19-6525

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

SEAN T. BARNES — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SEAN T. BARNES, PRO SE
(Your Name)

REG.NO. 63480-056, P.O. BOX 350
(Address)

F.C.I. BECKLEY, BEAVER, 25813
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(304)-252-9758
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QUESTION(S) PRESENTED

I. The issue subsuming all other issues in this appeal is whether or not, Mr. Sean Trent Barnes, while incarcerated in pre-trial custody as a federal prisoner in the Eastern District of North Carolina, should have undergone a competency examination in order to determine if his decision to waive counsel and represent himself was-made voluntarily, knowing, and intelligently made. A district court's failure to conduct a comptency hearing on its own motion will always be subject to plain error review. Moreover, the district court's failure to conduct a comprehensive competency hearing or evaluation must be construed and viewed upon as an abuse of discretion by this Court.

II. Whether the District Court erred when it accepted Mr. Barnes' guilty plea without determining a factual basis and ensuring that Mr. Barnes truly understood the nature of the charges in violation of Rule 11 and constituting plain error.

III. Whether this Court should grant certiorari in light of this Court's opinion in **United States v. Booker** and **United States v. Fanfan** as Mr. Barnes was duped by retained counsel Jim Melo, Esq. into pleading guilty with the "promise" and "guarantee" of a five year sentence pursuant to a plea agreement to distribute and possess with intent to distribute 50 grams or more of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1),(6)(1)(A), 846 (2012). The District Court increased Mr. Barnes total offense level by six levels when incorporating findings that were nothing more than debatable hearsay and not proven beyond a reasonable doubt or admiitted to by Mr. Barnes in the plea agreement.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] 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:

Petitioner:

Sean Trent Barnes, Pro Se
Register Number 63480-056
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Beaver, WV 25813

Represented by: Pro Se

Respondent:

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OTHER

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

[x] reported at United States v. Sean Trent Barnes; 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 _____ 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

[x] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 7, 2019.

[x] 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: _____, and a copy of the order denying rehearing appears at Appendix _____.

[x] An extension of time to file the petition for a writ of certiorari was granted to and including November 4, 2019 (date) on November 4, 2019 (date) in Application No. B 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

An accused has a Sixth Amendment right to waive his right to counsel and conduct his own defense in a criminal case. **Faretta v. California**, 422 U.S. 806, 821, 832 (1975). However, a waiver of counsel will not be valid unless it is "an intentional relinquishment or abandonment of a know right or privilege.

In determining whether Mr. Barnes has effectively waived his right to counsel the court must conduct two distinct inquiries. First, the court must determine whether Mr. Barnes voluntarily waived his right to counsel. **United States v. Padilla**, 819 F.2d 952, 955-56 (10th Cir. 1987). Second, it must be determined whether Mr. Barnes' waiver of his right to counsel was made knowingly and intelligently. Mr. Barnes' waiver will deemed effective only if it was made voluntarily, knowingly and intelligently. In other words, for the waiver to be voluntary, the court must be confident that the defendant (Barnes) is not forced to make a "choice" between incompetent counsel or appearing pro se.

The well-established test for competence is whether the defendant "has sufficient present ability to consult with his lawyer with a reasonable degree of rationale understanding -- and whether he has a rational as well as factual understanding of the proceedings against him."

STATEMENT OF THE CASE

On May 17, 2017, a grand jury in the Eastern District of North Carolina indicted Sean Barnes for violating 21 U.S.C. §§841(a)(1), 841(b)(1)(A), and 846 by conspiring to distribute and possess with intent to distribute methamphetamine from Febuary, 2016 to May 17, 2017 (Count One), 21 U.S.C. §841(a)(1) by distributing a quantity of methamphetamine on May 12, 2016, May 24, 2016, June 2, 2016 and June 14, 2016 (Counts Two, Three, Four and Five), and 21 U.S.C. §841(a)(1) by possessing with intent to distribute a quantity of methamphetamine on June 28, 2016. On August 21, 2017, Mr. Barnes entered a plea of guilty to Count One pursuant to a written plea agreement during his arraignment.

Prior to sentencing, Mr. Barnes filed a Pro Se motion to remove his counsel. On Febuary 7, 2017, a hearing was held to address the motion. The court relieved Mr. Barnes' attorney from further representation and appointed the Federal Public Defender.

On May 2, 2018, Mr. Barnes filed a motion, by and through his counsel, to proceed Pro Se. D.E. 119. The hearing for this motion was held on May 30, 2018. During the proceedings, Mr. Barnes reiterated his desire to proceed Pro Se, and his request was granted by the court.

The sentencing hearing was held on July 24, 2018. The court imposed a within-guidelines sentence of a term of imprisonment for for 360 months. The court entered its judgment on the same day, and Mr. Barnes timely filed notice of appeal on August 6, 2018.

According to the Presentence Investigation Report, which was adopted by the sentencing court, Mr. Barnes sold marijuana and crystal methamphetamine in Wilson and Johnston County, North Carolina from 2013 to April 2017. PSR at 4. During this time, law enforcement learned about his trafficking habits, including that he had four methamphetamine suppliers, stored and distributed ounces of methamphetamine from a house he shared with his girlfriend and her nine-year old son, and also stored methamphetamine and firearms at his father's home. Id. The PSR also states that Mr. Barnes allowed his codefendant, Elvis Davis, who was homeless and addicted to methamphetamine to live with him. Id. Soon thereafter, Mr. Barnes was providing Elvis methamphetamine to use and sell. Id. Various other unindicted individuals sold drugs for Mr. Barnes as well. Id.

In May 2016, the Wilson Police Department in Wilson, North Carolina began investigating Mr. Barnes. Id. Law enforcement used a confidential informant to make four controlled buys from Mr. Barnes for methamphetamine. Id. Then, the confidential informant negotiated with Mr. Barnes to purchase two ounces of methamphetamine on June 28, 2016 at a location near the state line of North Carolina and South Carolina. Id. While en route to deliver the drugs to the informant, law enforcement initiated a traffic stop of Mr. Barnes and seized 43 grams methamphetamine from the trunk of his vehicle. Id.

REASONS FOR GRANTING THE PETITION

THE COURT SHOULD GRANT CERTIORARI TO DETERMINE WHETHER THE DISTRICT COURT VIOLATED HIS SIXTH AMENDMENT RIGHT TO COUNSEL BY FAILING TO ORDER A SUA SPONTE COMPETENCY HEARING IN ORDER TO ADEQUATELY DETERMINE IF HIS DECISION TO WAIVE COUNSEL AND REPRESENT HIMSELF WAS MADE VOLUNTARILY, KNOWING, AND INTELLIGENTLY MADE.

Mr. Barnes asks this Court to grant certiorari to scrupulously explore and determine whether the district court erred when failing to order or conduct sua sponte competency hearing of Mr. Barnes' mental and cognitive abilities. A district court's failure to conduct a competency hearing on its own motion will always be subject to **plain error** review. **Henderson v. United States.** 133 S. Ct. 1221, 1126-27, see also **Drope v. Mo.,** 420 U.S. 162, 178-83 (1975)(trial Court's failure to make sufficient inquiry into Barnes' competence and give adequate weight to his ability to voluntarily, knowing, and intelligently waive counsel before and during his sentencing hearing clearly violates due process. See **Pate v. Robinson**, 383 U.S. 375, 385-86 (1966).

Mr. Barnes further contends, albeit respectfully, that the district court's failure to conduct a comprehensive competency hearing or evaluation must be viewed upon and construed as an **abuse of discretion.** See **United States v. Mason**, 52 F.3d 1286, 1289 (4th Cir. 1995).

Further, without the district court first ordering or conducting a competency hearing, it would have been virtually impossible

for U.S. District Judge James C. Dever, III to adequately ensure that Mr. Barnes understood "the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all facts essential to a broad understanding of the whole matter." **Von Moltke v. Gillies**, 332 U.S. 708, 724, 68 S. Ct. 316, 92 L.Ed. 309 (1948); **Daniels v. Lee**, 316 F. 3d 477, 489 (4th Cir. 2003).

The well-established test for competence is whether the defendant (Barnes) "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether he has a rational as well as factual understanding of proceedings against him." **Dusky v. United States**, 362 402, 80 S. Ct. 788, 4 L.Ed. 2d 824 (1960)(per curiam). The record will conclusively he did not possess this requirement. See **18 U.S.C. § 4241(a)**; see also **Moussaoui**, 591 F. 3d 263, 291 (4th Cir. 2010).

When considering Mr. Barnes' polemical mental capacity and his ability, or lack thereof, to fully grasp the severity of the offenses he had been charged with, he fervidly questions whether the district court egregiously erred by permitting him to represent himself and presents two theories why his waiver was invalid. **Iowa v. Tovar**, 541 U.S. 77, 92 (2004). First, he respectfully advances the proposition that any "waiver" was not voluntary because he was forced to choose between appearing pro se or proceeding with unprepared counsel.

Second, the record will demonstrate a discernible and complete breakdown of communication and an irreconcilable conflict with counsel that led to Mr. Barnes having no other alternative but to exercise his right to proceed pro se before, during, and after his sentencing hearing. See **McKee v. Harris**, 649 F. 2d 927, 931 (2d Cir. 1981).

Moreover, "A defendant forced to choose between incompetent or unprepared counsel and appearing pro se faces a 'dilemma of constitutional magnitude.'" **United States v. Padilla,** 819 F.2d 952, 955 (10th Cir. 1987);(quoting **Maynard v. Meachum**, 545 F.2d 273, 278 (1st Cir. 1976).

This Court has long held that a defendant's decision to represent himself is not voluntary if his only other options is to proceed to trial with "incompetent or unprepared counsel." Such a "choice," presents "a dilemma of constitution magnitude," and is really no choice at all: Mr. Barnes was faced with the unenviable decision either face the beast alone or cross his fingers and hope that his counsel's failings will not hinder his defense.

There is no question that Mr. Barnes lacked the requisite education, aptitude perspicacity, skill, legal expertise, and knowledge to adequately prepare his defense. **Powell**, 287 U.S. at 69, so too does the lawyer who fails to fulfill his "duty to bring to bear such skill and knowledge as will rendor the trial a reliable adversarial testing process." **Strickland,** 466 U.S. 688 (1984).

This being the exact situation, Mr. Barnes was caught between a rock and a hard place - somewhere between **Powell v. Alabama**, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158 (1932) and **Strickland v. Washington**, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) - and no matter which option he elected to take, his fundamental **[2014 U.S. App. LEXIS 17]** right to a fair plea has not been preserved.

Clearly, an accused has a Sixth Amendment right to waive his right to counsel and conduct his own defense in a criminal case. See **Faretta v. California**, 422 U.S. 806, 821, 882, 45 L. Ed. 2d 562, 95 S. Ct. 2525 (1975); **United States v. Willie**, 941 F. 2d 1384, 1388 (10th Cir. 1991), cert.denied, 502 U.S. 1106, 117 L. Ed. 2d 440, 112 S. Ct. 1200 (1992). However, a waiver of counsel will not be valid unless it is "'an intentional relinquishment or abandonment of a known right or privilege.'" **United States v. Mezzanatto**, 513 U.S. 196, 201, 103 L. Ed. 2d 697, 115 S. Ct. (1995), including **[2003 U.S. App. LEXIS 38]** the right counsel, **Alabama v. Shelton**, 535 U.S. 654 (2002).

Notably, self-representation "cut[s] against the grain of this Court's decisions holding that the Constitution requires that no accused can be convicted and imprisoned unless he has been accorded the right to the assistance of counsel." The right to counsel helps to assure a defendant a fair trial or plea agreement proceedings.

By contrast, self-representation ordinarily undermines the defendant's chance of a favorable outcome. **McKaskle v. Wiggins**, 465 U.S. 168, 177, 178, 104 S. Ct. 944, 79 L. Ed. 2d 122 (1984).

In light of this reality, this Court, as well as other lower courts, have noted that right to counsel serves "both the individual and collective good," while the right to self-representation protects only "individual interests." **United States v. Mackovich**, 209 F.3d 1227, 1237 (10th Cir. 2000).

This distinction results in "constitutional primacy" of the right to counsel. **Boyle v. United States**, 556 U.S. 938, 129 S. Ct. 2237, 173 L. Ed. 2d 1265 (2009). Partly because of the primacy of that right, a defendant wanting to proceed pro se must satisfy four requirements:

First, the defendant (Mr. Barnes) must "clearly and unequivocally" inform the district court of his intention to represent himself. Second, the request must be timely and not for the purpose of delay. Third, the court must conduct a comprehensive formal inquiry to ensure that the defendant "must be 'able and willing to abide by rules of procedure and courtroom protocol." **United States v. Tucker**, 451 F. 3d 1776, 1180 (10th Cir. 2006)(citations omitted). In evaluating whether the defendant satisfied these requirements, we "indulge in every reasonable presumption against waiver." **Brewer v. Williams**, 430 U.S. 387, 404, 97 S. Ct. 1232, 51 L. Ed. 2d 424 (1977). **United States v. Frazier-El**, 204 F. 3d 563, 558 (4th Cir. 2000).

The Court must conduct a penetrating and comprehensive examination into the defendant's apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circum-

stances to mitigation thereof, and all other facts essential to a broad understanding of the whole matter. **United States v.Silkwood**, 893 F. 2d 245, 248 (10th Cir. 1989). This was **NOT** done by the Court.

It's the controlling rule that "absent a knowing and intelligent waiver no person may be imprisoned for any offense...unless he was represented by counsel at his trial or plea proceedings." **Argersinger v. Hamlin**, 407 U.S. 25, 37, 32 L. Ed. 2d 530, 92 S. Ct. 2006 (1972) and the right to a jury trial: **Patton v. United States**, 281 U.S. 276, 298, 74 L. Ed. 854, 50 S. Ct. 253 (1930). To be valid, Mr. Barnes' waiver of his right to counsel and his right to a jury trial must be knowing and intelligent. **Shelton**, 122 S. Ct. at 1770. Clearly, Mr. Barnes' waiver of counsel was neither knowing or intelligent. Simply put, Mr. Barnes' requests to the district court was not made with open eyes and thus not valid. **N.C. v. Butler**, 491 U.S. 369 (1979).

A review of the record will conclude that Mr. Barnes' request to represent himself fail to meet the aforesaid requisite and was simply the egregious backlash associated with mental illness and the irreconcilable breakdown between himself and defense counsel. **Johnson v. Zerbt**, 304 U.S. 458, 464, 82 L. Ed. 1461, 58 S. Ct. 1019 (1938); see also **Hall v. Moore**, 253 F.3d 624, 628 (11th Cir. 2001); **United States v. Erskine**, 355 F.3d 1161, 1170-71 (9th Cir. 2004); **United States v. Singleton**, 107 F.3d 1091, 1097 (4th Cir. 1997).

As previously alluded to herein, a review of the record and relevant proceedings in the instant case will demonstrate Mr. Barnes was indicted by a federal Grand Jury sitting in the Eastern District

of North Carolina, Western Division, on May 17, 2017. The ten-count indictment charged Mr. Barnes along with alleged coconspirators Joshua Lee Wester and Elvis Kay Davis with conspiracy to distribute and possess with intent to distribute methamphetamine (Count One), distribution of a quantity of methamphetamine (Counts Two, Three, Four, and Five), and possession with the intent to distribute a quantity of methamphetamine (Count Six).

Subsequent to Mr. Barnes' arrest on April 19, 2017, Mr. Barnes' mother, Janace Barnes, retained the legal services of attorney Jim Melo, Esq. to represent her son in said proceedings. Approximately three (3) weeks later, attorney Melo appeared at the Franklin County Detention Center to examine, review, and evaluate the Mr. Barnes' "discovery" contained on a video tape recording, provided by the U.S. Attorney's Office.

Once the contents of the video tapes had been scrupulously analyzed and dissected by both attorney Jim Melo and Mr. Barnes, an incisive discussion ensued between the two men regarding Mr. Barnes' options and the likelihood of a conviction. At this juncture, attorney Melo brazenly assured and more or less "guaranteed" Mr. Barnes he would be able to secure a plea agreement with the Government for a sentence of no more than five (5) years if he (Barnes) would be willing to provide "substantial assistance" to law enforcement. Clearly shocked, traumatized, and not entirely grasping the complexity of the situation and this unexpected revalation, Mr. Barnes acquiesced and agreed, albeit indecisively, to defense counsel Melo's proposal. Reason being, throughout Mr.

Barnes' criminal proceedings he has steadfastly and fevently maintained his innocence of the offenses contained in the indictment.

Palpably uncomfortable with the complexion, temperament, and disposition of Mr. Barnes, as well as the overall outcome of the meeting, defense counsel Melo advised Mr. Barnes he was taking his leave but would speak with the Assistant U.S. Attorney concerning the plea agreement and would return in a couple weeks with the Government's decision.

Weeks passed without Mr. Barnes seeing or hearing hide nor hair of defense counsel Melo. Alarmed and frightened by this unusual turn of events, Mrs. Barnes incessantly telephoned attorney Melo's office in her efforts to determine exactly what was happening with her son's case. After weeks of calling, Mrs. Barnes finally spoke with Mr. Melo only to be advised he was still waiting for time to speak with the AUSA regarding the status of the case.

Finally, after two and a half ($2\frac{1}{2}$) months, defense counsel Melo returned to the Franklin County Detention Center with very disturbing news to convey to Mr. Barnes. In his hand, attorney Melo possessed the previously chronicled ten-count indictment. Only this time the five (5) year plea agreement was no longer an option and according to attorney Melo, Mr. Barnes was now looking at a minimum of ten years in federal prison with a maximum of a life sentence.

Needless to say, Mr. Barnes was at a complete loss of words and could only sit in the attorney-client conference room chair

stunned, paralyzed, and speechless. At this juncture defense counsel Melo attempted to explain and impress upon Mr. Barnes that he was at a point where he would have to make a decision - either accept the Government's plea agreement for ten (10) years or proceed to a jury trial.

After having previously realized and accepted the fact he would ultimately be serving five (5) years in a federal prison for crime(s) he was innocent of committing, this recent update had left him confused, bewildered, and in a complete and total disoriented state of mind. Even though he didn't truly understand or know what he was doing, Mr. Barnes ultimately agreed to accept the Government's tendered plea agreement and proposal with the understanding he would be sentenced to ten (10) years in a federal prison, **not the 360 months** he was sentenced to serve. Thereupon, Mr. Melo took his leave and advised Mr. Barnes he would return with the plea agreement for him to sign in the upcoming weeks.

Shortly after appearing in district court for his Rule 11 plea colloquy, Mr. Barnes was unexpectedly transferred by the U.S. Marshal's Service to Brunswick County Jail. Much to Petitioner's dismay, the facility was located two and a half ($2\frac{1}{2}$) hours from Franklin County and the office of attorney Melo. Mrs. Barnes finally learned that defense counsel Melo had been waiting for the U.S. Probation Officer and a federal agent to interview her son for the sole purpose of preparing the Presentence Investigation Report for the court. It was sometime later the PSI Report preparer, a D.E.A. Agent and

defense counsel gathered with Mr. Barnes to obtain the necessary information required to complete the Presentence Investigation Report.

Three months passed and attorney Melo finally appeared at the jail in hand with the completed "PSI" to read. Incredibly, according to attorney Melo's latest assessment of Mr. Barnes' "PSR" and sentencing exposure, his exposure unexpectedly inflated from the earlier "prediction" of a ten-year sentence to an incomprehensible twenty-five years. Accordingly, objections were lodged with the district court challenging the false and errorneous information contained in Barnes' PSI Report. These objections were ultimately denied by the U.S. Probation Office and the district court by U.S. District Judge Devers.

While incarcerated in the Brunswick County Jail, Mr. Barnes suddenly and without warning terminated the legal representation of well-respected and experienced attorney Jim Melo, citing irreconcilable differences in the preparation and strategy to be implemented. Shortly thereafter, Mr. Barnes was brought before the Honorable James C. Devers, III, U.S. District Judge in order to provide Mr. Barnes ample opportunity to explain his reason(s) for dismissing attorney Melo from his defense team. Thereupon, Judge Devers granted Mr. Barnes' request to remove Mr. Melo and took it upon himself at that time to appoint attorney W.J. Payne, Esq. to represent Mr. Barnes.

Clearly, this blatant display of erratic and mentally ambivalent behavior exhibited by Mr. Barnes should have immediately raised red flags with the court, the U.S. Attorney's Office and the U.S. Probation Office. Thus, the obvious need for a competency hearing.

Approximately two (2) weeks following the court's appointment of attorney Payne by Judge Devers to represent Mr. Barnes, defense counsel W.J. Payne met with Mr. Barnes at the Franklin County Jail. During this meeting attorney Payne promptly advised Mr. Barnes that, in his opinion, he would not get a day less than 25 years in federal prison. However, he (Payne), like Mr. Melo, would speak with the Assistant U.S. Attorney handling the case to see if something productive could be worked out towards a sentence reduction.

A month and a half later defense counsel Payne returned to the jail to inform Mr. Barnes that his sentencing date had been set on the docket, and much to his disappointment he had not been able to reach an amicable resolution or an abbreviated sentence for his "substantial assistance" to law enforcement officials.

Predictably, two days later an extremely disappointed Barnes called attorney Payne on the telephone and dismissed him as his defense counsel. Upon being advised of Mr. Barnes' intention to fire him, attorney Payne drove to the jail to speak with Mr. Barnes and attempt to reason with him while addressing his concerns. Importantly, attorney Payne fervently attempted to change Mr. Barnes' mind and allow him (Payne) to continue to represent him in his criminal proceedings...all to no avail.

Increduously, Mr. Barnes wanted no part of Mr. Payne's representation or the myriad of reasons and rationale why he (Barnes) should not proceed without him. Mr. Payne's repeated pleas fell on deaf ears and were met with implacable repudiation. Simply put, Mr. Barnes adamantly refused to relent and had made the disastrous de-

cision to represent himself and there would be no changing his mind.

Mr. Barnes appeared for his originally scheduled sentencing hearing before Judge Devers. From the very moment Mr. Barnes walked into the courtroom, a clearly annoyed but inquisitive Judge Devers began questioning Mr. Barnes in an effort to definitively pinpoint and determine the exact problem(s) he had been experiencing with not one, but two seasoned, experienced and skilled criminal lawyers and why he had terminated their representation.

Noticeably perplexed with Mr. Barnes' obstinate insistence that he be permitted to represent himself, Judge Devers proceeded to conduct an ephemeral quiry of Mr. Barnes. After answering a few scant questions asked by Judge Devers, Mr. Barnes' request to self-representation was granted followed by the re-scheduling of Barnes' sentencing hearing.

At this particular juncture of Mr. Barnes' criminal proceedings in which he recognizably continued to display mentally unstable, self-destructive, and irrational behavior in and outside the confines of the courtroom, the district court was obligated by law to order a competency hearing conducted before allowing him to represent himself during his upcoming sentencing hearing.

Mr. Barnes, a documented drug and methamphetamine user acquiring a very limited education possessing no legal training or experience whatsoever could not have possibly been mentally competent, of sound mind or embraced a complete understanding of the proceedings. This being the case, Mr. Barnes respectfully contends the district court violated his Sixth Amendment right to counsel by failing to adequately

determine his decision to waive counsel and represent himself was made voluntarily, knowingly, and intelligently. **Brewer v. Williams** supra.

Moreover, on July 24, 2018, Mr. Barnes appeared in district court for his sentencing with attorney W.J. Payne acting as "stand-by" counsel. It was clearly evident to Mr. Barnes, as well as the entire courtroom, including Judge Devers, the AUSA prosecuting the case and "stand-by" counsel Payne that Mr. Barnes' abject efforts to represent himself was nothing more than colossal joke and constitutionally infirm.

For all intents and purposes, Mr. Barnes didn't have a clue what was happening or what he should be doing. And, to exacerbate matters, "stand-by" counsel did absolutely nothing to protect and ensure Mr. Barnes' constitutional rights were protected. Simply put, stand-by counsel's conduct at the sentencing hearing was not objectively reasonable. "Counsel must make a significant effort, based on reasonable investigation and logical argument, to mitigate his client's punishment." **Eddmonds v. Peters**, 93 F.3d 1307, 1319 (7th Cir. 1996)(internal quotation marks and citations omitted), cert. denied, 117 S. Ct. 1441 (1997).

Here, defense counsel "engaged in neither reasonable investigation nor logical argument." The failure of Barnes' attorney to participate in the sentencing hearing made the adversary process unreliable. Mr. Barnes respectfully submits deficient performance must be found because stand-by counsel Payne fail to offer mitigating evidence but rather because he made no effort to contradict the prose-

cution's case or to seek out mitigating factors. He entirely failed to represent his client, inaction which distinguishes this phase of the trial from the conviction phase.

Counsel's performance during the sentencing phase was so lacking that it invites application of **Cronic** rather than **[1997 U.S. App. LEXIS 20]** **Strickland.** **Cronic** recognizes that "in some cases the performance of counsel may be so inadequate that, in effect, no assistance of counsel is provided." 466 U.S. at 654 n.11. Thus, where "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable." **Id.** at 659.

In this instance, Mr. Barnes does not have to show that standby counsel's performance resulted in prejudice; instead, if counsel "entirely fails to subject the prosecutor's case to meaningful adversarial testing," prejudice is presumed. **Id.** As this Court has stated, "The Sixth Amendment right to counsel, of course, guarantees more than just a warm body to stand next to the accused during critical stages of the proceedings; an accused is entitled to an attorney who plays a role necessary to ensure that the proceedings are fair." **United States ex rel. Thomas v. O'Leary**, 856 F.2d 1011, 1015 (7th Cir. 1988).

In **Tucker v. Day**, 969 F.2d 155, 159 (5th Cir. 1992), the Fifth Circuit held that a defendant was denied the effective assistance of counsel at resentencing where counsel **[1997 U.S. App. LEXIS 21]** did not consult with his client, had no knowledge of the facts, and

acted as a mere spectator during the sentencing hearing. "In this case, Mr. Barnes was unaware of the presence of counsel, counsel did not confer with Mr. Barnes whatsoever, and as far as the transcript is concerned, counsel made no attempt to represent his client's interests." **Id.** Mr. Barnes knew his "stand-by" lawyer was standing there, but in other respects attorney Payne's passivity compares to the shadow presence found ineffective in **Tucker**.

Simply put, "stand-by" counsel W.J. Payne, Esq. performed no investigation and made no effort whatsoever to mitigate Mr. Barnes' unreasonable sentence of 360 months--omissions especially grievous where, as in this case, the facts and circumstances presented during Mr. Branes' indictment, preparation of the PSR and the false, inaccurate and erroneous information contained therein and the ambiguous plea agreement in which Mr. Barnes entered same under the hollow illusion he would receive a sentence of ten (10) years and relied upon heavily at sentencing were one-sided and for all intents and purposes grossly inaccurate.

The evidence shows that "stand-by" counsel Payne's performance at Mr. Barnes' sentencing hearing was constitutionally substandard, poor enough to impute **prejudice** to Mr. Barnes' defense and render the result of the sentencing unfair and unreliable. See **Strickland**, 466 U.S. at 696 ("The ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.")

This Court should remand the instant case for sentencing in light of the aforementioned circumstances and relevant case law supporting same. At re-sentencing, the district court should sentence Mr. Barnes

without the enhancements used in the case, as that finding was not determined beyond a reasonable doubt. See **Apprendi v. New Jersey**, 530 U.S. 466 (2000); see also **Blakely v. Washington**, 124 S.Ct. 2531 (2004); **United States v. Booker**, 543 U.S. 220,234, 125 S.Ct.738 (2005).

Mr. Barnes also contends that his sentence should be vacated as substantively unreasonable because it was greater than necessary to meet the requirements of 18 U.S.C. § 3553(a). Mr. Barnes contends that his sentence overstated the seriousness of his conspiring to distribute and possess with intent to distribute methamphetamine offense, failed to reflect his personal history and characteristics, and overstated the need to deter future crimes and to protect the public. Mr. Barnes' appellate arguments fail to establish that his sentence was unreasonable. See **Gall v. United States**, 552 U.S. 38, 51 (2007); **United States v. Alonzo**, 435 F.3d 551, 554 (5th Cir. 2006).

WHETHER THE DISTRICT COURT ERRED WHEN IT ACCEPTED MR. BARNES' GUILTY PLEA WITHOUT DETERMINING A FACTUAL BASIS AND ENSURING THAT MR. BARNES TRULY UNDERSTOOD THE NATURE OF THE CHARGES IN VIOLATION OF RULE 11 AND CONSTITUTING PLAIN ERROR.

Mr. Barnes respectfully avers as set forth in Fed.R.Crim.P 11(b)(3), "[b]efore entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea." A district court errs when it fails to comply with the clear mandate of a Federal Rule of Criminal Procedure, and this error is plain. Fed.R.Crim.P. 11(b)(3) states that, before entering judgment on a guilty plea, the district court must determine that there is a factual basis for the plea in order to ensure the plea's accuracy through evidence that a defendant actually committed the offense. **United States v. DeFusco**, 949 F.2d 114, 120 (4th Cir 1991).

As noted in **United States v. McCreary-Redd**, 475 F.3d 718, 722 (6th Cir. 2007)(quoting **United States v. Tunning**, 69 F.3d 107, 111 (6th Cir. 1995)), this requirement "is to ensure the accuracy of the plea through some evidence that a defendant actually committed the offense." Rule 11(b)(3) requires a district court to determine**[2017 U.S. App. LEXIS 4]** whether there is a factual basis for the plea before entering judgment on a guilty plea. **United States v. Ketchum**, 550 F.3d 363, 366 (4th Cir. 2008).

To establish that plain error occurred, Mr. Barnes will continue to demonstrate "that an error (1) was made, (2) is plain (i.e, clear or obvious), and (3) affects substantial rights." **United States v.**

Martinez, 277 F.3d 517, 524 (4th Cir. 2002)." Mr. Barnes, who was clearly suffering from an unknown mental disorder, was clearly incompetent and could not have possibly understood the charges against him or the magnitude of pleading guilty to the false charges that he had been indicted for and facing a term of imprisonment. So long as the district court ensures that the defendant's statement includes conduct--and mental state, if necessary--that satisfies every element of the offense, there should be no question concerning the sufficiency of the factual basis for the guilty plea.

As clearly set forth in **McCarthy v. United States**, 394 U.S. 459, 467 (1969), "[t]he purpose of this rule is 'to protect a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge, but without realizing that his conduct does not actually fall within the charge.'"

There can be little doubt that the court's failure to definitively determine "that the conduct to which Mr. Barnes admitted is in fact an offense under the statutory provision under which he is pleading guilty." **United States v. Carr**, 271 F.3d 172, 178-79 n.6 (4th Cir. 2001)(quoting **United States v. Maher**, 108 F.3d 1513, 1524 (2d Cir. 1997))(interpreting **[2008 U.S. App. LEXIS 7]** an earlier version of Rule 11.

This being the case, the error of the court unquestionably affected the fairness, integrity or public reputation of judicial proceedings. **United States v. Strieper**, 666 F.3d 288, 295 (4th Cir. 2012),

In the guilty plea, context, Mr. Barnes established prejudice by showing a reasonable probability that he would just have pleaded guilty, but for the Rule 11 error. **United States v. Sanya**, 774 F.3d 812, 816 (4th Cir. 2014).

Moreover, Fed.R.Crim.P. 11(b)(1)(G) requires that, before a guilty plea is accepted, a district court must insure that the defendant understands, inter alia, the nature of each charge to which the defendant is pleading. This requirement is integrally related to Rule 11(b)(3)'s requirement that it be determined that the plea has a factual basis. Under Rule 11(b)(1)(G), the district court must be satisfied, after discussion with the defendant in open court, that the elements of the offense to which he or she pleads guilty. Because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.

The **Tunning** Court further noted, in discussing what a district court should do in ensuring that a factual basis exists, that:

The ideal means to establish the factual basis for a guilty plea is for the district court to ask the defendant to state, in the defendant's own words, what the defendant did that he believes constitutes the crime to which he is pleading guilty. So long as the district court ensures that the defendant's statement includes conduct-and mental state if necessary-that satisfy every element of the offense, there should be no question concerning the sufficiency of the factual basis for the guilty plea. This "ideal" method is by no means the only method, however. "We recognize that the district court may determine the existence of the ... factual basis from a number of sources, including a

number of sources, including a statement on the record from the defendant." And, of course, it is possible that witnesses may be called to state the factual basis with the defendant providing confirmation.

Tunning, supra, at 112 (citation omitted).

Here, there was no plea agreement containing a statement of facts nor was the indictment read into the record asking Mr. Barnes if he admitted to those facts. At the sentencing hearing the government did not put on the record a factual basis for a guilty plea.

A conviction based on an indictment where the grand jury was not informed of all the elements of the charged offense, where the indictment failed to inform the defendant of all the elements, and where the government's plea agreement and the district court at the change of plea hearing omitted an element undoubtedly affected Mr. Barnes' substantial rights and "seriously affect(s) the fairness, integrity, or public reputation of judicial proceedings." **Olano v. Gray**, 507 U.S. at 736 (1993).

Mr. Barnes is entitled to relief because his constitutional claim satisfies all three prongs of the plain-error standard. Courts measure whether an error is "plain" based on the law at the time of appeal, see **Henderson**, 568 U.S. 266, so the decision in **Rehalf v. United States**, 139 S.Ct.2191 (2019) alone establishes the first two prongs; that an error occurred and that it was plain.

The third prong, which requires an effect on Mr. Barnes' substantial rights, is satisfied as well. As indicated, a defendant must receive "real notice of the true nature of the charge against

him, the first and most universally recognized requirement of due process." **Smith**, 312 U.S. at 334. Because Mr. Barnes did not know the government must prove an additional element not charged in the indictment and never disclosed to him, Mr. Barnes could not intelligently and knowingly waive the rights that accompany a jury trial.

Additionally, a constitutionally invalid plea affects substantial rights as a per se matter. The Supreme Court highlighted this "point of contrast" in **United States v. Dominguez Benitez**, 542 U.S. 74,84, n.10 (2004). It explained that, unlike a Rule 11 error, a defendant need not make a case specific showing of prejudice if he establishes that his guilty plea violated constitutional due process. As an example, the Court cited **Boykin v. Alabama**, 395 U.S. 238, 243 (1969), which concluded that a guilty plea violated due process where the record contained no evidence that the defendant understood the federal constitutional rights waived upon entry of the plea.

Similarly, the Supreme Court invalidated a guilty plea to second-degree murder because the defendant was not informed about the relevant **mens rea** requirement: that the assault had been "committed with a design to effect the death of the person killed." **Henderson v. Morgan**, 426 U.S. 637,645 (1976). In doing so, the Court assumed "that the prosecutor had overwhelming evidence of guilt available." **Id.** at 644. But the Court still held that "nothing in this record" - not even the defendant's "admission ... that he killed Mrs. Francisco" - could "serve as a substitute for either a finding after trial, or voluntary admission, that [he] had the requisite intent." **Id.** at 644. The Court grounded this holding in the principle

that the defendant had not received "real notice of the true nature of the charge against him, the first and most universally recognized of due process." **Id.** at 645 (citation omitted).

As noted above, that same principle - that the defendant did not receive notice of the charge's true nature - formed the basis for the Court's holding in **Bousley**, where the guilty plea was "unintelligent" and therefore "constitutionally invalid" in light of the post-plea decision in **Bousley**, 523 U.S. at 618-19. The same error is present here in light of **Rehalf**. A conviction obtained in these circumstances cannot "be saved even by overwhelming evidence that the defendant would have pleaded guilty regardless." **Dominguez Benitez**, 542 U.S. at 84, n.10.

"The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional gurantees that should define the framework of any criminal trial." **Weaver v. Massachusetts**, 137 S.Ct. 1899, 1907 (2017). In other words, the error is structural because it will "always result[] in fundamental unfairness." **Id.** at 1908. Failing to indict the **mens rea** element deprives the defendant of even an opportunity to contest that element, or for the grand jury to find that the element is not supported.

The category of structural errors encompasses interests other than protection from an erroneous conviction, including "the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty." **Id.** When a court denies a criminal defendant the "right to conduct his

own defense" or the right to counsel of choice, for example, the error has infringed upon the defendant's autonomy interest regardless of the strength of the prosecution's evidence and regardless of whether the error afected the ultimate outcome of the proceedings. **Id.** "Because harm is irrelevant to the basis underlying the right, the Court has deemed a violation of that right structural error." **Id.** (citing **United States v. Gonzalez-Lopez**, 548 U.S. 140, 149, n.4 (2006)).

The error here is structural because it violates this same autonomy interest. Because Mr. Barnes did not understand the true nature of the 21 U.S.C. §§841(a)(1), 841(b)(1)(A), and 846 by conspiring to distribute and possess with intent to distribute methamphetamine charges, he was unable "to make his own choices about the proper way to protect his own liberty." **Weaver,** 137 S.Ct. at 1908. The infringement on his autonomy in this scenario is at least comparable to - if not significantly more problematic than - the infringement that occurs when a defendant is denied the right to represent himself or the right to the counsel of his choice. Indeed, the Supreme Court has described a plea in this circumstances as not "voluntary in a constitutional sense." **Henderson**, 426 U.S. at 645. Where a defendant's choice to plead guilty is not knowing and voluntary, it is not a choice at all.

Based on these fundamental principles, this Court should exercise its discretion to notice the error under the plain-error standard. Leaving in place a constitutionally involuntary plea - one that violates "the first and most universally recognized re-

quirement of due process," **Bousley**, 523 U.S. at 618 - would "seriously affect[ ] the fairness, integrity, or public reputation of judicial proceedings." **Olano**, 507 U.S. at 732. "To allow a district court to accept a guilty plea from a defendant who did not admit to an essential element of guilt under the charge ... would surely cast doubt upon the integrity of our judicial process ..." **United States v. Mastrapa**, 509 F.3d 652, 661 (4th Cir. 2007).

As previously set forth herein, Mr. Barnes made no objections during his criminal proceedings at the District Court to the Rule 11 error requiring that he establish **plain error**. See **United States v. Vonn**, 535 U.S. 55, 58-59 (2002). This Court noted in **United States v. McCreary-Redd**, supra. "[t]o establish plain error, a defendant must show (1) that an error occurred in the District Court; (2) that the error was plain, i.e., obvious or clear; (3) that the error affected defendant's substantial rights; and (4) that this adverse impact seriously affected the fairness, integrity, or public reputation of the judicial proceedings." Citing, **United States v. Koeberlein**, 161 F.3d 946, 949 (6th Cir. 1998).

Third, the failure to establish the factual basis for Mr. Barnes' plea affected his substantial rights. In this case, unlike others reviewed by this Court dealing with this issue, there was no factual basis set forth in a plea agreement.

Further, the indictment was not read into the record, and Mr. Barnes did not waive the reading of the indictment nor did the government place a factual basis on the record. Thus, Mr. Barnes' own statement is the factual basis for the plea. As Mr. Barnes' facts do not

clearly support a finding of his guilt, the District Courts failure to establish a factual basis pursuant to Rule 11(b)(3) affected Mr. Barnes' substantial rights.

Fourth, to uphold a conviction herein, that does not prove that Mr. Barnes knew that he was possessing drugs would be inconsistent with Rule 11. As this Court noted in **McCreary-Redd**, "Adhering to Rule 11 helps to ensure that a defendant's guilty plea is truly voluntary, a constitutional requirement." **Id.** at 726 (citations omitted).

Mr. Barnes respectfully advances the proposition that remand is required so that he can make an intelligent and voluntary decision about whether to plead guilty. In addition, this Court should exercise its discretion under **Olano** to notice the error. Mr. Barnes' conviction in this case should be vacated. **Griffith**, 479 U.S. at 328; **Russell**, 369 U.S. at 770.

THIS COURT SHOULD GRANT CERTIORARI IN LIGHT OF THIS COURT'S OPINION IN UNITED STATES V. BOOKER AND UNITED STATES V. FANFAN.

Mr. Barnes asks this Court to grant certiorari as the sentence imposed by the District Court should be vacated in light of this Court's holdings in **Blakely v. Washington**, 124 S.Ct. 2531 (U.S. June 24, 2004) and **United States v. Fanfan**, 175 Ed.2d 67, 558 (2009). Mr. Barnes was sentenced to a 360 month term of imprisonment pursuant to the "advisory" federal sentencing guidelines.

Much to the chagrin of Mr. Barnes, he was categorically duped and hoodwicked by retained counsel Jim Melo, Esq. into pleading guilty with the "guarantee" of a five (5) year sentence pursuant to a plea agreement to distribute and possess with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1),(6)(1)(A), 846 (2012). At sentencing, the district court inexplicitly adopted the Presentence Investigation Report which increased Mr. Barnes' total offense level by six (6) levels when incorporating findings that were nothing more than debatable hearsay and not proven beyond a reasonable doubt or admitted by Mr. Barnes in the plea agreement. The district court calculated Mr. Barnes' range under the 2016 U.S. Sentencing Guidelines Manual at 360 months to life imprisonment and sentenced Mr. Barnes to 360 months' imprisonment.

Notably, Mr. Barnes, not "standby" defense counsel, lamely objected to the sentencing enhancements without providing applicable case law or a knowledgeable and persuasive dispute. As this Court

is acutely congnizant of, the **Blakely** Court found that the Sixth Amendment right to a jury trial makes unconstitutional the imposition of any sentence above the statutory maximum prescribed by the facts found by a jury or admitted by the defendant.

This Court's decisions in **Blakely v. Washington**, 124 S.Ct. 2531 (2004) and **United States v. Booker**, supra and **United States v. Fanfan**, supra, hold that each aggravating factor that affects the sentencing of a defendant must be proven to a jury or admitted by a defendant beyond a reasonable doubt. The **Booker** opinion goes further and states that the federal guidelines are advisory only.

Since Mr. Barnes' sentence was increased by mendacious, disputable and unreliable statements, including alleged testimony -- that Mr. Barnes possessed three firearms, as well as being an organizer or leader involving five or more participants and that exercised control over a defendant -- by the District Court by a preponderance of the evidence, the case must be vacated.

This Court has consistently held that "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime upon which he is charged." **In re Winship**, 397 U.S. 358, 364 (1970). This Court further underscored this principle in **Apprendi v. New Jersey**, 530 U.S. 466 (2000).

In **Apprendi**, this court held that, with the exception of prior convictions, any fact that increases the legally prescribed maximum

penalty must be proved to the jury beyond a reasonable doubt. 350 U.S. at 490. **Blakely** reiterates the holding in **Apprendi** that, under the Sixth Amendment, all facts used to increase a defendant's sentence beyond the statutory maximum must be charged and proven to a jury. 124 S.Ct. at 2536. Based on the indictment and the facts established in the tendered plea agreement, Mr. Barnes' advisory guideline range should have been no more than 57-71 months.

The sentencing range used by the District Court in this case was askewed 360 months to life imprisonment, with the statutory maximum being ten years. The District Court had to make additional findings beyond the parameters of the indictment and the facts to which Mr. Barnes admitted in order to use the increased base offense level. These judge-determined facts increased Mr. Barnes' sentence beyond the parameter of facts as determined at the guilty plea. **Blakely** and now **Booker** instruct us that such actions violate Mr. Barnes' constitutional rights.

Further, Mr. Barnes should be re-sentenced in light of the remedial majority opinion in **Booker**. In **Booker**, this Court held that "its holding in **Blakely** applied to the [Federal] Sentencing Guidelines." **Booker**, 2005 WL 50108, at 15. "This conclusion rested on the premise, common to both [the North Carolina guidelines system at issue in **Blakely** and the Federal Sentencing Guidelines], that the relvant sentencing rules [were] mandatory and imposed binding requirements on all sentencing judges," **id.** at 8, thereby creating "statutory maximums" within the meaning of **Apprendi**.

The Court chose to remedy the unconstitutionality of the mandatory Federal Sentencing Guidelines by stripping them of their mandatory nature and rendering them purely advisory:

> We answer the question of remedy by finding the provision of the federal sentencing statute that makes the Guidelines mandatory, 18 U.S.C.A. § 3553(b)(1)(Supp. 2004), incompatible with today's constitutional holding. We conclude that this provision must be severed and excised, as must one other statutory section, § 3742(e) (main ed. and Supp. 2004), which depends on the Guidelines' mandatory nature. So modified, the Federal Sentencing Act, see Sentencing Reform Act of 1984, as amended, 18 U.S.C. § 3551 et seq., 28 U.S.C. § 991 et seq., makes the Guidelines effectively advisory. It requires a sentencing court to consider Guidelines ranges, see 18 U.S.C.A. § 3553(a)(4)(Supp. 2004), but it permits the court to tailor the sentence in light of other statutory concerns as well, see § 3553(a)(4)(Supp. 2004).

Id. at 16; see also id. at 24-27.

This Court declined to limit its holding only to cases where a judge unconstitutionally made findings that raised the Guidelines sentencing range:

> The Government would render the Guidelines advisory in "any case in which the Constitution prohibits" judicial factfinding. But it apparently would leave them as binding in all other cases.
>
> We agree with the first part of the Government's suggestion. However, we do not see how it is possible to leave the Guidelines as binding in other cases. For one thing, the Government's proposal would impose mandatory Guidelines-type limits upon a judge's ability to **reduce** sentences, but it would not impose those limits upon a judge's ability to **increase** sentences. We do not believe that such

"one-way level[s]" are compatible with Congress' intent. For another, we believe that Congress would not have authorized a mandatory system in some cases and a nonmandatory system in others, given the administrative complexities that such a system would create. Such a two-system proposal seems unlikely to further Congress' basic objective of promoting uniformity in sentencing. **Id.** at 28 (emphasis in original).

For the articulated reasons stated herein, Mr. Barnes respectfully asks this Court grant this Petition for Writ of Certiorari, and vacant the conviction, judgment, and sentence as substantively unreasonable because it was greater than necessary to meet the requirements of 18 I.S.C. § 3553(a). Mr. Barnes' appellate arguments fail to establish that his sentence was unreasonable.

For the articulated reasons stated herein, Mr. Barnes respectfully asks this Honorable Court **GRANT** the submitted Petition For Writ of Certiorari and **REMAND** these proceedings to the district court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sean J. Barnes

Date: OCTOBER 29, 2019