

No. _____

18-9256

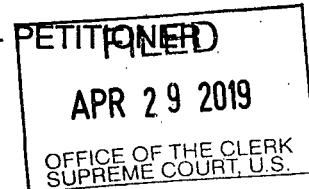
IN THE
SUPREME COURT OF THE UNITED STATES

ZEESHAN KHALID SYED

(Your Name)

vs.

UNITED STATES OF AMERICA



— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ZEESHAN KHALID SYED

(Your Name)

FCI - II OAKDALE P.O.BOX 5010

(Address)

Oakdale, LA 71463

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- Q1. When a pro-se files for a COA and discuss his claim extensively in his argument, can the Court construe the issue as being waived?
- Q2. When the Court evaluating the reasonableness of the counsel, can they rely completely on a counsel's affidavit with out considering other reference of evidence that Movant provides without calling for an evidential hearing?

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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CASES	PAGE NUMBER
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OTHER

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 DD 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☒ is unpublished.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 G to the petition and is

☒ reported at 2018 U.S. Dist. LEXIS 86724; 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☐ is unpublished.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☐ is unpublished.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 Nov, 5, 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: Jan 16 & Feb 01, 2019, and a copy of the order denying rehearing appears at Appendix K, L.

☐ 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

On April 20, 2011, Syed was indicted and charged with one count of violation of 21 U.S.C. §846, conspiracy to distribute 5 kilograms or more of cocaine and 100 kilograms or more of marijuana.(ECF No. 45-1). During the plea bargain process, Syed wrote a letter to his counsel on August 4, 2012, asking him that he(Syed) wants to try his luck and go to trial.(Exhibit B). On October 28, 2012, Syed wrote a letter asking his counsel to proceed in a manner that he(Syed) can argue about quantity, leader role, and everything on final sentencing.(Exhibit A).On October 31, 2012, superseding indictment was filed charging Syed with one count of violation of 18 U.S.C. §1956(h), conspiracy to launder money.(Count Two)(ECF No. 457-1). On November 5, 2012, based on his counsel advice Syed entered into a plea agreement with out been able to object those enhancements, but the Govt. will file a downward departure under section 5K1.1. In November 2015, After 3 years prior to sentencing the government offered Syed 180 months which was given on condition that Syed's counsel will not argue or ask anything less then that on sentencing. If Syed's counsel argue or ask for a lesser sentence than 180 months in return government will ask for 216 months. Counsel advised Syed to gamble hoping to get a sentence of 144 months. On December 4, 2015, Syed was sentenced to 216 month imprisonment.

Syed filed a timely appeal which was dismissed. Syed filed for an ineffective assistance of counsel under section 2255 on July 4, 2017.(Exhibit C). Syed's counsel issued an affidavit on November, 2017.(Exhibit I). The court denied Syed's motion

§2255. (Exhibit F). Syed filed a Motion to Reconsider 60(b). (Exhibit H). Syed's motion to reconsider 60(b) was denied on August 8, 2018. (Exhibit G). On September 5, 2018 Syed filed for an application for certificate of appealability.(Exhibit E). Court's order entered on November 5, 2018, denying Syed's application for certificate of appealability.(Exhibit D). In December, 2018, Syed filed a combined petition for panel rehearing and rehearing EN BANC.(Exhibit J). On January 16, 2019 Panel Rehearing was declined. (Exhibit K).On February 1, 2019, Panel denies the petition for Rehearing En Banc. (Exhibit L).

REASONS FOR GRANTING THE PETITION

FIRST REASON FOR GRANTING THE PETITION:

Sixth Circuit Panel erred when it concluded that Syed forfeited the argument that his counsel had asked him to gamble over the government offer because he(Syed) did not brief the issue. Therefore, Syed moves the Court for COA on his second claim only, and the District Court's failure to hold an evidentiary hearing on his motion. (Exhibit D at pg 3).

Reviewing the COA, Syed briefed as follows:

"After the plea agreement was accepted by the court, a pre-sentence report was prepared with a final adjusted level at 43 with criminal history category 1.(Id). Although Petitioner agreed to the plea deal, he did not agree to government's offer regarding sentencing.(Id). Defense counsel informed petitioner that Govt. offered 180 months but suggested that they should "gamble" and ask for 144 month that way court would meet us somewhere in the middle.(Id). The 180 months offer was contingent on the condition that Movant's counsel will not argue for less.(Id). On December 4, 2015, the court held a sentencing hearing and government filed a motion for downward departure and requested a 216 months sentence.(Id). Petitioner was sentenced to 216 month term of imprisonment".(Id). (Exhibit E at pg 3).

In this particular issue, Syed had asked for COA on his first claim; Counsel's failure to investigate the guidelines before encouraging Syed to gamble when the government offered 180 months sentence. According to Simpson V. Vill. of Lincoln Heights, 2018 U.S. App.Lexis 13240 (6th Cir. 2018). The Sixth Circuit concluded "Pro se litigant must attempt to develop arguments regarding the issues raised in their appellate brief

in order to preserve those issues for appeal".(Id).

Here the records shows that Syed develop arguments on his issues over counsel's advice for him to gamble, hence it is clear that the court errored in concluding that the issue was waived. For the said reasons The Supreme Court should grant the petition. For failure to do so will prejudice Syed to serving 3 years more than it would have been if he was reasonably advised by his counsel over the government sentence offer.

SECOND REASON FOR GRANTING THE PETITION:

According to Sixth Circuit law, the district court abused its discretion when it did not call for evidential hearing on the issue of factual dispute. An evidentiary hearing " is required unless the record conclusively shows that the petitioner is entitled to no relief". Campbell V. United States, 686 F.3d 353, 357 (6th Cir. 2012)(quoting Arredondo V. United States, 178 F.3d 778, 782 (6th Cir. 1999)); See also 28 U.S.C. § 2255(b). The burden "for establishing an entitlement to an evidentiary hearing is relatively light" and "[W]here there is a factual dispute, the habeas court must hold an evidentiary hearing to determine the truth of the petitioner's claim". Turner V. United States, 183 F.3d 474, 477 (6th Cir. 1999).

Similarly Fifth Circuit held that " contested facts issues in Section 2255 cases can not be resolved on the basis of affidavit". See U.S. V. Daniel, 2018 U.S. Dist. Lexis 136538 (5th Cir. 2018)(quoting Friedman, 588 F.2d at 1017). See U.S.C. § 2255(b). It is clear that there was an issue in dispute. Syed

alleges that the counselor asked him to gamble (Exhibit C at pg 4) and the counselor respond in his affidavit that Syed is the one who said he wants to gamble. (Exhibit F at pg 7). As a result the court relied on the letter to substantiate counsel's position without considering the circumstances surrounding those letters. (Exhibit G at pg 3,4).

Example the court referenced the letter that Syed wanted to "plea guilty in a manner that you can argue about the quantity, leader role, everything on final sentencing". (Exhibit A). Contrary to the court conclusion , Syed had entered into a plea agreement based on his counsel's advice that did not benefit him to argue any of the issues stated in his letter. Upon reviewing the sentencing transcript it is clear that Syed did not argue against or object any of the enhancement, but 3553 factors.

Syed responded by calling the court's attention to the phone records that will resolve the dispute, showing that the counsel is the one who advice Syed to gamble. (Exhibit H at pg 2). The phone records which Syed could not have obtained on his own as a pro se except through the help of a court appointed counsel. Therefore, evidential hearing was warranted to resolve the issue in question. If the hearing would have resulted in favor of Syed, where the phone records would have revealed that it was the counsel who advised Syed to gamble. Then Syed provided sufficient evidence in the form of sentencing guidelines statistics demonstrating that the court would have accept the offer. (Exhibit C at pg 7).

Furthermore, counsel raised argument on Syed co-defendant where the court rejected the government recommendation. Unfortunately the particular co-defendant was not similarly situated as Syed. Contrary to the co-defendant, Syed entered into a change of plea, accepted responsibility and provided substantial assistance. Also it is well known that upon Syed accepting the offer, the government would have only presented information that support the sentencing recommendation, hence as sentencing statistics demonstrates there is a likelihood the court would have sentenced Syed consistent to the recommendation.

The court concluded that Syed did not affirmatively said that he will accept the offer, but looking at § 2255 motion filed by Syed, it states otherwise. As a pro se it appears Syed did say so in a poorly constructive english. (Exhibit C at pg 8). English is Syed second language therefore when he used the "if", conjunction, Syed meant that if it wasn't for the counsel advice he would have accepted the offer.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ZEESHAN K SYED (Pro SE) Zeeshan

Date: 04/28/2019