**Criminal Law § 60.5 - guilty plea - right to plead anew**

2. A defendant is entitled to plead anew if a United States District Court accepts his guilty plea without fully adhering to the procedure provided for in Rule 11 of the Federal Rules of Criminal Procedure, which states that the Court shall not accept a guilty plea without first addressing the defendant personally and determining that the plea is made voluntarily with an understanding of the nature of the charge and consequences of the plea, and that judgment shall not be entered upon a guilty plea unless the court is satisfied that there is a factual basis for the plea.

**Criminal Law § 59; Supreme Court of the United States § 9 - supervisory powers of lower courts - guilty plea**

3. A decision of the Supreme Court of the United States based solely upon its construction of Rule 11 of the Federal Rules of Criminal Procedure with regard to the acceptance of a guilty plea is made pursuant to the Supreme Court's supervisory power over lower federal courts.

**Appeal and Error § 1550 - guilty plea - reversible error**

4. Any noncompliance with Rule 11 of the Federal Rules of Criminal Procedure is reversible error, such Rule providing that the court shall not accept a guilty plea without first addressing the defendant personally and determining that the plea

is made voluntarily with an understanding of the nature of the charge and the consequences of the plea, and that judgment shall not be entered upon a plea of guilty unless the court is satisfied that there is a factual basis for the plea.

Criminal Law § 59 - guilty plea - defendant's understanding of charge

5. Under Rule 11 of the Federal Rules of Criminal Procedure, which provides that a District Court shall not accept a guilty plea without first addressing the defendant personally and determining that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea, the judge must personally inquire whether the defendant understands the nature of the charge, and cannot properly assume that the defendant is entering the guilty plea with a complete understanding of the charge against him merely because the defendant, in response to the judge's remarks, states his desire to plead guilty and expresses his understanding of the consequences of such plea as explained by the judge.

Constitutional Law § 835; Criminal Law § 59, 111 - guilty plea - purposes of Federal Rules

6. The purposes of the provisions of Rule 11 of the Federal Rules of Criminal Procedure that the court shall not accept a guilty plea without first addressing the defendant personally and determining that the plea is made voluntarily with

an understanding of the nature of the charge and the consequences of the plea, and that judgment shall not be entered upon a guilty plea unless the court is satisfied that there is a factual basis for the plea, are (1) to assist the district judge in making the constitutionally required determination that a defendant's guilty plea is truly voluntary, and (2) to produce a complete record at the time the plea is entered of the factors relevant to such voluntariness determination; the 1966 amendment of the Rule, which expressly requires the court to address the defendant personally, furthers both of the Rule's purposes.

Constitutional Law § 835; Criminal Law § 50, 63; Jury § 20;  
Witnesses § 94.5 - guilty plea - waiver of constitutional rights

7. A defendant who enters a guilty plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers; for such waiver to be valid under the due process clause, it must be an intentional relinquishment or abandonment of a known right or privilege.

Constitutional Law § 835 - due process - guilty plea

8. If a defendant's guilty plea is not voluntary and knowing, it has been obtained in violation of due process and is therefore void.

Criminal Law § 59 - guilty plea - voluntariness

9. Because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.

**Criminal Law § 59 - guilty plea - factual basis for plea**

10. Under the provision of Rule 11 of the Federal Rules of Criminal Procedure that judgment shall not be entered upon a plea of guilty unless the District Court is satisfied that there is a factual basis for the plea, the judge must determine that the conduct which the defendant admits constitutes the offense charges in the indictment or information or an offense included therein to which the defendant has pleaded guilty; requiring such an examination of the relation between the law and the defendant's acts is designed to protect a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge.

**Criminal Law § 59 - guilty plea - defendant's understanding of charge**

11. Although the nature of the inquiry under the requirement of Rule 11 of the Federal Rules of Criminal Procedure that the district judge shall address the defendant personally to determine that his guilty plea is made voluntarily with an understanding of the nature of the charge must necessarily vary

from case to case, nevertheless where the charge encompasses lesser included offenses, personally addressing the defendant as to his understanding of the essential elements of the charge to which e pleads guilty would seem a necessary prerequisite to a determination that he understands the meaning of the charge; in all such inquiries, matters of reality, and not mere ritual, should be constrolling

Appeal and Error § 1692, 1752 - remand - improper acceptance of guilty plea

12. When a Federal District court has not complied fully with the provision of Rule 11 of the Federal Rules of Criminal Procedure that the court shall not accept a guilty plea without first addressing the defendant personally and determining that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea, the defendant's guilty plea must be set aside by the Court of Appeals on appeal and his case remanded for another hearing at which he may plead anew, and it is not proper for the Court of Appeals to merely place upon the government the burden of demonstrating from the record of the Rule 11 hearing that the guilty plea was voluntarily entered with an understanding of the charge, and if voluntariness cannot be determined from the record, to remand the case for an evidentiary hearing on such issue, Rule 11 being designed to eliminate any need to resort to a later fact-finding proceeding.

Criminal Law § 59, 112 - guilty plea - voluntariness - record

13. Rule 11 of the Federal Rules of Criminal Procedure, which provides that the court shall accept a guilty plea without first addressing the defendant personally and determining that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea, contemplates that disputes as to the understanding of the defendant and the voluntariness of his action are to be eliminated at the outset, and there is no adequate substitute for demonstrating in the record at the time the plea is entered the defendant's understanding of the nature of the charge against him.

## REASONS FOR GRANTING THE PETITION

The District Court abused its discretion in violation of the United States v. McCarthy Rule "62 Interrogation Questions" mandatory by law. Petitioner asserts that Rule 11 colloquy hearing was not properly conducted and constitutes a reversible error and should be remanded for a rehearing. Petitioner also argues that the plea was not knowingly and voluntarily. Also see; United States v. Rodney Class (138 S. Ct. 798; 200 L. Ed. 2d 37; 2018 U.S. LEXIS (defendant's guilty plea must be "voluntary" and "related waivers" must be made "knowingly and intelligently, and with sufficient awareness of the relevant circumstances and likely consequence"). See De Novo of Docket entry in the District Court on Oct. 25, 2017 Attorney hearing while those "simultaneously" relinquished rights include the privilege against compulsory self-incrimination, the jury trial right, and the right to confront accusers, McCarthy v. United States, 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L. Ed. 2d 418 (1969), they do not include a "waiver of the privilege which exists beyond the confines of the trial." Mitchell v. United States, 526 U.S. 314, 324, 119 S. Ct. 1307, 143 L. Ed. 2d 424 (1999). A valid guilty plea also renders irrelevant - and thereby prevents the defendant from appealing -- the constitutionality of case-related government conduct that takes place before the plea is entered. See, e.g. Haring, supra, at

320, 103 S. Ct. 2368, 76 L. Ed. 2d 595 (holding a valid guilty plea, "results in the defendant's loss of any meaningful opportunity he might otherwise have had to challenge the admissibility of evidence obtained in violation of the Fourth Amendment.

## CONCLUSION

Petitioner requests this Honorable Court to remand this case back to the district court for rehearing pursuant to Rule 11, United States v. McCarthy "62 interrogation questions" mandatory by law constitutes reversible error.

Respectfully submitted,

Mitchell Brooks

Mitchell Brooks  
Reg. 24135-016

Date: 04/29/2019