

19-6021

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

RECARDO VALLES DE LA ROSA — PETITIONER
(Your Name)

Supreme Court, U.S.
FILED
SEP 20 2019
OFFICE OF THE CLERK

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

RECARDO VALLES DE LA ROSA

(Your Name)

US PENITENTIARY, FLORENCE / P.O. BOX 7000

(Address)

FLORENCE, COLORADO, 81226

(City, State, Zip Code)

Not Applicable/Petitioner is a Federal Prisoner

(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE FIFTH CIRCUIT COURT OF APPEALS' AFFIRMANCE OF THE PETITIONER'S GUILTY-PLEA SENTENCE VIOLATED PETITIONER'S DUE PROCESS RIGHTS UNDER, AND THIS COURT'S PRECEDENCE IN, BRAXTON V. UNITED STATES, 500 U.S. 344 (1991), WHERE IN SENTENCING THE PETITIONER TO LIFE IMPRISONMENT, THE DISTRICT COURT RELIED ON OTHER, MORE SEVERE OFFENSES THAN THAT WHICH THE PETITIONER STIPULATED AND AGREED TO IN THE WRITTEN PLEA AGREEMENT AND FACTUAL STIPULATION, SUPPORTING THE GUILTY PLEA, AND WHETHER THESE SAME ACTIONS BY THE DISTRICT COURT ALSO VIOLATED THIS COURT'S HOLDINGS IN NELSON V. COLORADO, 137 S.CT. 1249 (2017).

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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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: Exh 1 to the petition and is ("Exh" means Exhibit)

reported at N/A ("N/A" means Not Applicable); or,
 has been designated for publication but is not yet reported; or,
 is unpublished. USCA No. 17-50668; US v. De La Rosa

The opinion of the United States district court appears at Appendix N/A to the petition and is ("N/A" means Not Applicable)

reported at USDC No. 3:10-CR-2213-6; US v. De La Rosa; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**: Not Applicable

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

reported at Not Applicable; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Not Applicable court appears at Appendix _____ to the petition and is

reported at Not Applicable; 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 June 27, 2019

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: Not Applicable, 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 Not Applicable (date) on _____ (date) in Application No. A.

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

The Judgement of the U.S. District Court for the Western District of Texas was entered on July 20, 2017 (in case No. 3:10-CR-2213-6, USDC), and a timely notice of appeal was taken to the Fifth Circuit Court of Appeals and final disposition in the appeals was entered on June 27, 2019. No Petition for Rehearing or Rehearing En Banc was filed. Thus the District Court had jurisdiction pursuant to 18 U.S.C. § 3231; and the Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291; and whereby, this Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254, within the 90 day time limit.

For cases from **state courts**: Not Applicable

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

A timely petition for rehearing was thereafter denied on the following date: Not Applicable, 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 N/A (date) on N/A (date) in Application No. A.

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

Specifically, 28 U.S.C. § 1254, as this is a Federal Court case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The right of an accused to not be punished for uncharged, dismissed, or acquitted offenses and conduct is a right protected by the Fifth Amendment's Due Process Clause covering the Criminal Judicial Process's Indictment, Jury Trial, and Guilty-Plea procedures.

Indeed, no person should suffer adversely as a result of the application of a law or proceeding, without first enjoying notice thereof and the proper application and process of that law and proceeding, pursuant to the right, guarantee, and protection under the Fifth Amendment to the U.S. Constitution (V).

STATEMENT OF THE CASE

Recardo De La Rosa seeks review in this Court from his guilty-plea sentence in the United States District Court for the Western District of Texas (Lubbock Division), which involved the use of the United States Sentencing Guidelines (USSG), the sentencing court's judicial factfinding, and a sentence more severe than that for which De La Rosa admitted guilt and had a reasonable expectation to receive.

On March 2, 2011, the Government filed its Third Superseding Indictment, and an arrest warrant was issued for De La Rosa. De La Rosa was subsequently arrested and brought before the district court, where he waived his right to a detention hearing and was appointed counsel to represent him in the matter, which charged a RICO Conspiracy (Count 1), a Section 846 Narcotics Conspiracy (Count 2), a Conspiracy to Import Narcotics (Count 3), a Conspiracy to Launder Monetary Instruments (Count 4), a Murder resulting from the Use and Carrying of a Firearm (Count 6-8), a Murder In Aide of Racketeering (Counts 9-11), and Obstruction of Justice (Count 12). De La Rosa appeared before the Honorable Kathleen Cardone, and entered a plea of not guilty.

Then, on January 13, 2017, De La Rosa, represented by appointed counsel, informed the court of his intent to plead guilty pursuant to a written plea agreement with the Government, which included an attached factual stipulation. That same day, and pursuant to the plea agreement, the court accepted De La Rosa's plea of guilty on Counts 1, 2, 3, and 4. And on July 20, 2017, the court held a sentencing hearing wherein it made factual findings of culpable conduct beyond, and outside of that admitted and agreed to by De La Rosa in the factual stipulation, resulting in a life sentence--in Counts 1-3, and 240 months on Count 4 (all to be served concurrently)--otherwise not applicable.

REASONS FOR GRANTING THE PETITION

The district court clearly erred, and the Fifth Circuit Court of Appeals' affirmance thereof, violated De La Rosa's due process rights in accordance with Braxton v. United States, 500 U.S. 344 (1991), when it sentenced De La Rosa to life imprisonment based on unstipulated offenses and their specific, statutory elements. Also, the lower courts violated De La Rosa's due process rights when it used uncharged, dismissed, and/or acquitted conduct/offenses, more severe than that established by the guilty-plea conviction, to increase De La Rosa's sentence to mandatory life imprisonment, otherwise not applicable--a due process right created--and a judicial process contravened--by Nelson v. Colorado, 137 S.Ct. 1249 (2017).

Here, it was alleged that De La Rosa became a member of the Barrio Azteca ("BA"), criminal enterprise, which was a paramilitary gang with propensity for violence, comprised of hundreds of members in El Paso, Texas, and Juarez, Mexico, including, but not limited to, murders, assaults, kidnappings, extortion, money laundering, and trafficking in controlled substances. That in 1995, De La Rosa became a member of BA while imprisoned at a Federal Bureau of Prisons Facility (FBOP). While there, De La Rosa engaged in criminal activities on behalf of BA. Then, when he was released in July of 2007, De La Rosa was placed in charge of prostitution and after-hours alcohol sales, and collected taxes or fees from that activity, as well as other activities conducted by BA.

In his factual stipulation, supporting his guilty-plea, De La Rosa simply acknowledged that he was aware that throughout the overall BA conspiracy, more than one kilogram of heroin was imported into the United States, but when he (De La Rosa) became aware (during the conspiracy, or post arrest) was not stipulated or acknowledged by De La Rosa, for full responsibility of the entire one kilogram amount to be attributable to De La Rosa, i.e., that he was involved in the entire amount over the length of the BA conspiracy. Neither did De La Rosa stipulate or acknowledge that he or who of the BA Gang were involved in murders, assaults, kidnappings--nor that he himself participated or agreed to the commission of these specific crimes, or who of the BA did and when, specifically, in regards to the most serious offense and sentence: "Murder of a Foreign Official(s)" (Count 1). Indeed, the sentencing Court found that De La Rosa was guilty and thus culpable for the offense of first-degree murder and

its accompanying, mandatory life imprisonment sentence, though De La Rosa did not stipulate or acknowledge the necessary elements for a first-degree murder offense, or who of the BA did the crime(s), or that he agreed to its commission, or agreed and acknowledge that he became aware of any such crime during the BA conspiracy, whereby not removing the fact of simply having gained post trial knowledge.

Thus, certiorari review and relief should be granted by this Court to enforce De La Rosa's rights under this Court's precedence and controlling law in Braxton v. United States, 500 U.S. 344 (1991), and to correct the Fifth Circuit's district court and its Court of Appeals' rogue conduct in the face of Braxton.

In addition, certiorari review should be granted by the Court because its decision in Nelson v. Colorado, 137 S.Ct. 1249 (2017) cannot be reconciled with the Court's decision in United States v. Watts, 519 U.S. 148 (1997) (holding that "a jury's verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proven by a preponderance of the evidence"), and vice versa. As well, to once and for all, clarify the conflict created by these two decisions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ricardo Valles de la Rosa

Date: SEPTEMBER 12, 2019

APPENDIX

EXHIBIT 1