IN THE SUPREME COURT OF THE UNITED STATES

STEVEN JUSTIN VILLALONA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Appeal No. 19-6127
ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR REHEARING

COMES NOW, the petitioner, Steven Justin Villalona, in pro-se form, pursuant to Sup. Ct. R. 44.2, and respectfully presents this petition for a rehearing of the above-entitled cause. In support thereof, the petitioner avers as follows:

Grounds for Rehearing

A rehearing of the decision in the matter is in the interests of justice because there exists substantial grounds which were not previously presented within the petition for writ of certiorari to the United States Court of Appeals for the 11th Circuit.

1. On November 12, 2019, this Court entered an order which denied the petition for writ of certiorari.

2. The grounds raised dealt with the effects of a concession made by party to a controversy on the courts ability to ajudicate the merits, whether prejudice should be presumed when an attorney fails to promptly communicate a conflict of interest to the court, and whether the courts may correct a plain error at any stage of the proceedings.

3. However, this case beggets the question of whether an attorney's improper withdrawal from a case may amount to ineffective assistance of counsel, or does a counsel's failure to take resonable steps to protect his client's interests when withdrawing from a case may amount to deficient performance, and whether the 11th Circuit

Court of Appeals erred in concluding that "Villalona has failed to show that reasonable jurists would find debatable the merits of the underlying claims or the procedural issues that he seeks to raise[.]" Villalona v. U.S., 2019 U.S. App. Lexis 6032 (11th Cir. 2019).

4. Furthermore, this case contains several crucial factual and procedural distincions from the case of McCoy v. Louisiana, 200 L.Ed. 821 (2018) and U.S. v. Rhode, 2010 U.S. Dist. Lexis 77259 (Middle District of Florida, April 26, 2010) that warrants a determination by a different or at least altered rule.

5. As Justice Alito pointed out, "[u]nwilling to go along with [McCoy's] incredible and uncorroborated defense, English told [McCoy] 'some 8 months' before trial that the only viable strategy was to admit the killings and to concentrate on attempting to avoid a sentence of death. 218 So.3d, at 558. At that point - aware of English's strong views - [McCoy] could have discharged English and sought new counsel willing to pursue his Conspiracy defense; under the Sixth Amendment, that was his right. See U.S. v. Gonzalez-Lopez, 548 U.S. 140, 144 (2006). Here, the district court found that counsel was not ineffective, because the petitioner "fired" him. Civil Doc. 53, at 7-8. Moreover, the petitioner discharged his counsel 8 days before the district court accepted the guilty plea. Criminal Doc. 60.

6. Likewise, Magistrate Judge Pizzo found that "[i]f Rhode truly wanted to withdraw his plea, his counsel rightly and accurately surmised Rhode would inform the district judge at the sentencing proceeding." U.S. v. Rhode, supra, at 10. Furthermore, Judge Pizzo found that "[i]n the end, Allen unquestionably left the decision [of whether to accept responsiblity for his crimes] to Rhode." Id. at 6.

Here, however, the petitioner without consulting his counsel did make a request to the district court at sentencing to withdraw his plea. See U.S. v. Villalona, 506 F.App'x 902, 903 (11th Cir. 2013). The 11th Circuit Court of Appeals established that the petitioner formed the intention to withdraw his plea before the district court accepted it, when he still had the "absolute right" to withdraw it, he failed to promptly act on that intention. Id. at 905. Furthermore, the record reflects that counsel was aware 60 days before sentencing that the petitioner wished to withdraw his plea, and there is evidence in the record of the petitioner making a clear request to withdraw his plea. See Crim. Doc. 62 ("Villalona advised [the United States] that [he] intended to withdraw his guilty plea at the sentencing hearing" and that, in a recent conversation between the United States and Hued, Hued "confirmed Defendant Villalona's intentions."); also see PSR addendum at 2. ("The defendant pled guilty pursuant to a written Plea Agreement but now wishes to withdraw from his plea. The defendant is denying the facts of the Plea Agreement, specifically the agreement to purchase 10 kilograms of cocaine for distribution, therefore the defendant has not accepted responsibility[...]").

7. As such, a rehearing tightly and squarely focused on the distinctions between this case and the McCoy v. Louisiana, supra, and U.S. v. Rhode, supra, cases, and whether these distinctions merit a different rule of law, is a matter of fundamental fairness to petitioner and would not unduly burden the Court.

8. Lastly, the 11th Circuit Court of Appeals erred in concluding that reasonable jurists would not debate the district court's denial of Villalona's ineffective assistance of counsel claim, because Villalona's ineffective claim is predicated upon the denial of

an absolute right to withdraw his guilty plea before it is accepted by the district court. See Villalona, 506 F.App'x at 905; also, Fed. R. Crim. P. 11(d)(1)(providing that a defendant may withdraw a guilty "before the court accepts the plea, for any reason or no reason"). In Williams v. Taylor, 529 U.S. 362, 391, this Court noted that "[i]t is true that the Strickland test provides sufficient guidance for resloving virtually all ineffective assistance of counsel claims, there are situations in which the overriding focus on fundamental fairness may affect the analysis." Here, the district court noted that "[i]n the present case, the issue of whether Hued failed to file a motion to withdraw Villalona's plea is relevant to Villalona's absolute right to withdraw his plea before the Court accepted it." Civ. Doc. 53 at 7. However, the district court did not depart from the straightforward application of the Strickland analysis. Therefore, it is debatable of whether the Strickland analysis is "[]adequate to assure vindication of [Villalona's] Sixth Amendment right to counsel." Mickens v. Taylor, 535 U.S. 162, 176 (2002).

CONCLUSION

For the reasons just stated, Steven Justin Villalona urges that this petition for rehearing be granted, and that, on further consideration, the Petition for Certiorari be granted.

DATED: 11/30/2019

Respectfully submitted,

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CERTIFICATE OF GOOD FAITH AND SERVICE

I HEREBY CERTIFY that the foregoing petition for rehearing is made in good faith and without the intent of delaying the proceedings, and that the subject matter is confined to the limitations set forth in Rule 44.2, Supreme Court Rules.

Dated 11/30/2019

I HEREBY CERTIFY that the foregoing petition for rehearing was forwared to the Solicitor General of the U.S., Room 5616, Department of Justice, 950 Pennsylvania Ave, N.W., Washington, DC 20530-0001, on 11/30/2019, via U.S.P.S. first class pre-paid mail.

See 28 U.S.C. § 1746