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CASE No. 18-2336

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IN THE UNITED STATES SUPREME COURT

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

SAUL E. CAMILO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit**

PETITION FOR WRIT OF CERTIORARI

Dated April 24, 2019

Saul E. Camilo
Incarcerated Pro Se Petitioner
I.D. 06368-104
Federal Correctional Institution
P.O. Box 779800
Miami, FL 33177

QUESTIONS PRESENTED

- I Where a plea deal has opposing clauses, is such confusion sufficient to reach the bar for appellate review in a §2255 process when ineffective assistance of counsel is the claimed cause.
- II Can due process exist when the gate keeper to the appellate process in a 28 U.S.C. §2255 proceeding is the same district court that denied the original motion.
- III Would a jurist of reason consider a plea deal with a sentence in excess of a defendant's guidelines a reasonable plea bargain.
- IV If a direct appeal is acknowledged as of right after a trial and is on occasion successful how then can the need for approval of an appeal in a U.S.C. §2255 motion meet the standard for due process and the fair administration of justice.

LIST OF PARTIES

The parties to the original proceeding in the district court were Petitioner, Saul E. Camilo, and the United States of America, Respondent.

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OPINION BELOW

The United States Court of Appeals for the Eleventh Circuit denied Saul Camilo the issuance of a certificate of appealability in United States v. Camilo, Case No. 18-11345-J (11th Cir. 2018) LEXIS 33657. A copy of the decision is filed herewith as Appendix A.

GROUND FOR JURISDICTION

The jurisdiction of this Court is invoked by the timely filing of this petition for a writ of certiorari within the prescribed time limit, which was extended by this Court to April 26, 2019. See 28 U.S.C. §1254(1) and Supreme Court Rule 13.3.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST. amend. VI (hereafter Sixth Amendment)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of that state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. CONST. amend. XIV (hereafter Fourteenth Amendment)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Material Facts

Saul Camilo was arrested on April 14, 2015, pending a State of Florida conviction, his case was referred to the federal authorities. On September 15, 2015, the United States of America indicted Camilo with possession of a firearm by a convicted felon, 18 U.S.C. §922(g).

On November 10, 2015, Camilo entered a plea of guilty with the understanding his charge carried a ten year statutory maximum sentence, but that his sentence would be based upon the Guidelines range which would be determined by his P.S.R. (Doc. 50 at 12).

Camilo signed a plea deal (Doc. 20) which had three distinct terms at odds with itself. One that promised a reduction for acceptance of responsibility, one that claimed the sentence would be determined by the court, and the third, a "fine print" statement that sentencing would be at the statutory maximum.

Counsel's ineffective assistance was glaring and despite the denial of a certificate of appealability at both the district court and the appellate court, Camilo is an example where the barrier to the appellate process is a denial of due process.

REASONS FOR GRANTING THE WRIT

CONTRARY TO THE ELEVENTH CIRCUIT RULING, A DEFENDANT SEEKING A CERTIFICATE OF APPEALABILITY HAS DEMONSTRATED INEFFECTIVE ASSISTANCE OF COUNSEL AND PREJUDICE SUFFICIENT FOR ISSUANCE WHEN A BAD PLEA, ON ITS FACE, SUBJECTS THE DEFENDANT TO A HIGHER THAN GUIDELINE SENTENCE AND WHERE THE PLEA AGREEMENT IS ITSELF AT ODDS WITH ITS OWN TERMS.

As a threshold matter, because of Camilo's pro se status, he seeks the liberal construance of his pleading pursuant to Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007). Where a defendant seeks to challenge a Court's order and underlying understanding of his case the review by the appellate process is essential to preserve the fair administration of justice.

Most often, a defendant has little to no rights to further his interests other than a 28 U.S.C. §2255. Defendants who have signed plea deals invariably have no other recourse than a 28 U.S.C. §2255. As such, the need and right to appellate review is vital. No district court judge is infallible. If they were, the appellate process would be unnecessary, period. The cursory review by the appellate court sufficient to determine the true facts cannot be achieved by a motion for certificate of appealability.

A defendant should be able to rely on the guiding hand of counsel to aggressively pursue his interests and rely upon counsel's appointment as more than a sham to satisfy the need to comply with the Sixth Amendment requirement of the appointment of counsel.

Camilo was denied a Certificate of Appealability for his 28 U.S.C. §2255 by the district court in February of 2018. The Eleventh Circuit Court of Appeals further denied Camilo in August of 2018. Camilo's original §2255 motion addressed counsel's ineffective representation for anomalies in the plea deal and not objecting to the Court's failure to examine §3553(a)

factors. When Camilo attended his change of plea hearing, the magistrate judge did not go over the plea agreement and advised Camilo his sentencing range would be determined by his P.S.R. (Doc. 50 at 12).

In the case subjudice, counsel's failure was blatant. The issue therefore is why Camilo was denied a Certificate of Appealability and whether due process can be achieved when the gate keeper to the appellate process is in part the object of criticism. Counsel failed to 1) address the validity of a hypothetical charge, 2) misrepresented a factual issue already established by case law in the circuit, 3) failed to draw the Court's attention to the contradiction in Camilo's plea agreement, the Government's violation thereof, and 4) present all 18 U.S.C. §3553(a) sentencing factors.

Camilo entered into a plea deal which included three distinct clauses at odds with each other. Paragraph number 3 of the plea deal described over 17 lines how the PSI will be prepared, the Court's responsibility at sentencing, the significance of the Guidelines range, and the Court's ultimate determination of the sentence. At paragraph number 7, the Government states over 17 lines it will recommend up to a 3 level reduction for the purpose of the Guidelines sentencing range. At paragraph number 8, in just 2 lines the Government states, the Government and Camilo agree to the statutory maximum sentence of 10 years.

At sentencing the Court relied upon the Government and defense counsel's agreement that Camilo had already received a grand bargain because of the possibility of an unsubstantiated enhancement. Counsel for the defense acknowledged Camilo's sentence of the statutory maximum and the Court accepted it as fact without discussion.

The concept of using an unsubstantiated enhancement as a means to deny the defendant an opportunity to fully examine all the the factors in sentencing is the denial of due process for which counsel shoulders full

responsibility. Ineffective representation is glaring. A sentence of nearly twice the Guidelines cannot be excused as merely slipshod performance.

"The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Rule 11(a), Rules Governing §2255 Proceedings. "If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. §2255(c)(2)." Id. "If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22." Id. "A timely notice of appeal must be filed even if the district court issues a certificate of appealability." Rule 11(b), Rules Governing §2255 Proceedings.

"A certificate of appealability may issue... only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). When a district court rejects a movant's constitutional claims on the merits, "a petitioner must show that reasonable jurists could debate whether... the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 336, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003) (citing Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000)). By contrast, "[w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a [certificate of appealability] should issue when the prisoner shows... that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack, 529 U.S. at 484.

The appellate court claims to have conducted a de novo review, however, Camilo avers the Court has materially misunderstood his claims, and

as such, is entitled to fully brief his case for appellate review of his 28 U.S.C. §2255 claims. Counsel was ineffective, resulting in a sentence of twice the Guidelines, which is prejudicial on its face. In Bloomberg Vol. 103 No. 18 referencing the case *in re Williams* (11th Cir.) Case No. 18-12538 quoting Judge Martin, "the court has turned a mere screening duty" into, "a rich source of precedent-producing opinions that is depriving inmates of a process that could reveal them to be wrongfully incarcerated."

Camilo has no due process rights without the formal full appellate process. Counsel shepherded Camilo like a lamb to the slaughter professing her guiding hand as a benefit. The fact is Camilo's PSI scored out at a category V level 19 (57-71 months) after the meaningless plea deal promise of a 3 level reduction. In effect, smoke and mirrors were utilized to confuse Camilo to plea. The offer of a reduction was nothing more than a ruse. At sentencing, the threat of a statutory minimum sentence of fifteen years for an unsubstantiated enhancement was weaponized to provide the illusion that a terrible plea bargain was in fact a benefit. Counsel was either confused or herself incompetent. Counsel allowed the unlikely claim of an unsubstantiated ACCA enhancement to sway the Court into accepting a horrific deal and ignore its obligation to examine any §3553(a) sentencing factors.

On the surface, counsel was clearly ineffective. Counsel knew or should have known pursuant to her explanation at sentencing that Camilo was not actually eligible for an ACCA enhancement or at the very least that the resolution of the issue was far from certain.

Doc. 53 at 4:

Ms. Harris:

"So if the Court sees from the three paragraphs that explain the offense conduct, we have May 27th, 2004; July 8th of 2004; and March 30th, 2006. This was one of those sting operations where these sales occurred, but there was no arrest at that particular time. So Mr. Camilo was arrested, and

then he pled guilty to the three different cases, and those are the qualifiers. So it is not a situation where I have a client who has three separate distinct cases that qualify him. It is that one case; but under the law, it would still qualify him as an ACCA.

And I have explained this at length to Mr. Camilo, in trying to negotiate the deal that I did that, unfortunately, if we were to proceed forward with a plea with those qualifiers, that he would be subject to a 15-year mandatory minimum."

Under the ACCA, an enhancement is applicable only when a defendant was previously convicted of three ACCA-qualifying offenses that were "committed on occasions different from one another." 18 U.S.C. §924(e). At sentencing, the government is required to show that "the three previous convictions arose out of a separate and distinct criminal episode." United States v. Proch, 637 F.3d 1262, 1265 (11th Cir. 2011). On appeal, we review de novo whether crimes were committed on different occasions within the meaning of the ACCA. United States v. Weeks, 711 F.3d 1255, 1261 (11th Cir. 2013) cert. denied, U.S., 134 S. Ct. 311, 187 L. Ed. 2d 220 (2013).

Prior sentences are not considered related if they were for offenses that were separated by an intervening arrest (i.e., the defendant is arrested for the first offense prior to committing the second offense). Otherwise, prior sentences are considered related if they resulted from offenses that (A) occurred on the same occasion, (B) were part of a single common scheme or plan, or (C) were consolidated for trial or sentencing.

Camilo's prior conviction included all three dates as part of a scheme, his single conviction was for for three counts to sell, manufacture and possess with intent to distribute for which he ultimately served 60 days in jail. Counsel allowed a theory of a questionable enhancement to deny Camilo a fair and honest plea bargain and to cloud the judgement of the Court at sentencing. The question becomes what right minded defendant would accept a plea of twice his guidelines on the basis of a threat of an enhancement that may never have been valid? The answer is a defendant who relies on the guiding hand of counsel who in this case abused Camilo's trust and led him into a

disastrous bargain with a nonsensical reduction referenced at length in that same plea deal, which was effectively meaningless.

The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV, §1. A violation of procedural due process occurs where the state fails to provide due process in the deprivation of a protected liberty interest and "refuses to provide a process sufficient to remedy the procedural deprivation." McKinney v. Pate, 20 F.3d 1550, 1557 (11th Cir. 1994) (en banc). A claim "alleging a denial of procedural due process requires proof of three elements: (1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally-inadequate process." Grayden v. Rhodes, 345 F.3d 1225, 1232 (11th Cir. 2003). Ordinarily, all the process that is required "in a civil case is proper notice and service of process and a court of competent jurisdiction." Fehlhaber v. Fehlhaber, 681 F.2d 1015, 1027 (5th Cir. Unit B 1982).

Camilo was denied his constitutional right under the Sixth Amendment to the effective assistance of counsel. By denying him a certificate of appealability Camilo is a dead duck and it cannot be claimed this doesn't compound Camilo's loss of rights to due process under the Fourteenth Amendment. Camilo must have a right to access the appellate process a denial of which is to acknowledge a one party system where the fair administration of justice hinges on a single individual who may or may not have had a good day.

Defense counsel and appellate counsel failed to challenge a plea at odds with itself, or the Government's subterfuge of a bargain for a downward departure. Camilo was not sentenced fairly base on established guidelines and counsel's ineffective assistance is squarely to blame.

Camilo had at least three meritorious arguments for appeal under the

Strickland test citing counsel and appellate counsel's failure in 1) confusion in the plea deal, 2) the violation of the plea deal, and 3) a bad plea deal on the face of it.

Aside from the obvious overbearing sentence the Court should have examined the Government's breach of the plea agreement. "Interpreting the terms of a plea bargain involves a two-step [2018 U.S. App. LEXIS 14] process. The court must first examine the nature of the prosecutor's promise. Next, the court examines this promise based upon the defendant's reasonable understanding upon entry of the guilty plea." Cunningham v. Diesslin, 92 F.3d 1054, 1059 (10th Cir. 1996) (citation omitted). "[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." Sanicobello v. New York, 404 U.S. 257, 262, 92 S. Ct. 495, 30 L. Ed. 2d 427 (1971). "If the government breaches express or implied terms of a plea agreement, a violation of due process occurs." Gibson v. Klinger, 232 F.3d 799, 803 (10th Cir. 2000) (quoting United States v. Martin, 25 F.3d 211, 217 (4th Cir. 1994)).

Deficient performance and prejudice, the two prerequisites for a successful Sixth Amendment claim, are often mixed questions of law and fact. See Strickland v. Washington, 466 U.S. 668, 687, 698, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Whatever the ultimate standard of review might be for these questions, see United States v. Toms, 364 U.S. App. D.C. 397, 396 F.3d 427, 432-33 (D.C. Cir. 2005), the district court's factual findings made in the course of judging an ineffective assistance of counsel claim may be set aside only if clearly erroneous, Strickland recognized, 466 U.S. at 698 (citing Rule 52(a) of the Federal Rules of Civil Procedure). See United States v. Askew, 319 U.S. App. D.C. 2, 88 F.3d 1065, 1070 (D.C. Cir. 1996); Adams v. Jago, 703 F.2d 978, 980 (6th Cir. 1983); Washington v. Watkins, 655 F.2d 1346, 1354 (5th

Cir. 1981). Which in this case, was worthy of appellate review. Camilo has made sufficient showing to warrant a review of his case to the appellate which met the bar for the granting of certificate of appealability. Counsel overestimated and therefore misadvised Camilo about the potential threat of enhancements and substantially prejudiced him binding him to a bad plea deal.

District courts must resolve all claims for relief raised in a motion to vacate pursuant to §2255, regardless of whether habeas relief is granted or denied. See Clisby, 960 F.2d at 936 (addressing §2254 petitions); see Rhode v. United States, 583 F.3d 1289, 1291 (11th Cir. 2009) (extending Clisby to §2255 motions). A claim for relief is "any allegation of a constitutional violation." Clisby, 960 F.2d at 936. A defendant alleges a constitutional violation, and therefore a claim for relief, when he alleges that counsel provided ineffective assistance in violation of his Sixth Amendment rights. See Strickland v. Washington, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 80 L. Ed. 2d 674. In the case subjudice, Camilo was failed by the system.

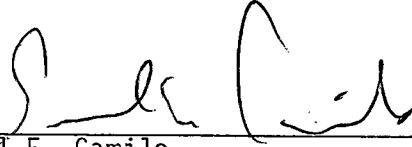
Camilo asserts he met the criteria for the issuance of a COA, and made "a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2). The requirement is satisfied if reasonable jurists would find the District Court's assessment of the constitutional claims debatable, or if the issues deserve encouragement to proceed further. Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604, 146 L. Ed. 2d 542 (2000). Indeed if Camilo's argument fails than who is the gate keeper to a jurist of reason, the same court that denied relief in the first instance and why must Camilo effectively place the cart before the horse by being required to argue his cart is sufficiently sturdy to warrant a horse in the first place.

CONCLUSION

For the reasons stated herein, petitioner, Saul E. Camilo,

respectfully prays that this Court issue a Writ of Certiorari to review the judgement of the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted this 24th day of April 2019, in accordance with 28 U.S.C. §1746, by depositing a copy of this petition in the prison mailbox system with pre-paid postage for onward transmission via the USPS.

By: 

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