Case No. 19-6058

IN THE SUPREME COURT OF THE UNITED STATES

GUY PHILIPPE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION: FOR REHEARING PURSUANT TO SUPREME COURT RULE 44

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I. INTRODUCTION

Comes now, Guy Philippe (hereinafter "Appellant"), proceeding pro se, submits a rehearing to this Court's denial of certiorari entered on November 4, 2019, because Appellant believes this Court overlooked his request for a certificate of appealability ("COA"). Appellant had requested this Court to grant certiorari due to the lower court's denial of claims. (See Appellant's Certiorari at p. 1). However, Appellant also requested this Court at a minimum to grant him a COA from the lower court's denying him a COA. (See Appellant's Cirtiorari at p. 6,10,14. This Court may review a lower court's denial of an application for a COA. Hohn v. United States, 524 U.S. 236, 238-41 (1998).

Here, Appellant is only seeking rehearing on the denial of a COA based on Appellant asserting a violation of his Sixth Amendment constitutional rights to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771 n.14 (1970) ("defendants... are entitled to the effective assistance of counsel.") Specifically, ineffective assistance of counsel prevented Appellant from entering a knowing and voluntary plea. Hill v. Lockhart, 474 U.S. 52, 56 (1985) (quoting McMann v. Richardson); see also United States v. Cockerham, 237 F.3d 1179, 1187 (10th Cir. 2001) (guilty plea does not waive claim of ineffective assistance of counsel if claim challenges validity of plea or waiver). Appellant will demonstrate below that his two claims for relief constitute granting a COA.

II. ARGUMENTS

CLAIM 1: Counsel Was Constitutionally Ineffective For Not Presenting The Treaty Violation Claim

Appellant contended that trial counsel was constitutionally ineffective for failing to argue that the indictment should have been dismissed based on the 1904/1905 and 1997 treaties between Haiti and the United States in light of United States v. Rauscher, 119 U.S. 407, 236-38 (1886). Appellant believes this

Court overlooked the crucial facts which consists of: (1) The U.S. Ambassador deliberately mislead Haitian law officials by claiming that Appellant would be charged with illicit trafficking in drugs, (2) Haiti's Minister of Justice confirmed that Appellant was extradited pursuant to pursuant to the 1904/1905 treaty between Haiti/United States, (3) Haiti's Senators voted unanimously that a treaty violation occurred, and (4) Appellant's case violated the act of the state doctrine. (See Appellant's Certiorari at p.8,9).

Counsel not presenting the treaty violation claim was clearly not within the reange of competence demanded of attorneys which was deficient performance that was overlooked. Hill, 474 U.S. at 56; see also United States v. Juarez, 672 F.3d 381, 389-90 (5th Cir. 2012) (performance deficient because counsel failed to investigate citizenship law as potential defense to crime to which defendant plead guilty). Appellant was severely prejudiced by counsel's deficient performance because the supporting facts, exhibits to support the facts, and case law to support the claim would have confirmed a treaty violation and dismissed the indictment. Strickland v. Washington, 466 U.S. 668, 687 (1984); see also Heard v. Addison, 728 F.3d 1170, 1184-86 (10th Cir. 2013) (defendant prejudiced by counsel's failure to discover relevant unpublished opinions or raise obvious defense). Appellant's country of Haiti clearly confirmed a treaty violation occurred (see Ex. 7, Senator's Resolution), therefore, the act of the state doctrine is the controlling authority based upon Appellant being arrested by Haitian officials, turned over to U.S. officials due to the treaty, and extradited to the United States pursuant to the treaty. (See Appellant's Cirtiorari at p.7,8,9)

Based on the foregoing facts, case laws, and legal arguments to support Appellant's prima facie claim, Appellant believes a COA should be granted

because his Sixth Amendment rights were violated and overlooked.

CLAIM 2: Counsel Was Constitutionally Ineffective When Presenting Appellant's Speedy Trial Claim.

Appellant also presented an ineffective assistance claim based on counsel's lack of producing evidence when filing his speedy trial act claim in violation of his Sixth Amendment right, and thus, Appellant's guilty plea was not made knowingly and voluntarily which was overlooked. Hill, 474 U.S. at 56. For instance, counsel's advice fell below an objective minimum threshold of competence by withholding at least 10 exhibits to support Appellant's claim which was deficient performance that prejudiced his defense. (See Appellant's Certiorari at p.9,10; see also United States v. Streater, 70 F.3d 1314, 1318 (D.C. Cir. 1995)(defendant prejudiced in making guilty plea because induced by counsel's faulty legal advice regarding elements of possible defense). Had counsel submitted all the exhibits in her possession, it would have shown that the reason for the delay was caused by the government's lack of diligence and bad faith. (See Appellant's Certiorari at p.12). Any competent counsel would have submitted the prima facie evidence in order to show that the second Barker factor weighed heavily against the government, however, counsel's lack of submitting the evidence sabotaged the second Barker factor which fell below an objective standard of reasonableness and there is a reasonable probability that but for this ineffective assistance the outcome would have been different. The third Barker factor weighed heavily against the government as well; (see Appellant's Certiorari at p.10-12), see Doggett, 505 U.S. 647, 653(1992)(the defendant should "not be taxed for invoking his speedy trial right only after his arrest," where the evidence showed that he was not aware, prior to his arrest, of the charges pending against him.), therefore, Appellant need not show actual prejudice (the fourth Barker factor) to succeed in showing a violation of his right to a speedy trial. Doggett, 505

U.S. at 655. (See Appellant's Certiorari at p.13).

Appellant request a COA be granted on his speedy trial act claim on the basis that his plea was not knowingly or voluntary due to counsel's ineffectiveness which was a clear Sixth Amendment violation

III. CONCLUSION

Based on the foregoing reasons, Appellant believes his requests for a COA was overlooked and prays that the Honorable Court will grant him a COA on his two claims. Thank You.

Respectfully submitted,

Date: 1-13-2020

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