

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Pro se Frank D. Monsegue sr. — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Frank D. Monsegue sr.
(Your Name)

(FPC) Federal Prison Camp
(Address) 2680 S. U.S. Hwy 301

Jesup, GA 31599
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1) Whether a warrantless arrest, without search or arrest warrant to enter a home without exigent circumstances is a constitutional violation under the 4th Amendment?

2) Whether the court finds that the moving party did not receive notice under Federal Rule 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry; and the failure of defense counsel to inform the defendant of his right to appeal and his right to have counsel appointed on appeal (if indigent) is in violation of the defendant's constitutional rights under the 14th Amendment, by depriving the defendant the right to a Direct Appeal, due process? SEE Roe vs. Flores-Ortega

3) Whether this practice by depriving a defendant a procedural right to Direct Appeal, Post conviction motion, because of the defendant lack of knowledge of the law and failure of counsel to inform client of that right, is ineffective assistance of counsel and in violation of defendant's 6th Amendment Constitutional rights? see Roe vs Flores-Ortega and Gilberto Garza, Jr., Petitioner v. Idaho No. 17-1026

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 A to the petition and is

☐ reported at _____; 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☒ is unpublished.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 B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; 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 February, 21, 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: April, 11, 2019, and a copy of the order denying rehearing appears at Appendix C.

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

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

☐ For cases from **state courts**:

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

☐ A timely petition for rehearing was thereafter denied on the following date: _____, 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 _____ (date) on _____ (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION

FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION

SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION

EIGHT AMENDMENT OF THE UNITED STATES CONSTITUTION

FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION

STATEMENT OF THE CASE

1) Monsegue pled guilty 16-June-2014 to count 1, Attempt and conspiracy, (An agreement must be between two or more persons) Defendant has no co-defendant, Count 19, Theft of Government property, (Indictment reads: Theft of Government money), for this defendant was enhanced +2 level for 10 or more victims, (unknown victims, FAKE), because count 19 reads "theft of government property", No named victims. Section 641 relates to theft of public money or rewards, and count 33 Aggravated identity theft (No victims).

2) Defendant Monsegue, his counsel failed to file motion for direct appeal, after we both agreed for me not to read a letter that I wrote, in front of the judge during sentencing, referencing my illegal arrest in New York (ordered by this court) on 12-may-2015 Doc. 97, see EXHIBIT 1, and If I was not to read this letter, the prosecutor will not recommend the high end of my sentencing range and we will be able to work out these other issues on Direct Appeal., I, Frank Monsegue agreed with my counsel advice at that time.

3) Attorney's duty to continue representation
Trial Counsel: Every attorney, including retained counsel who represented a defendant in the District Court shall continue to represent the client after termination

of those proceedings, unless relieved of further responsibility by this court, where counsel has not been relieved: If there is a judgment of conviction or an order revoking probation, Counsel shall inform the defendant of his right to appeal and his right to have counsel appointed on appeal. If so requested by the defendant, Counsel shall file a timely notice of appeal.

4) *Withdrawal of Counsel*: An attorney appointed to represent a defendant in a lower court is generally obliged to continue that representation upon appeal unless relieved by this court. see *infra* Part V.1. An attorney who does not desire to continue the representation must file a motion to withdraw with the clerk of the court promptly after filing the notice of appeal.

5) Rule 4(a) civil case and Rule 4(b) criminal case. These rules are very much the same, they are linked by key words: Judgment, Order, and Appeal. 28 USC 2107(c) has/is identical to rule 4(a), and exclude (d) Bankruptcy matters. As stated in USA Bobby L. Christin's response page #2 In Monsegue's criminal case the regular period for appeal expired on August 10, 2015, 14 days after entry of judgment on July 27, 2015. The extended

period for appeal permitted under Rule 4(b)(4) expired 30 days later on September, 9, 2015.

6) Under Rule 77(d), Monsegue received a copy of the judgment that was mailed out, 42 days late outside the window of filing a timely notice of appeal, with an address of the transfer facility, Tallahassee, Florida, with no explanation as to why this is late or if I can still file a direct appeal under some other rule

7) The court was late, No fault of Monsegue's. This court also had the authority under Rule 4(b)(4) before or after the time expired, with or without motion and notice, extend the time to file a notice of appeal for a period not to exceed 30 days. This Notice should have been included in the 42 day late judgment, which would have eliminated any defect from the court's violation of Rule 77(d), and Monsegue's Right to Direct Appeal.

8) Monsegue was deprived of his Right to Direct Appeal

1. Defense counsel failed to appeal as we agreed.
2. The Court clerk under Rule 77(d) failed to

serve notice within the time limit to execute an appeal.

3. The court who is responsible under Rule 77(d) failed to serve immediately after entering an order or judgment July-27-2015 or correct the court's error under Rule 4(b)(4) and informing the defendant of this extension.

9) Monseque was illegally arrested in his home, with NO arrest warrant.

Monseque was given no benefit for a Guilty Plea No Acceptance of Responsibility, (A 3 Point reduction) No Plea Agreement, written, in-camera or any discussion in open court.

No Accepting any plea agreement, deny or deferred until review of PSR, By the court in open court in accordance Rule 11(c) (2) Disclosing a Plea Agreement (3) Judicial consideration of the Plea Agreement (A) (B) (4) Accepting and (5) Rejecting.

10) This court has the authority to render relief based on forgoing facts, Constitution violations 4, 5, 6, 8 and 14TH amendment (A BIVENS Action) in the form

of Ineffective Assistance of Counsel and BRADY, YOUNGBLOOD and GIGILIO violation. SEE New York court file DOC.97 and EXHIBIT 1 which was suppressed in conspiracy from the defendant's Monseque's defence. This information is New to the defense, this information was left for Monseque marked "Confidential Attorney Client communication Frank Monseque sr. and sealed, taped and confidential written over the tape." Counsel decided to reveal this suppressed information only after counsel was fired by this court and defendant was sentenced. This suppressed information DOC.97 which could have dismissed this case with prejudice in view of several constitutional violations. SEE Roe Vs. Flores-Ortega and Garza Vs. Idaho No. 17-1026 February, 27, 2019.

REASONS FOR GRANTING THE PETITION

1) The issue of whether as charged in the initial indictment under 18 U.S.C. 641 Theft of Government money, then property (superseding indictment) is a clear violation under 18 U.S.C. 641: Public money, property or records (Any record, voucher, money or thing of value of the United States or of any department or agency thereof or any property made or being made under contract for the United States or any department or agency thereof,

If money = Property then there will be no need for the charge 18 U.S.C. 641 to contain the words records, voucher, money, or thing of value of the United States (Just simply use the word "Property" of the United States.

If the property the indictment is referring to as a violation under 18 U.S.C. 641 (Property made or being made under contract for the United States or any department or agency thereof) Then whether the indictment is unclear, ambiguous, lack description, size, value, location, make, or Proof of Government ownership of this vague property and violation of the 6TH Amendment "TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION," resulting in a defective indictment?

2) Whether the District Court abuse of discretion by suppressing Brady evidence Doc 97. Which the Brady decision requires the prosecution to disclosed

exculpatory evidence to the defense/defendant or whether defense counsel was ineffective by being armed with a copy of this Brady evidence Doc 97. and remained silent throughout sentencing, silence is complicity?

3) Whether under the court's OPINION, Pre-Plea Claims "Generally, a voluntary, unconditional guilty plea waives all nonjurisdictional defects in the proceedings."

1. Specific to my case:

A. The records indicate NO such voluntary, unconditional guilty plea, and if there were? whether this would only highlight the ineffective assistance of counsel?

B. Whether the court can deny or uphold the defendant claim under "voluntary, unconditional guilty plea waives all nonjurisdictional defects," when the District Court, in open court under Rule 11 (c) (2) (A) proceedings failed to accept, deny, or defer a decision until the court has reviewed the presentence report, of the Plea Agreement, established procedures not followed (both court and Defense Counsel) failed to ensure a written Plea Agreement/contract indicating and acknowledge by both sides

what rights are being waived and what rights are preserved?

4) In Response to Appeal Court's Opinion, Page #2
COURT WORDS "AFTER RESPONSE AND THREE MOTIONS FROM
MONSEGUE DEMANDING RELEASE UNDER 18 USC 3145 (b), and
magistrate Judge ENTERED A REPORT AND RECOMMENDATION
("R&R") THAT HIS CLAIMS WERE ALL WAIVED BY HIS
GUILTY PLEA" This opinion by the court was misled by the
original respondent and lack credibility for the following
reasons:

1. "After Response and three motions" This is misleading
Government never respond, but only in the footnote
of the 2255 R&R dated march-24-2017 Doc.136
and this footnote came 1 year and 1 week later
(docketed date 3/7/16) of the 18 USC 3145 motion

2. Under 18 USC 3145 states "This motion shall
be determined PROMPTLY" Court have ruled
promptly is 30 days or less.

3. SEE Default motion filed 7-14-2016 Doc.132
also went un-answered by the District Court
SEE EXHIBIT 2 Default motion 18 USC 3145 (b).

4. Hereto court opinion, pages "he was not entitled to a copy of a Plea Agreement that did not exist," This gives rise to the question, Whether a Plea Agreement that did not exist is sufficient to establish waiving of Constitutional rights?. Under Rule 11(c)(2)(A) a procedurally correct executed Guilty Plea coupled with a valid Plea Agreement may only waive certain constitutional rights up to the date of the Plea Agreement, In this case the majority of the constitutional violations came after the Guilty Plea and No Plea Agreement, to include the Fourth Amendment violation 12-may-2015, No Arrest warrant or search warrant, suppression of Brady evidence doc.97, Ineffective assistance of counsel, conviction of conspiracy with no co-conspirator, Right to be heard in court, speedy Trial 12-may-15 to date. No hearing - "Physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed" see also *Gorh V. Ramirez*, 540 U.S. 551, 124 S. Ct. 1284, 157 L. Ed. 2d 1068 (2004) the right of a person to retreat into his home and there be free from unreasonable government intrusion stand at the very core of the Fourth Amendment. see *Payton V. NEW YORK* 445 U.S. 573, 590, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980) and *United States V. Kone* 591 F. Supp. 2d 593, 601 (S.D.N.Y. 2008).

5) Response to court's opinion, page #5 " That the bargain he struck allowed him to plead guilty to only 3 counts in an indictment that originally contained 41 counts.

The 3 counts are:

- 1) Count 1: 18 USC 1349 Conspiracy = No Co-Conspirator, No overt act.
- 2) Count 19: 18 USC 641 Theft of Government Property = No proof of property or Government ownership.
- 3) Count 33: 18 USC 1028A Aggravated Identity Theft = No victims and No loss to any victim.

Two days before trial date 6-16-14, Order granting 65 motion to dismiss as to Frank D. Monsegue Sr. Count 3s, 4s, 9s, 17s, 18s, 20s, 31s, 32s, & 34s, defendant entered a coerced Guilty Plea without knowing these over charges were dismissed. After the Guilty Plea was entered, defendant was allowed to cross-examination of criminal Investigator Andres Hernandez doc 75 page 34-36. During the examination it became clear to me and the Court that Mr. Hernandez violated my right to financial privacy and that the government failed to respond to the Defense motion to withdraw a guilty plea (SEE motion in the records of case # 4:14-cr-00019-WTM-GRS-1) submitted July, Aug, and Sept 2014, No response well before sentencing, because the laws supporting Defendants Rights under 12 USC 35, 3405, 3401 and 3402.

CONCLUSION

The defendant Monsegue, having served his country 20 years of Honorable service and Monsegue's oath of service to protect and defend the constitution of the United States both foreign and domestic should be equally up-held by person's who are appointed with analogous oath to up-hold the constitution.

The defendant Monsegue respectfully request relief from this Court, The RIGHT TO A DIRECT APPEAL, AN EVIDENTIARY HEARING and Here Monsegue claims ACTUAL INNOCENCE of the charges he is Falsely incarcerated for. The petition for a writ of certiorari Should be GRANTED.

AFFIDAVIT IN SUPPORT OF THIS PETITION

I, Frank D. Monsegue, SR. Pro se being duly sworn, depose and says that: the above is true to the best of my knowledge given this 31-may-2019

Date: 31-may-2019

Respectfully Submitted

By: Frank D. Monsegue sr
Frank D. Monsegue sr. Pro se