

19-5705

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

JUL 02 2019

OFFICE OF THE CLERK

LEIGHTON MARTIN CURTIS — PETITIONER

(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LEIGHTON MARTIN CURTIS

(Your Name)

FEDERAL CORRECTIONAL COMPLEX Y A200-LW

(Address)

P.O. Box 5000, Y A200 CITY MS 39194

(City, State, Zip Code)

NONE

(Phone Number)

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SUPREME COURT, U.S.

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AUG 23 2019

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

A evidentiary hearing is granted;

Does Counsels failure to expand on the record, and file pre and post hearing briefs for the petitioners arguments, and make specific objections to the report and recommendations of a Magistrate Judge and identify what portion of the record in which petitioner objects, and not object in a footnote stating, "same oral arguments as", enough to satisfy cause and prejudice, in an initial review collateral proceeding, pursuant to Martinez v Ryan Sct.132 thus affecting the integrity of the proceedings presented.

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:

MAGISTRATE JUDGE PATRICK WHITE
DISTRICT COURT JUDGE JOAN LENARD
APPEALS COURT FOR THE ELEVENTH CIRCUIT JUDGES:
JUDGE WILLIAM Pryor
JUDGE NEWSOM

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APPENDIX A	1. A copy of the 28 U.S.C. 2255 decision where it shows DISTRICT JUDGE RULED it, Counsel's objection to be legally insufficient.
	2. A copy of the civil docket for Case #: 0:14-cv-61851-SAL, to show that petitioner tried to object to magistrate Judge Report and Recommendations.
APPENDIX B	3. A copy of the initial 608 motion.
	4. A copy of the Magistrate Judge Report and Recommendations.
APPENDIX C	1. A copy of petitioners objections to Magistrate Judge issued Report and Recommendations of 608 motion.
	2. A copy of movants addendum to include exhibit of Attorney objections that was deemed legally insufficient.
APPENDIX D	1. A copy of DISTRICT JUDGE Affirming the denial of 608 motion.
	2. The opinion of the United States Court of Appeals when they deny the COA to the 608.
APPENDIX E	1. A copy of Reconsideration motion to Appeals Court for 608.
	2. A copy of the order denying rehearing.
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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 E to the petition and is

reported at Pacer; 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 D to the petition and is

reported at Pacer; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from **state courts**: N/A

The opinion of the highest state court to review the merits appears at Appendix N/A to the petition and is

[] reported at N/A; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished. N/A

The opinion of the N/A court appears at Appendix N/A to the petition and is

[] reported at N/A; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished. N/A

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 5/19/19.

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: 5/19/19, and a copy of the order denying rehearing appears at Appendix E.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

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

For cases from **state courts**: N/A

The date on which the highest state court decided my case was N/A. A copy of that decision appears at Appendix N/A.

A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

" FIFTH AMENDMENT DUE PROCESS", The Fifth Amendment to

the U.S. Constitution guarantees that,

"[n]o person shall be deprived of life, liberty, or property, without proper due process of law".

The court has further held that "[+]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner".

" 28 U.S.C. 2253", The court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right 28 U.S.C. 2253 (c)(2). To make such a showing, a "petitioner must demonstrate that reasonable jurists would find the district courts assessment of the constitutional claims debatable or wrong, Slack v. McDaniel, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed. 2d 542 (2000), or that "the issues presented" 2019 U.S. Dist. LEXIS 5} were adequate to deserve encouragement to proceed further". Miller-EL v. Cockrell, 534 U.S. 322, 336, 123 S.Ct. 1029, 154 L.Ed. 2d 931 (2003).

STATEMENT OF THE CASE

Petitioner raised a 60B motion that, counsels actions affected the integrity of the proceedings. Petitioner raised 15 issues on a 28U.S.C.2255 and was granted a Evidentary Hearing on one issue out of the 15, which was issue 1.

(1) That stated, "Counsel failed to relay plea, and also counsel caused petitioner to forego a favorable plea based on erroneous advice that, "he could win case as", petitioner in his defense cited, Missouri v. Frye, Sct, and Lafler v. Cooper, Sct, both 2012 cases.

A Evidentary hearing was granted in regards to issue 1. The plea issue. District Court appointed Micheal Cohen to represent the petitioner at the Evidentary Hearing. Thereby petitioner also asked his Attorney why issue 2-15, in petition was not heard, or at least to be heard.

That being the case, he should request, from the court a COA on issue 1-15. At the conclusion of the Evidentary Hearing the Magistrate Judge issued a Report and Recommendation denying relief to issue 1, as well as stated 2-15 does not hold merits for further review.

Issue at hand is, Once Appointed, Counsel for petitioner didn't file any pre or post hearing briefs to issue 1 that the Evidentary Hearing was scheduled for, and also issue 2-15 which was not scheduled for review. Petitioner requested Counsel to file for a COA for those issues. As the purpose of the Evidentary Hearing is to expand on the record and for clarity. This Magistrate Judge had granted a Evidentary Hearing, therefore it is appropriate for appointed Counsel at least to strengthen petitioner arguments and file pre and post hearing briefs in support of the argument, and expand on the record. This Appointed Counsel didn't file specific objections to the Report and Recommendations of the Magistrate Judge and identify which portion petitioner specifically objects to in the record of the report and recommendations. As when he did object, it was in a single footnote, which stated, "same oral arguments as". This objection was deemed by the District Court as legally insufficient, thereby leaving the courts to frivolous and general objections which need not be considered by the court. Thus affecting the integrity of the proceedings and not being at best the petitioners mouthpiece and file pre and post hearing briefs and by not specifically objecting to Magistrate Judge Report and Recommendations and not giving petitioner not only his best shot, but all of his best shots.

and also to be heard and therefore had abandoned petitioners and his claims and handicap his ability to object, as when petitioner objected pro-se his objections was futile and petitioner was told his attorney has to file the objections and when petitioners attorney did so it was not as petitioner filed in his rejected objections, However it was in a footnote, and was never at all specific, as which portion of the record in the Magistrate Judge report and recommendation he objects, thereby petitioners states this is enough to show cause and prejudice in an initial review collateral proceeding pursuant to Martinez v. Ryan Sct. 1, and asks this Honorable Supreme Court to grant this petition and re-open 2255 or grant a new 2255 and any other relief that this court see fit to be addressed.

REASONS FOR GRANTING THE PETITION

A Fifth Amendment Due Process right has been violated from petitioner to be heard on issues raised in his objections that was omitted and from appointed counsel not making specific objections to Magistrate Judge Report and Recommendations and by not filing any pre-Hearing and post-Hearing briefs for petitioner, and equal protection clause for one to defend themselves Constituting Cause and prejudice in an initial review collateral proceeding, pursuant to MARTINEZ V. Ryan Sct, as separate from the claim in regards to counsel, there is no constitutional right to counsel in a collateral review proceedings, However once one is appointed then it is their duty to afford their client adequate representation as required by the Bar association and by the Sixth Amendment to the Constitution as counsel, once appointed by the District Court to represent the petitioner at the Evidentiary Hearing that was granted, counsel at this time should of expanded on the record and file pre and post hearing briefs and also when the Magistrate judge issued a report and recommendation denying petitioners claims, It was for counsel to now properly object to the report and recommendations and identify specific portions to the record of the report and recommendations in which petitioner objects and not leaving the court to just frivolous and general objections which need not be decided by the courts. As it was determined by the District Court Judge in their Decision, that counsel's objections to the magistrate judge report and recommendation was "legally insufficient".

Therefore counsels actions is enough to show cause and prejudice Pursuant to Martinez v. Ryan Sct , and affected the integrity of the proceedings and violated petitioners due process rights, as the purpose of a Evidentiary Hearing was to expand on the record. Therefore when petitioner filed his initial brief and was granted a evidentiary hearing, Appointed Counsel was to be petitioners mouthpiece acting as his agent an "represent" his client in every sense of the word.

Counsel never presented and, or "enriched" petitioners arguments as from a Pro-Se litigant standpoint to one with legal profession,

Pre Evidentiary Hearing, and Post Evidentiary Hearing and once the initial Evidentiary Hearing was concluded, and a report and recommendation was issued counsel never filed any specific objections and identify which portion of the record he objects, as when he did object it was in a single sentence footnote which stated, "the same oral arguments as", petitioner stated this objection was a general objection, and didn't identify a specific portion of the record

in which Petitioner objects and was deemed legally insufficient and therefore District Judge denied petitioners 60B.

This is why petitioner cited Buck v. Davis, S.Ct (2017), as in a reasonable jurists would find this to fit a extraordinary circumstances and Gonzalez v. Crosby, S.Ct (2003), Maples v. Thomas, S.Ct, (2012) with Martinez v. Ryan, 132 S.Ct at 1316. (2012).

Petitioner also tried to object by filing his own **objections** which were specific in nature and identified the portion of the record of the Magistrate Judge report and recommendations petitioner objects, however these objections were futile, and omitted by just the district courts and sent to appointed counsel, and which appointed counsel never submitted these specific objections in his own words and represent what plaintiff objects to, and by just stating: "same oral arguments as", in a **footnote** clearly was legally insufficient thus affected the integrity of the proceedings and pursuant to Martinez v. Ryan, , satisfies these standard, as it satisfies the cause and prejudice in an initial review collateral proceeding.

Wherefore the purpose of the Evidentiary Hearing was to expand on the record, and counsel abandoned petitioner, thus as a result petitioner was denied his 60B, as petitioner states these claims presented in the 28 U.S.C § 2255 was meritful and had it been argued that, objected claims that are presented by petitioner are specific in regards to the record and had counsel pointed out that in the objected claims argued it specifically identifies to the portion of the Magistrate Judge report and recommendation there is a reasonable probability that the decision would be different as ultimately the issue

heard at the Evidentiary Hearing which was issue 1 in the 28 U.S.C 2255, "Counsel failure to relay a plea, and erroneous advice led petitioner to forego a favorable plea", as both issues at hand represent Missouri v. Frye and Lafler v. Cooper. Government admitted to a verbal plea of 7 years. Instead petitioner went to trial and received a 30 years and lifetime probation and \$54,000 restitution awarded to a alleged victim, sentence. This was all based on erroneous advice from trial attorney to petitioner, which was clearly prejudicial as petitioner stated the presentence investigation report reflected a category 1 level 32 and petitioner was enhanced 8 points from the advisory guideline section on elements that was already embedded in the statute for convictions and ultimately was a level 40. It also reflected no criminal history what so ever. Therefore facing this situation it would of been practical for petitioner to accept the 7 year plea that the government offered. Government stated they told counsel of the plea verbally, and counsel stated he told petitioner and petitioner refused this paid private attorney's advice. There was no written agreement shown to petitioner of the verbally offered plea, and there was no proof that counsel even told petitioner the plea the government admitted to offering, other than the Attorney's words. Petitioner was not brought to a court and record is on the alleged rejected 7 year plea that counsel stated petitioner refused. Therefore this was clearly prejudicial this is why petitioner cited North Carolina v. Alford 3 Sct, holding other reasons than guilt would so induce a defendant to plea, and Lalan v. United States 11. th Cir., holding protestations of innocence does not undermine a guilty plea. Petitioner state that it would of been practical to accept a plea and not be subjected to a more of a sentence exposure, that petitioner did not know he could

face had he not taken a plea. Therefore claims were meriful and appointed Counsel for petitioner at the Evidentary Hearing abandoned his client both pre and post to this Evidentary Hearing thus affected the integrity of the proceedings and cause and prejudice is shown in an initial review collateral proceeding based on, there was no filed briefs, separate from the initial filed brief from petitioner 28 U.S.C. 2255 that petitioner filed, and appointed Counsel as a professional didn't expand on petitioner brief and pre and post Evidentary Hearing and no objections were made specifically to what portion of the Magistrate Judge report and recommendations in which petitioner objects.

Therefore petitioner respectfully asks this Honorable Supreme Court to grant this petition in the interest of Justice and give relief as it see fit in the interests of justice to this claim presented.

As this decision can also help many others with the same issue, Thank You.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Leighton M. Curtis

Date: 6/25/19