

19-5522 ORIGINAL  
No.

IN THE  
Supreme Court of the United States

FILED  
JUL 22 2019  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

BERSON MARIUS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari  
To The Eleventh Circuit Court of Appeals

Case No. 19-10532-K

**PETITION FOR WRIT OF CERTIORARI**

In pro se  
Berson Marius #08116-104  
Federal Correctional Complex Medium  
P.O. Box 1032  
Coleman, Florida 33521-1032

**QUESTION(S) PRESENTED**

WHETHER THE DISTRICT COURT JUDGE CAN ELICITE ADDITIONAL FACTS DURING A FACTUAL PROFFER, AND WHETHER COUNSEL WAS INEFFECTIVE ASSISTANCE OF COUNSEL WAS INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILING TO OBJECT WHEN THE COURT ELICITED ADDITIONAL FACTS DURING A FACTUAL PROFFER

WHETHER A VIOLATION OF RULE 11 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE WHEN THE DISTRICT COURT JUDGE ELICITED ADDITIONAL FACTS DURING THE FACTUAL PROFFER

**LIST OF PARTIES**

The United States of America is the only party listed in this matter.

## **TABLE OF CONTENTS**

OPINIONS BELOW

JURISDICTION

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

REASONS FOR GRANTING THE WRIT

CONCLUSION

## **INDEX TO APPENDICES**

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

**TABLE OF AUTHORITIES CITED**

CASES

PAGE NUMBER

## **JURISDICTION**

The United States Court of Appeals for the Eleventh Circuit Court of Appeals denied my case on May 17, 2019, and Petitioner attempted to file a request for rehearing, which the clerk of the court did not file. Appendix B.

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Fifth Amendment right to due process

The Sixth Amendment right to effective assistance of trial counsel.

Federal Rule of Criminal Procedure, Rule 11.

## STATEMENT OF THE CASE

Mr. Berson Marius ("PETITIONER") request is based on the district court's denial of his timely filed Title 28 U.S.C. § 2255 motion and the denial of his application for Certificate of Appealability ("COA"), and his motion to proceed in forma pauperis on appeal. The denial from the Eleventh Circuit court of Appeals was entered May 17, 2019. Appendix A.

Mr. Marius filed a request for the Eleventh Circuit to rehear his case but the clerk of the court did not file his application, stating that the case was closed. Appendix B.

The issue's presented before the Eleventh Circuit and this Honorable Supreme Court, are issue's of first impression, debatable, and likely to come up in other cases, and the issue warrant's this Court's review.

## **REASON FOR GRANTING THE PETITION**

The United States court of appeals for the Eleventh Circuit court of Appeals has entered an order of denial and evaded an important question of federal law that has not been, but should be, settled by this Court, specifically, Rule 11 of the Federal Rule of Criminal Procedure where the district court elicited additional facts during the factual proffer, and whether counsel was ineffective for failing to object when the Court elicited additional facts during a factual proffer. Notably, the district court acknowledged that the court's research revealed no Eleventh Circuit precedent addressing petitioner's claims that the district court elicited additional facts. And because the issue is one of first impression, debatable and likely to come up in other cases, the issue warrant's this Court's review.

The district court's conduct was improper pursuant to Rule 11(b)(1), considering and accepting a guilty or nolo contendere plea. When the rule instructs the court, before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

- (A) the government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath;
- (B) the right to plead not guilty, or having already so

pledged, to persist in that plea;

(C) the right to a jury trial;

(D) the right to be represented by counsel--and if necessary have the court appoint counsel--at trial and at every other stage of the proceeding;

(E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses;

(F) the defendant's waiver of these rights if the court accepts a plea of guilty or nolo contendere;

(G) the nature of each charge to which the defendant is pleading'

(H) any maximum possible penalty, including imprisonment, fine, and term of supervised release;

(I) any mandatory minimum penalty;

(J) any applicable forfeiture;

(K) the court's authority to order restitution;

(L) the court's obligation to impose a special assessment;

(M) in determining a sentence, the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. §3553 (a); and

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence; and

(0) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

The district court's conduct in this matter contravenes Rule 11 of the Fed. R. Crim. P., when it elicited additional facts during the Entering a Plea stage.

#### CONCLUSION

Premised on the fact that this is an issue of First impression, debatable, and likely to come up in other cases, Petitioner is requesting that this Honorable Supreme Court, Grant, Vacate, and Remand this matter back to the Eleventh Circuit court of Appeals to resolve the issue of first impression regarding the Rule 11 violation of the district court eliciting additional fact at the plea hearing.

Respectfully submitted,



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