19-6445

No. 14-50325, 15-50453
16-50415

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Lewellyn Charles Cox IV — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lewellyn Charles Cox IV Reg. 48963-112
(Your Name)

P.O. Box 26020
(Address)

Beaumont Texas 77720
(City, State, Zip Code)

None
(Phone Number)

CERTIFIED QUESTIONS PRESENTED

(1) Whether denial of a right to self-representation during sentencing is subject to harmless error analysis as held by the Ninth Circuit, or subject to structural error as held in the Fifth Circuit?

Subquestion:

(A) Whether harmless error analysis regarding a denial of self representation violates the Constitution, by placing to high a burden of showing ineffective assistance, without the ability to expand the record? [Is denial of self-representation at sentencing structural error?]

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(2) Whether by Counsel losing a witness's signed statement givem by a witness who asserted a Blanket Fifth Amendment claim not to answer any questions, caused the pro se defendant prejudice in his efforts to withdraw his guilty plea for a fair and just reason, remdering his right to self-representation meaningless?

(3) Whether by denying the Defendant's request for a continuance after being granted his pro se right minutes earlier, prejudiced his ability to make a defense ~~and obtain evidence~~ showing fabricated evidence to show a fair and just reason to withdraw his guilty plea under Rule 11?

(4) Whether a judge can threaten that he could knowingly impose an illegal guideline calculation if the case returns on appeal or collateral attack?

(5) Whether the District Court can, ignore ruling on a idicative ruling request, concerning fabricated evidence while appeal is pending?

LIST OF PARTIES

[X] 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:

RELATED CASES

United States v Lewellyn Charles Cox IV, No. 09-CR-00248-DOC, judgment entered on July 1, 2014, in the Central District of California.

United States v Lewellyn Charles Cox IV, U.S. Court of Appeals for the Ninth Circuit No. 14-50325, 15-50453, 16-50415

Lewellyn Charles Cox IV, 18-CV-02067-DOC, Habeas Corpus, in the Central District of California, District Court.

TABLE OF AUTHORITIES CITED

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STATUTES AND RULES

OTHER

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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

[X] 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 757 Fed. Appx 527 (12/26/18); or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at 2019 U.S. App. Lexis 9861; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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 December 26, 2018.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 3, 2019, and a copy of the order denying rehearing appears at Appendix B.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including August 31, 2019 (date) on July 10, 2019 (date) in Application No. 19 A42.

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

This case involves the Sixth Amendment right to self representation. The Ninth Circuit is in a circuit split with the Fifth Circuit concerning whether denial of the right to self-representation is subject to harmless error analysis or whether it is structural error..

Cox, contends that he did suffer prejudice in the Court's denial of Cox's request to proceed pro se, and that without expanding the record, it is impossible for Cox to describe the fact that it was his counsel's suggestion that Cox proceed pro se on June 27, 2014, and not an outburst as the Government describes. Cox, contends that if he has a hearing his counsel can testify that it was his suggestion that Cox proceed pro se, and not Cox's own emotional outburst as decribed by the Government. (See Appendix A).

Here, the Ninth Circuit holds that a request to proceed pro se is subject to harmless error but other circuits hold that it is structural error. This is a situation that not only concerns Cox but is a question that will effect the entire country and write a history regarding self-representation during sentencing. Cox, contends that he can not show his prejudice under harmless error without expanding the record and showing that because counsel was ineffective it prejudiced Cox's ability to meaningfully represent himself after he was granted his pro se right 2 days too late. Cox, intends to present new evidence that was withheld from him by counsel, which would have exposed that his 2008 photo could not be viewed identified and signed in 2005 before his mugshot existed.

STATEMENT OF THE CASE

The Petitioner Mr. Lewellyn Charles Cox IV, was convicted of bank fraud conspiracy (1349), Aggravated identity theft (1028A) and possession of a firearm (922g). Cox was sentenced to 25 years in prison after the Court found him responsible for under 250 victims and $8,000,000 actual loss, and $5 million intended loss. Cox, timely appealed, arguing that his right to proceed pro se was denied on June 27, 2014, and that by allowing his previous counsel to proceed and not cease other business and make the required Faretta inquiry Cox was unable to represent himself after he was granted his right to proceed pro se on June 30, 2014. Cox, previously told the Court that he intended to withdraw his plea once he was able to prove that the Government fabricated evidence (see June 13, 2014 Ex Parte Hearing Transcript). On June 30, 2014, the District Court again acknowledged that Cox's intent was to withdraw his guilty plea after obtaining a statement from Jessica Bacque (see June 30, 2014 Tr. Vol. I P. 24). Cox, then discovered that his 2008 mugshot photo was used in 5 blacked out six packs (redacted photos) to induce Cox's plea, he realized this afer he got the copy of the Bacque statement previous Attorney Thomas wolfsen claimed he lost. Cox, contends the Government fabricated evidence, and that Cox would have discovered the evidence was fabricated, if allowed pro se to ask witness Jessica Bacque, if the photo in position 4 was the same photo she circled on "11/2/05". Cox, would have known that a 2008 photo cannot be viewed 3 years before it exists. The Ninth Circuit holds self representation is subject to harmless error, Cox filed an idicative ruling request that was ignored (Doc. 1829), though it argued this issue.

REASONS FOR GRANTING THE PETITION

A Circuit Split is the main purpose of the Supreme Court, and here Cox has a case where his right to self-representation was held subject to harmless error, but however, the 5th Circuit held that denial of a right to self-representation is structural error, and not subject to harmless error review requiring a showing of prejudice. Cox, contends that in order to show his prejudice he must be allowed to expand the record, therefore, harmless error review is unworkable on direct appeal.

Cox, also contends that he attempted to file a Fed. R. Crim. P. 37 (Indicative Ruling) request in order to take the newly discovered evidence to the appeals court by appealing and consolidating the appeals, which would have allowed Cox to present the new declarations showing that the photo of him in position 4 of all 5 six packs which induced his guilty plea, was either photoshopped or backdated, and fabricated evidence. Specifically Cox has new evidence, witnesses saying that the shirt Cox is wearing in position 4 of all 5 six packs, signed by Jessica Bacque, Ronisha Jessie, Guadelupe Mendoza, and Yolanda Magana in 2005 contained a 2008 mugshot photo photographed at the California Parole office in 2008. One cannot view identify and sign a photo before the photo exists. Likewise Brandon Pettus signed the six pack circling position 4 in 2006, yet the photo was not photographed until 2008. Cox, contends that the Government Prosecutor provided redacted six pack photos purposely unviewable in the discovery, and Cox relied on counsel to allow him to see photos but he was denied the opportunity. By delaying self-representation, 2 days too late, Cox lost the opportunity to expose fabricated evidence.

The United States Supreme Court

Case No. 14-50325, 15-50453, and 16-50415

WRIT OF CERTIORARI

Circuit Split Regarding Self-Representation
Asking Whether it is Harmless Error or Structural

Lewellyn Charles Cox IV
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CONSTITUTIONAL QUESTION FOR THE SUPREME COURT

The issue here, is that Cox was unable to make his claim to rebut the Government claim that Cox's request to proceed pro se was an emotional outburst, which equals an equivocal request under United States v Maness, 566 F.3d 894, 897 (9th Cir. 2009). Without expanding the record on direct appeal determining whether the request to proceed was an emotional outburst at that exact moment of the request is impossible. For Example, if Cox's request was at 2:00pm hypothetically, then there has to be an indication that he was emotional at exactly 2:00pm. There was more than a dozen witnesses who could testify that Cox's request was not emotional, including Cox's Appointed Counsel Thomas Wolfsen. The Government gains a tactical advantage by not allowing Cox to expand the record because the Court can only use the Government's monday-night-quarterback representation, supplying circumstancial representations without actual testimony. However, if the record was expanded Cox could elicit testimony showing that it was Attorney Thomas Wolfsen's suggestion that Cox tell the Judge that he wants to proceed pro se. Cox, filed an indicative ruling request (Fed. R. Crim. P. 37), showing new evidence, that could have been discovered had Cox been allowed to proceed pro se when he asked. Because, the Government provided only Blacked out (redacted) photos in the discovery to Cox after the Court 3/21/11 order, Cox's counsel decided that all that was necessary was to view the 5 six packs, and determine whether if it was Cox's photo in position 4. After Counsel viewed the photo Counsel decided that arguing that it was not Cox identified was useless. Cox, filed his habeas arguing a guilty plea induced, "actual

innocence" claiming that his guilty plea was induced by fabricated evidence (i.e. fabricated photo six packs), and that without the fabricated evidence the Indictment would allege multiple unrelated conspiracies of which he is actually innocent (see 8:18-cv-02067-DOC).

Reason for granting the writ

This Court determines a matter of controversy within a circuit split concerning a fundamental constitutional issue. Here, we have a circumstance where Cox was denied the right to represent himself, which denied him the right to expose the fabricated evidence prior to sentencing, and by doing so, Cox could have met the fair and just reason standard pursuant to Rule 11. But by allowing Jessica Bacque, to be direct examined by Counsel in disregard of Cox's pro se request Cox was forbidden from obtaining the Jessica Bacque statement which had color photos, that would have allowed Cox to determine that his 2008 photo could not have been viewed, identified, and signed on "11/02/05" as Agent Wesley Schwark testified (see Tr. 6/27/14 P. 100). Then, by Counsel allowing Jessica Bacque to assert a Blanket Fifth, Cox was denied the right to ask Bacque how it is possible to sign a photo 3 years before the photo is photographed. After allowing a Blanket Fifth not to answer any questions, then losing the Bacque Signed Statement (Tr. 6/30/14 P. 59), Counsel prejudiced Cox's ability to date his own photo. This is because Counsel never allowed Cox to see the photo six packs. There is a circuit split between United States v Maness, 566 F.3d 894, 897 (9th Cir. 2009) and United States v Cano, 519 F.3d 512, 516 (5th Cir. 2008), and United States v Evans, Fed. Appx. 475 (6th Cir. 2014), the Ninth Circuit holds that denial of pro se right at sentencing is harmless error, the Fifth Circuit disagrees.

EXPLAINING THE CORRELATION BETWEEN THE DELAYED RIGHT TO SELF-REPRESENTATION AND THE PREJUDICE SUFFERRED BY THE DELAY

Claim: Cox, contends his right to meaningful self-representation was denied, due to delay in holding a faretta hearing 2 days too late. And, inquiry by the Appellate Court should be subject to structural error, not harmless error as held.

Summary:

Cox, filed a suppression motion regarding all 5 six pack photo arrays, provided in the discovery, including Jessica Bacque, Ronisha Jessie, Guadelupe Mendoza, Yolanda Magana, and Brandon Pettus six packs identifying Cox's involvement in 2005. Cox, was able to discover that the six packs were fabricated after being sentenced, only because Counsel failed to provide Cox with viewable copies, on June 30, 2014. Cox, contends that by not allowing Cox to proceed pro se on 6/27/14, Cox's counsel was allowed to question Jessica Bacque on direct examination. If, Cox were given the oportunity to proceed pro se on 6/27/14, Cox could have first gain possession of the Bacque Six Packs, which contained a viewable copy of the six pack the Government alleged Bacque signed on "11/02/05" (see 6/27/14 Tr. P. 100). By gaining possession of the six pack, and being allowed to proceed pro se Cox would have noticed his 2008 mugshot photo, before direct examining Bacque. Cox could have asked Bacque whether it was Cox's photo she identified on "11/02/05", and presented the question to the Court asking whether or not Cox's 2008 California Parole Office photo could be signed by her in 2005?

This issue would have struck at the heart of the suppression hearing that occurred on 7/16/11 (or thereabout). As proof at the suppression hearing Agent Wesley Schwark provided a declaration that he showed Bacque the Six pack in 2005. But, by providing

Cox with only Blacked-Out versions of the six packs, the Government committed a discovery violation concealing exculpatory evidence. If, Cox would have received viewable copies of the six packs prior to the Suppression hearing, Cox could have argued then that his 2008 mugshot photo could not be viewed identified and signed in 2005 or 2006. Counsel's investigation in response to Cox's demand that he be allowed to view the redacted six packs was non-existent until after the suppression hearing.

Following the suppression hearing Cox pled guilty, without being given the chance to see the six packs unredacted. Therefore there was a Brady violation, because on 3/21/11 the district Court set the discovery cut-off for 4/27/11. The District Court ordered the discovery provided to Cox himself on a hard drive uploaded on the Santa Ana City Jail inmate computer. But, provided to Cox was Blacked-Out six packs. This prevented Cox from dating the photo prior to his guilty plea. Cox's counsel responded to Cox's complaint Cox can not tell if it was Cox's photo in the 5 six packs, by agreeing to goto the U.S. Attorneys Office, to obtain viewable six packs. But, upon arrival the U.S. Attorney claimed the copy machine was broken, and allowed Wolfsen to view the six packs to determine it was Cox's photo identified by all 5 witnesses.

Attorney Thomas Wolfsen, decided that since he can not obtain viewable copies, all that was necessary was for Counsel to determine whether it was Cox's photo in position 4 of all 5 identical six packs. Counsel, returned to Cox explaining that it was Cox's photo and he would not argue that it was not Cox's photo as a defense. It was strategic, AUSA McNally knew that only Cox could tell that his photo was a 2008 photograph, afterall it is Cox's photo.

The prosecutor knew that Thomas Wolfsen did not know Cox, because he was court appointed, and therefore could not date the photo, but he also knew Cox could. So by only allowing Wolfsen to see clear photos and not Cox, he knew that Wolfsen would not argue that it was not Cox's photo.

Cox, became suspicious on 6/13/14, when he learned that his new investigator Tracy Spada was saying that Bacque, is claiming coercion. Cox, explained to Wolfsen that he wanted him to question Bacque on a question by question basis, and that he wished to withdraw his guilty plea after obtaining evidence of coercion.(see 6/13/14 Tr., Ex Parte Hearing). On 6/27/14, Counsel advised Cox that it would be better if Cox proceeds pro se, Counsel advised Cox to tell the Court. Cox, followed Wolfsen's instructions on 6/27/14 and motioned to proceed pro se orally (see P. 137-38). The Court imediately denied the request stating "[Cox] has able counsel". Cox, explained that he has a witness that could explain how he was "framed". The Court denied Cox, and Wolfsen called Bacque. Cox, contends that if he were granted his pro se status he would have obtained the Bacque statement, which had color photos that would have alerted Cox that his photo was a 2008 mugshot photo and could not be signed in 2005. The Court allowed Wolfsen to question Bacque, and Wolfsen then claimed he lost the Bacque Statement during questioning Bacque (see Tr. 6/30/14 Vol. I P. 59). Cox's claim is that by not getting the statement containing the 6 pack on 6/27/14, he was impeded from presenting fraud on the court concerning the suppression hearing. And, had Cox seen the photo, Cox would not have pled guilty with evidence proving the 5 six packs were fabricated, Cox was denied meaningful self-representation, due to delay in granting his pro se request.

Comes now the Appellant Lewellyn Charles Cox IV, files this writ of certiorari to the Supreme Court untimely, due to being given an extension of time by Justice Kagan after prison tranfer from Lompoc Federal Prison to Beaumont Federal Prison. After asking for said extension the Appellant was given 60 days which ended on August 31, 2019. However, on August 9, 2019 the Appellant was placed in the segragated housing unit (SHU), for disciplinary reasons and later not given disciplinary detention, but held in the SHU until investigations were complete, and released back into general prison population on September 4, 2019. Because of this unwarranted detention the Appellant lost valuable time to complete his writ of certiorari, because he was denied access to his partially completed works and needed research information. The Appellant was also denied access to a writing pen for 2 weeks while in detention, and therefore did not even have a writing pen until on or about August 23, 2019. The Appellant, explains here that the BOP is a part of the executive branch and DOJ, and therefore the hinderance causing this untimely filing should be placed upon the Government (Appellee), and this untimely filing should be accepted by the Supreme Court under the circumstances of this criminal case.

September 3, 2019, the Supreme Court sent the Appellant a letter explaining that the Appellant's request for extension of time was denied because 60 days is the maximum allowable. This letter from the Supreme Court "Clerk" (Exhibit A), was in response to the Appellant's letter written in the SHU explaining his

circumstances of being in the "SHU" (Segragated Housing Unit), (see Exhibit B, letter motioning for extension of time written in pen). Cox, hereby asks for this untimely filing to be accepted under the circumstances (see Cox's Declaration Exhibit C).

CERTIFIED QUESTIONS

(1) WHETHER HARMLESS ERROR ANALYSIS REGARDING SELF-REPRESENTATION DURING SENTENCING VIOLATES THE SIXTH AMENDMENT, BY PLACING TO HIGH A BURDENOON THE DEFENDANT, DURING DIRECT APPEAL WITHOUT THE ABILITY TO EXPAND THE RECORD?

(2) WHETHER BY COUNSEL LOSING A WITNESS'S SIGNED STATEMENT GIVEN BY A TESTIFYING WITNESS, WHO WAS GIVEN THE OPPORTUNITY TO ASSERT A BLANKET FIFTH AMENDMENT RIGHT NOT TO ANSWER ANY QUESTIONS, CAUSED THE PRO SE DEFENDANT PREJUDICE IN HIS EFFORTS TO WITHDRAW HIS PLEA FOR A FAIR AND JUST REASON?

(3) WHETHER BY DENYING THE DEFENDANT'S REQUEST FOR A CONTINUANCE AFTER BEING GRANTED PRO SE STATUS MINUTES EARLIER, PREJUDICED HIS ABILITRY TO MAKE A DEFENSE AND OBTAIN EVIDENCE TO SHOW A FAIR AND JUST REASONTO WITHDRAW HIS GUILTY PLEA UNDER RULE 11?

(4) WHETHER A JUDGE CAN THREATEN TO KNOWINGLY IMPOSE AN ILLEGAL GUIDELINE CALCULATION IF THE CASE RETURNS ON APPEAL OR COLLATERAL ATTACK?

(5) WHETHER THE DISTRICT COURT CAN IGNORE RULING ON A INDICATIVE RULING REQUEST, CONCERNING FABRICATED EVIDENCE WHILE APPEAL IS PENDING?

The Appellant seeks to be heard and believes that his First Amendment right to be heard was denied during the pendency of direct appeal. The Appellant requested to proceed pro se on 6/27/14, but the District Court immediately denied his request (see 6/27/14 CR Trans. P. 137). The Appellant, contends that his denied right to self-representation is the cause an effect of suffering ineffective assistance, and a denial of his right to be heard and expose deliberately fabricated evidence. Cox, contends that he has been denied justice, suffering a fundamental miscarrage of

justice, causing a manifest injustice by inducing his guilty plea through the use of deliberatetly fabricated evidence showing Cox is actually innocent of Count One (Conspiracy to Commit Bank Fraud "beginning in or around 2005" continuing until February 16, 2011).

(1) Whether harmless error analysis regarding self-representation during sentencing violates the Constitution, by placing to high a burden on the defendant, during direct appeal without the ability to expand the record?

Argument

On June 27, 2014, the Appellant made a straight forward unequivocal request to proceed pro se, stating, "Your Honor, I'd like to represent myself", (see Trans. P. 137, line 1). The District Court, immediately responded stating "I'm going to decline that" "I think you've got able counsel", indicating that it believed Cox's right to pro se depended on whether Cox's court appointed Counsel, of which Cox no longer trusted, was "able". To appease the Court's concerns about counsel's ability, Cox responded:

"No, I mean, I do, but he cannot explain what I need to explain, and it's just not working. I'm trying to relay the information to him, and they're blindsinding us. And I'm the only one that knows. And it takes minutes -- it's not working. It's not fair to me not tobe able to speak for myself, and I actually know these laws, and I can competently represent myself." (P. 137)

Cox, was calm, one cannot tell from the record whether Cox was emotional, but it sure appears not to be an outburst. And, in the interest of protecting a constitutional right, the absence of an indication of emotion at that very moment seems to weigh in favor of the Appellant. Next, Cox seeks to compromise, by stating:

> "And I'd like to have him as advisory counsel and let me represent myself. And I'll be real subtle and listen to everything you say, and will not interrupt or speak to long. I really need this" (P. 137).

Cox points out that the District Court was mainly concerned with Cox's ability to perform as his own counsel rather than whether Cox was mentally competent to represent himself. In making this analysis, the District Court explained that Attorney Thomas Wolfsen was "able counsel". Cox, never insisted that his pro se right was contingent on whether the Court would appoint advisory counsel, but he made the statement that he would "like to have [Wolfsen] as advisory counsel" only in an effort to please the Court about it's belief that Cox was not a good counsel. The Court Stated: "But I do worry that with the performance I've seen so far on your part, that you desperately need somebody in court to advise, whether you choose to accept that representation or not"... "So I'll indicate although Faretta really drives in the opposite direction, that I would appoint standby counsel for you". (See 6/30/14 Vol. I P. 27).

If this Court will notice the truth is standby counsel was forced upon Cox as a condition to allowing Cox to represent himself. And, it wasn't as the Appellate Court held, Cox's unconditional request, that Cox would not proceed pro se unless he is given "advisory counsel". This was not a equivocal request it was a persistant request. Notice on Page 138 Cox repeats his request first explaining that he was "framed", informing the Court that he has a witness that has information to offer as proof. Then Cox says, "okay. I need to represent myself, though, sir, please" (see 6/27/14 CR Trans. P. 137-138). The Court then said "number two, I don't hav much faith in you, I see you walking this very difficult path that's been somewhat harmful to you so far" (see 6/27/14 CR Tr. P. 140). Then Wolfsen interrupted and called Cox's witness against Cox's wish for self-representation, ultimatly allowing Bacque to plead a blanket Fifth (see 6/27/14 P. 159)

Somehow, the Appellate Court missed the fact that the District Court was unsure whether in the middle of the hearing it could "cease other business and make the required [Faretta] inquiry", as noted in United States v Rice, 776 F.3d 1021 (9th Cir. 2014) a "delay in holding the hearing after the right is unequivocally asserted undermines that right by forcing the accused to proceed with counsel whom he has no confidence and whom he may distrust". But, here in Cox's case the District was actually confused as to whether "case law supports" granting Cox his pro se rights after a guilty plea, during a hearing. Attorney Thomas Wolfsen, argued that it does not prohibit granting Cox his pro se right at that very moment (see 6/27/14 CR Tr. 168:21-25).

So, in essence, the Appellate Court missed this whole exchange, and relied on the Government's representation that Cox made an impulsive outburst causing the Court to reject Cox's unequivocal request to proceed pro se. This is not so, the request was not an outburst but a stategy initiated by Cox's counsel Thomas wolfsen. Indeed; this issue of self-representation, was brought up by Wolfsen on 6/27/14, minutes before Cox made the request (see Cox's declaration Exhibit H). How could it be an emotional outburst, if it was brought up by Counsel and not Cox? Cox, asks this Court to order that a hearing is held to determine if it was an outburst, initiated by Cox under emotion.

Cox, contends that any references made by the Court regarding emotion, did not occur until 3 hours later after Bacque pled a blanket Fifth not to answer any question, after Cox was denied his right to proceed pro se, therfore, his request was unequivocal.

Because, the District Court's only concern was Counsel's abilities, Cox believed the Court would be more willing to grant Cox his right to self-representation, if he agreed to let Counsel remain as advisory counsel.

But, this is not the test. If this ruling is allowed to stand it would represent that failing to grant a defendant his pro se right after a guilty plea is not structural error, and thus subject to harmless error analysis. However, in order to perform this "harmless error" test the actual test turns on whether counsel was ineffective. This presents a problem, because in determining whether counsel is ineffective has always been left to collateral attack, which is needed to expand the record and inquire into counsel's actual performance.

Here, the Appellate Court performed a investigation into Counsel's performance without allowing the Appellnt the opportunity to expand the record, and prove that Counsel was ineffective.

Cox, seeks to prove that Counsel prevented him from proving the Government used deliberately fabricated evidence to induce his guilty plea, and that after exposing the deliberately fabricated evidence, the Indictment becomes fatally defective because it included multiple unrelated conspiracies instead of a single overall conspiracy as charged, and therefore Cox is "actually innocent" as charged.

Unlike the teachings in Mesarosh v United States, 77 S.Ct. 1 (1956), where the Supreme Court decided that it should address allegations of Government perjury, rather than treat a pending

appeal as an outright impediment to addressing Government impropriety, The District Court seems to believe "judicial convenience" outweighs allegations of suborn perjury, and deliberately fabricated evidence by the Government, used to induce a guilty plea, and make multiple unrelated conspiracies appear as one single overall conspiracy.

Cox, tried hard to employ Fed. R. Crim. P. 37 requesting an "indicative ruling", showing that his 2008 California Mugshot photo, was superimposed onto 5 separate deliberately fabricated six pack photo arrays. But, however, Cox's "indicative ruling" request was ignored by the District Court, which prevented Cox from raising the contents on direct appeal. The indicative ruling request was filed on February 18, 2018, well before the Government filed their response brief. (See Doc. 1829, 1830, 1831, 1832).

Cox's claim is simple one can not view, identify, and sign photos 2 or 3 years before the photo exists. The issue is that 4 of the 5 six pack photo arrays was signed in 2005, and one was signed in 2006. But, Cox's mugshot photo was photographed in 2008, and could not have been in position 4 allegedly shown in 2005 or 2006. The Respondent convinced the Court Cox and Bwon began in 2005. (See Exhibit I, listed in Appendix C)

Before Cox pled guilty, he asked his court appointed counsel to request from Assistant U.S. Attorney Joseph T. McNally, a viewable copy of the six packs. During direct appeal Cox asked his Appellate Counsel Jennifer Coon, to obtain the origin and date of Cox's photo shown in all 5 six packs, but AUSA McNally responded saying he has "no comment" (see Doc. 1829 attached Ex. B2, email).

On Cox's direct appeal, Counsel argued that it is structural error to deny Cox's unequivocal request to proceed pro se. The Ninth Circuit held that Cox must prove he was prejudiced by the Court's failure to immediately hold a faretta hearing. But, at the time of Cox's sentencing Cox knew only that, Jessica Bacque claimed the guy she identified within the six packs was a darker Black male than Cox (see Doc. 1563, Ex. E last page). Bacque, could not identify Cox, and stated that the present persons in the "white Jaguar" was "two men" "one male Black" and "one Male Asian", and stated that the person she saw was a darker Black man (see Exhibit G, Bacque arrest report). Also filed in Doc. 1563.

The problem is that if Cox would have been allowed to direct examine Bacque about her signing the six pack, which tied Cox to overt act No. 1, Cox would have seen the six pack for the first time. Cox, needed to expand the record and explain that his Court appointed counsel, Thomas Wolfsen, never allowed Cox to see unredacted six packs, because he was shown only blacked-out versions of the six packs (see Exhibit F, blacked out six pack as provided). The photos in all 5 six packs were redacted and Cox was unable to determine when the photo of him in all 5 six packs was photographed. Counsel, believed that all that was necessary was a determination that it was indeed Cox's photo in the six packs, so Counsel determined that it was Cox's photo and advised Cox to plead guilty without ever letting Cox himself see the photo prior to his guilty plea. This was ineffective assistance of counsel because Cox had a right to see the photo rather than believing the photo existed prior to the signing dates, shown on the 5 six packs.

And, by not allowing Cox to see the six packs made viewable before Cox's guilty plea, the strategic plan to conceal deliberate fabricated evidence on the part of the Government was successfully accomplished. Then, when Cox asked to go pro se, and the Court immediately denied that right, Cox was prejudiced becuase he could have presented Jessica Bacque Government Exhibit 7, which was the previously signed Bacque six pack, allegedly signed on "11/02/05", at that point Cox could have seen the six pack made viewable for the first time, and noticed his 2008 California Parole Office photo. But, during court Counsel never showed Cox.

Cox, needed to expand the record on direct appeal, and explain that his Court appointed Counsel Thomas Wolfsen never allowed Cox the opportunity to see the six pack made viewable. This would have shown that Cox was prejudiced by the Court's delay in holding a Farretta hearing. Cox, could have asked Jessica Bacque on direct examination whether the photo in position 4, of the six pack she signed was the photo she originally seen. But, Cox was left with only being allowed to see blacked out six packs (see Exhibit F). Counsel was the only person who decided that it was Cox in position 4 of all 5 six packs, which were signed by Jessica Bacque, Ronisha Jessie, Guadelupe Mendoza, Yolanda Magana, and Brandon Pettus. But, Cox's question would have been how is it possible to sign these six packs including Cox's photo years before Cox's mugshot photo existed. By not allowing Cox to proceed pro se the moment he asked, Cox was prevented from seeing the six pack photo array, because once Cox was pro se Counsel claimed he lost the Bacque Statement, which contained viewable six packs. Bacque's

statement contained within it, a new six pack photo array including Mr. Cox, now in position 2, which Cox's investigator Tracy Spada showed Bacque, and Bacque could not identify Cox, and explained that the person she apparently saw on "5/16/05" accompanied by the single male Asian passenger, was darker in skin tone than Cox (see Exhibit E1 please note this was filed in Doc. 1563). So, Cox's position today is that by not allowing him to proceed pro se, the moment he asserted his right, Cox was prevented from asking Bacque whether the photo she saw in position 4, of the six pack Agent Schwark claimed she signed on "11/02/05", was the same photo, or was it replaced by a different photo?

Cox, points out that the discovery contained two police reports from the Orange County Sheriff Department, which stated that Bacque, claimed that there was only 2 people in the "white Jaguar" on 5/16/05, describing 1 male Black, and 1 male Asian. It should also be noted that the District Court found that Cox is not Asian and that the evidence showed that the Male Black was Angus Brown AKA "Homicide" (see Trans. 6/27/14 P. 122). (Ex. G Police Report)

Bacque testified that she did not write the statement on the six pack implicating Cox as the "passenger of the white Jag" on "5/16/05". (se Bacques testimony 6/27/14 P. 144, and compare Agent Schwark's testimony P. 100). Cox, indeed suffered prejudice in his efforts to withdraw his guilty plea, becuase Counsel allowed Bacque to assert a blanket Fifth Amendment claim not to answer "any questions" (see Tr. 6/27/14 P. 159).

Cox, wanted to present the Bacque testimony to show a fair

and just reason to withdraw his guilty plea under Fed. R. Crim. P. 11, and notified the District Court of his intent to present Bacque's testimony to show a reason to withdraw his plea (see 6/13/14 Transcripts). The District Court acknowledged Cox's main intent to withdraw his guilty plea after granting Cox his pro se right on 6/30/14 (see Tr. 6/30/14 Vol. I P. 24). The District Court stated: "You've also expressed an interest in potentially withdrawing your guilty plea. I am going to pay very close attention to that today after I decide if you're representing yourself or not"

But, oddly once Cox was granted his right to proceed pro se his counsel Thomas Wolfsen claimed he lost the Bacque statement with both viewable six packs, and Bacque's claim that the person she saw was a darker Black male, which implicated she could not identify Cox. (Exhibit E1 Bacque's Statement with viewable photos).

Cox, asks this Court to notice Cox never again asked for Wolfsen to be advisory counsel or standby counsel, but the Court appointed him as such (see 6/30/14 Tr. Vol. I P. 35). Cox, then brought it to the Court's attention that Attorney Thomas Wolfsen claimed he LOST the important Bacque statement (see Tr. 6/30/14 Vol. I P. 59). So, Cox's ability to represent himself meaningfully was denied by Wolfsen's failure to maintain the statement in his possession, on top of the fact that Cox was denied his right to proceed pro se on 6/27/14, which would have allowed Cox to ask Bacque whether the photo in position 4, was the same photo she circled. Cox, would have discovered that the date of the photo did not match the signing date, because it was a 2008 mugshot. Ineffective assistance and failure to grant a continuance denied

Cox meaningful self-representation, which prejudiced his ability to show a fair and just reason to withdraw his guilty plea.

Cox, was then sentenced, and it wasn't until 3 years later when Cox received the viewable six pack photo array, and noticed that when viewing the photo in color he realized that the shirt he wore in the mugshot in position 4, was given to him as a birthday gift by his mother on August 2, 2007. Prior to the color photo, Cox received the Bacque six pack in black and white from Attorney Thomas wolfsen on or about October 10, 2014, but did not realize the date, because it was not the original in color. Cox, filed Doc. 1563, which included Bacque's statement in Black and White, sent to Cox's mother by email then mailed to Cox. Wolfsen, either lost the original or refused to turn it over.

Then, sometime in 2017 Cox did a Freedom of Information Act request to the Executive Office for U.S. Attorneys and received a color version of the Six Pack signed by Guadelupe Mendoza, and at that very moment he realized something was wrong, and contacted his mother, and mailed her the six pack. This is when his mother Elizabeth Cox, noticed that this was the shirt she gave him on his birthday.

Cox, tried vigorously to bring this new evidence to the District Court's attention but was thwarted at every attempt. First Cox filed an "Indicative Ruling" request pursuant to Fed. R. Crim. P. 37, which included declarations from his Mother Elizabeth Cox, Brother Aaron Cox, Ex-wife Jamala Pratt, Daughter Melissa Cox, Daughter Mariah Cox, Son Jonathan Cox, and himself,

all in an attempt to prove that the photo in the six pack Schwark testified that he showed Bacque on "11/02/05" could not have contained Cox's photo which was a mugshot from 2008.

The "Indicative Ruling" request was ignored by the Court and to this day has not been heard, (see "Indicative Ruling" filed 2/18/2018 Doc. 1829, 1830, 1831, and 1832). Cox waited another 10 months then filed a Habeas Corpus naming the Warden Felipe Martinez, who is located in the central distict of California at Lompoc Federal Prison. Cox, filed his 2241 to the Federal Court in the Central District of California in Los Angeles. The Los Angeles Court transferred the Habeas Corpus to the Sentencing Court, which is also in the Central District of California, and thus Judge David O. Carter has territorial jurisdiction over Warden Felipe Martinez.

The District Court then took 8 months to deny the motion holding that it does not have jurisdiction impeded by 28 USC 2255(e), (see 8:18-cv-02067-DOC, Dkt Entry 26). Cox, however, knows that Section 2255(e) does not prohibit filing a Habeas Corpus to the Sentencing Court, and is receiving further delay, because his habeas corpus is filed in the sentencing Court and at the same time it is filed in the custodian Court. Judge David O. Carter, therefore has dual jurisdiction over both the sentence and custodian, yet Cox's issue of perjury suborn by the prosecutor, fabricated evidence, and fraud on the court is being outweighed by administrative convenience. Cox, cites United States v de la Campa Rangel, 519 F.3d 1258 (10th Cir. 2008), asking that his certiorari be

abated, due to the serious allegations of imprepriety involving fabricated evidence, so that Cox can be heard in District Court. Cox, asks this Court to return his case to the District Court to hold a hearing on whether the Government fabricated evidence that induced Cox's guilty plea, and whether Cox is actually innocent of the Conspiracy alleging that it began in 2005.

CERTIFIED QUESTION

(2) Whether by Counsel losing a witness's signed statement given by a testifyiong witness, who was given the opportunity to assert a blanket Fifth Amendment claim not to answer any questions, caused the pro se Defendant prejudice in his efforts to withdraw his plea for a fair and just reason?

Cox, contends that he was denied the right to use the evidence to discover that the mugshot photo of him in position 4 of all 5 identical six pack photo arrays signed by 5 separate witnesses, contained, his 2008 photo identified years before it was photographed. Cox, argues that he was prejudiced by Counsel losing the Bacque signed statement, rendering his pro se status powerless to a effective showing that he was induced to plead by fabricated evidence. Such, a adequate showing would have required the Bacque Statement and or Bacque's testimony, to show a fair and just reason to withdraw Cox's guilty plea.

CERTIFIED QUESTION

(3) Whether by denying the Defendant's request for a continuance after being granted pro se status minutes earlier, prejudiced his ability to make a defense and obtain evidenceto show a fair and just reason to withdraw his guilty plea under Rule 11?

Cox, contends that he desparately needed a continuance once he was granted his right to proceed pro se, because he learned only minutes after being given his pro se right, that Attorney Wolfsen lost the Bacque Statement (see 6/30/14 Tr. Vol. I P. 57-59). At that very moment, Cox told the District Court what he learned, and requested a continuance so that he could obtain a new Bacque statement, from investigator Tracy Spada, who was going to be on vacation out of town until after the 4th of July. The District Court, refused to grant the continuance, and this denied Cox a meaningful opportunity to represent himself, because Cox could have seen the Bacque six pack in color for the first time and noticed that the photo in position 4 was a 2008 mugshot incapable of being shown, signed, and circled in 2005 or 2006.

During the hearing on 6/27/14 Investigator Tracy Spada handed Cox a folder containing the Bacque Statement, and the Marshal in the Courtroom, intervened stated that Cox cannot receive documents from the investigator, and insisted that due to policy it must only be handed to Attorney Thomas wolfsen. This denied Cox the right to open the folder and view the contents of Bacque's statement, ultimately denying Cox the right to notice it was his 2008 mugshot photo which Agent Wesley Schwark testified Bacque wrote the signing date "11/02/05" (see 6/27/14 Tr. P. 100). However, conflicting with Schwark, shortly after, Bacque testified that she did not write that date (see 6/27/14 Tr. P. 144). This would not be the first conflict with the Government's representation of facts, because the Government also swore in its search warrant that Cox was present in a

bluish/green Jaguar on May 23, 2005, claiming that Bacque told Agents this (see Search warrant Affidavit attached Exhibit H). But, however, the Los Angeles County Jail records indicate that Cox was in jail on May 23, 2005. Cox, lost the opportunity to ask Bacque whether she told Agents that Cox was present, and infact her statement says she could not see the individuals who were in the bluish/green Jaguar that day. This could have impeached Agent Wesley Schwark or Agent James Mikkelson, which would have given Cox a fair and just reason to withdraw his guilty plea. (See TRANSCRIPT P. 122 6/27/14, WHERE THE COURT FOUND COX IN JAIL)

By impeaching Agent Wesley Schwark the Government would have lost all evidence collected from 2005 through 2006, amounting to over 200 victims and would have subtracted $3.2 million in actual lost, and over $10 million in intended loss, which included the $7.4 million in intended loss incorrectly applied defining access devices as check against the statute specific exclusion in 18 USC 1029. Also, if it was determined that Agent James Mikkelson, made up this allegation in the search warrant alleging Bacque told him this it would have shown that he could be impeached. Impeaching, Mikkelson, would have excluded all the evidence he allegedly collected starting from 2007 to 2011. Such exclusion would have reduced victims by 290 victims, and dropped loss by $4 million actual loss and $11 million intended which includes the $7.4 million included uses the incorrectly applied "access device rule" 3(F)(i) adding $500 per check, by defining checks as "access devices". The discovery that the agents were framing Cox would have reduced Cox's guideline sentence from 20 levels for loss to 18 levels for loss or quite possibly much more.

ARGUMENT

"The officer's misrepresentation, which informed the defendant's decision to plead guilty and tinged the entire proceeding, rendered the defendant's plea involuntary and violated his due process rights" (see United States v Fisher, 711 F.3d 460 (4th Cir. 2013)

Here, in Cox's case the District Court ordered all discovery placed on the Santa City Jail inmate computer, so that Cox himself could view the evidence against him. But, oddly, placed in the discovery saved on the Santa Ana City Jail Computer was only BLACKED OUT SIX PACKS identifying Cox. This forced Cox to request that his counsel get viewable copies in order to determine if it was in fact Cox in the six packs identified by all five witnesses mentioned above, which included Jessica Bacque. Counsel, in error however, decided that it would be futile to obtain viewable copies, if counsel himself determined that it was Cox in the six packs. So, Counsel made the decision that if he himself could identify the photo as Lewellyn Cox, then there was no need to get viewable copies. The Prosecutor claimed that the copy machine was broken, and for that reason viewable photos were not obtainable. The misconduct was calculated and executed with the intent of preventing Cox from noticing that the photo was in fact a 2008 mugshot photo taken at the California Parole Office in 2008, and could not have been shown to witnesses Jessica Bacque, Ronisha Jessie, Guadelupe Mendoza, Yolanda Magana, and Brandon Pettus in 2005, before his photograph existed.

To add further impediment, Counsel failed to show Cox a copy of the Bacque signed statement which included viewable six packs. Counsel also failed to maintain the copy of the Bacque signed statement, and admitted that he lost the Bacque statement on June 30, 2014 after Cox was belatedly given his pro se right, days after Bacque had been excused by the Court. This error losing the Bacque statement prevented Cox from seeing the six pack (see 6/30/14 Trans, P. 59 where Attorney Wolfsen admits losing the statement). Cox, was denied

meaningful self-representation, and thus his Sixth Amendment right to self-representation was altogether denied, by the arbitrary deferal of holding the required Faretta inquiry.

> "[O]nce a defendant affirmatively states his desire to proceed pro se, a court should cease other business and make the required inquiry... delay in holding a hearing after the right is unequivocally asserted undermines that right by forcing the accused to proceed with counsel in whom he has no confidence and whom he may distrust" (see United States v Rice, 776 F.3d 1021 (9th Cir. 2014)

Cox, clearly explained to the Court that he had no confidence in Attorney Thomas Wolfsen, immediately after the Court denied Cox's request claiming that [Cox["has able counsel" (see 6/27/14 Trans. P. 137). Although the Ninth Circuit read in the exchange that the Court made a finding that Cox's request was equivocal, the record concerning the Court's immediate denial does not state that it was because Cox's request was equivocal. In fact, the record only shows that the Court considered a wholely improper opinion that Cox has "able counsel". Cox, request was not equivocal and his offer to allow counsel to stay on as advisory counsel, was to please the court concerning cousel's abilities. No where in the record does it show that Cox's request was conditioned upon whether the Court would allow advisory counsel.

> "[A] trial court may not unduly defer ruling on a firm request by defendant to represent himself". (See Brown v Wainwright, 665 F.2d 607, 612 (5th Cir. 1982)

The Ninth Circuit rested its decision in part on its belief that Cox made an impulsive decision to represent himself. But, this is obviously erroneous, because Cox eventually convinced the Court to allow him to represent himself. Now, as a Monday Night Quarterback, it appears that the Ninth Circuit sees a impulsive decision, when Cox sees distrust which ultimately prevented Cox from learning that the Six Pack Photo Array, had to be either "Photoshopped" or backdated, because one can not view, identify, circle, and sign a photo before it is photographed. Cox, attempted to

represent himself pro se, but was denied a continuance arbitrily without an adequate explanation concerning why his request was denied. Cox needed the continuance to reobtain the lost Bacques Signed Statement, containing within and attached viewable color 6 packs. Allegedly the 6 pack was signed by Bacque on "11/02/05". But, if Cox would have been allowed to represent himself, he would have possessed the color six pack, then during direct examination, he would have notice it was a 2008 photo.

There is a Circuit split
concerning whether denial of the
right to self representation is structural error.

In United States v Cano, 519 F.3d 512, 516 (5th Cir. 2008), the 5th Circuit, held denial of self representation during sentencing is structural error, but the 9th Circuit disagrees calling its review subject to harmless error. (See United States v Maness, 566 F.3d 894, 897 (9th Cir. 2009). This isuue is ripe for Supreme Court review.

Cox, contends that he was altogether denied the right to meaningful self representation, plus the right to question a critical witness, and discover fabricated evidence as a result of being denied his right to self representation. His self representation was critical to discovering fraud on the court and fabricated evidence because his counsel prevented discovery. For all 5 witnesses Jessica Bacque, Ronisha Jessie, Guadelupe Mendoza, Yolanda Magana, and Brandon Pettus the photo Identification 6 packs were fabricated to appear that all five witnesses signed Cox's photo before his photo existed. Without these fabricated six packs the was no other evidence in the Discovery implicit or expressed showing an agreement with another ON-GOING CONSPIRATOR BEGINNING IN 2005 Cox and Brown are not alleged to form the required 2 man agreement alleged

again, in the Discovery or the Indictment until 2009. This reveals multiple unrelated conspiracies rather than the single over-all conspiracy as charged excluding 4 years and more than 300 unrelated conspiracies occuring proir to 2009. Cox, would therefore be, "actually Innocent".

Cox, contends that because neither he or co-defendant Angus Brown form an agreement with any ON-GOING CONSPIRATOR until 2009 the Indictment can not allege a single overall conspiracy starting "in or around 2005" as alleged (see Indictment). Therefore, the 5 fabricated six packs concealed multiple unrelated conspiracies, and so Cox is actually innocent. If the Court may take notice the Indictment alleged in Overt Acts 1 through 7, that Cox was identified in connection with Jessica Bacque, Ronisha Jessie, Guadelupe Mendoza in 2005.

Certifiou

CERTIFIED QUESTION

(4) Whether a judge can threaten to knowingly impose an illegal guideline calculation "if" the case returns on appeal or collateral attack?

On June 30, 2014, Cox made a compelling argument that Congress specifically excluded passing stolen check from the ambit of 18 USC 1029 in defining "Access Device". Assistant U.S. Attorney Joseph T. McNally, argued that checks are "access Devices", and therefore it could apply App. 3(F)(i) and add $500 per check in each checkbook to amount to $7.4 million added to the intended loss calculation to reach a $20 million actual and intended loss combined. This would require a 22 offense level increase for loss.

The District Court listened carefully to Cox's argument and and stated, "I think there's wisdom that prevailed over the finding I was about to make and getting you close to the $20 million" (see 6/30/14 Tr. Vol. III P. 27:24-25). Then as Cox described checks as "paper instruments" and read the Congressional record aloud the Court concluded Cox was right and stated, "that also takes into account your best argument concering the access devices concerning what I'm going to call 'paper'" (see 6/30/14 Tr. Vol. III P. 28:13-15), thus, conclusively finding $5 million in intended loss excluding the losses applied using App. Nt. 3(F)(i) adding $500 per check in each checkbook. (See 6/30/14 Vol. III P. 20-28).

Cox, asks how then can the Court state that it "could climb to $20 million so easily if this case [comes] back to [it]. Okay? Very easily." (see 6/30/14 Tr. Vol. III P. 45:14-17). Cox, contends this was a threat to illegally apply the guidelines, also by implication stood for the proposion that the Court need not wait until the case returns to "so easily" disregard Congressional intent in order to increase loss to $20 million just to apply a 22 offense levels. Cox, interpreted the entire exchage as a threat which chilled his pro se defense to argue more guideline error. Specifically, that the Ninth Circuit states tha victims can not be estimated as was done by Judge Carter stating "230, 240 range" (see 6/30/14 Vol. III P. 31:7-10). Cox was prepared to argue that the victims being reduced to only victims after 2009, reduced the loss associated with the overall schemme. By finding only "230, 240 range" victims, the actual loss would drop to $3 million and intended to $2 million. The Court silenced Cox

making Cox, abandon, his arguments he stated, "I -- I would really -- I did not mean to upset you like that" (see 7/1/14 P. 22:21-23). And, Cox said, I dont't want to get bashed over the head anymore. I -- get it. Your Honor, I'm sorry for even asking. Honestly" (see 7/1/14 P. 23:21-23). Cox, contends this is evidence of his pro se right being chilled, by the discrete threat to illegally apply the guideline for loss using Application Note 3(F)(i) defining checks as "access devices" to do so.

Adding, those statements to the comment made by the District Court post sentencing, it's clear Judge Carter holds a sustained abinus against Cox. On 6/22/14, 21 days after Cox was sentenced and not present. Judge Carter said, "I don't care what Cox says his repentence is minimal" (see 6/22/14 Tr. during Co-defendat Smith's sentencing P.37). The motion for recusal was reviewd by Judge Carmac J. Carney, who held that because the statement was made before Cox was sentenced Cox had an opportunity to review it. But, this is untrue the statement was made after Cox was sentenced an out of Cox's presents.

Although, Cox, appealed his denied motion for recusal, he suffered additional prejudice because Counsel failed to point out this critical fact as it was explained in the recusal motion. And, when the same Judge Carmac J. Carney, ruled that not applying the guidelines illegally is a genuine benifit to Cox, rather than a right, Cox suffered more error because the threat was a threat to illegally apply the guidelines to increase the sentence, if Cox continued to dispute sentence calculation error.in biased.

CERTIFIED QUESTION

(5) Whether the District Court can ignore ruling on a indicative ruling request concerning fabricated evidence, while appeal is pending?

Pursuant to Fed. R. Crim. P. 37, the District Court may entertain an indicative ruling request while appeal is pending in order to either issue a statement that the Court would grant the motion, if the case was returned by the Appellate Court. It could state that the motion rases substantial issues, or defer the motion, but the law does not state that it can ignore the motion. Here, in Cox's case the Court ignored the motion way past conclusion of direct appeal which prevented Cox from bring the fabricated evidence to the Appellate Court's attention. Cox, contends this violated his right to be heard, under the First Amendment.

The graveman of this certiorari is that Counsel failed to show Cox the six packs prior to pleading guilty. Counsel withheld showing Cox the six pack at sentencing, and then allowed Bacque to plead a blanket Fifth Amendment claim not to answer any questions (Tr. 6/27/14 P. 159). The Court denied Cox the right to proceed pro se, immediately stating that it believed Cox has able counsel as its reasoning for denial. Cox was prevented from obtaining viewable six packs because Counsel claimed he lost the Bacque signed statement, which had viewable six packs attached. By denying Cox's request to proceed pro se, Cox was denied adequate counsel (himself), because he could have determined the date of the photo during his direct examination of Bacque. Cox, contends that denial of the right to self-representation is structural error.

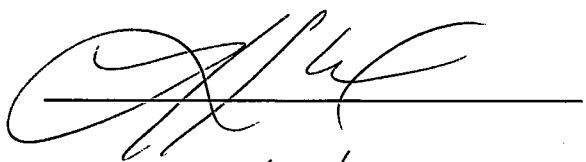
Cox contends that because Counsel was allowed to direct examine Bacque, he was denied the right to ask Bacque whether it was Cox's photo in position 4 when she signed the six pack. Due to being allowed to plead a blanket Fifth, and Counsel subsequently losing the Bacque statement which had attached 6 pack, Cox never had the opportunity to see a clear 6 pack, and determine the date and origin of his mugshot photo in position 4. Cox, was given only redacted 6 packs in the discovery where the photos were made completely unviewable. (See Attached Brief). Cox, argues that harmless error analysis makes it impossible to show prejudice.

CONCLUSION

Cox respectfully seeks to settle the split circuit question regarding self-representation during sentencing.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 10/10/19