NO. 19-6698

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

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OFFICE C.

AMON RWEYEMAMU MTAZA,

Petitioner,

V.

UNITED STATES OF AMERICA

Respondant.

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

# PETITION FOR REHEARING

AMON RWEYEMAMU MTAZA
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SUPREME COURT, U.S.

PETITION FOR REHEARING
( Sup. Ct. R. 44.2)

Petitioner presents its petition for rehearing above entitled cause. A rehearing of the decision in the matter is in the interest of justice because petitioner's Indictment is invalid and he had received ineffective assistance in violation of Sixth Amendment. Supreme Court Rule (Sup. Ct. R.) 44.2 limits grounds to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

QUESTION(s) PRESENTED

I. Where counsel was ineffective for failure to investigate and litigate the issue of the 5-sheets seized from petitioner where investigation would have revealed that 5-sheets did not contain any SSN's and case agent had falsely testified in front of grant jury and the district court that the 5-sheets contained SSN's. And, in absence of false testimony, the grand jury would not have issued the Indictment. Thereby, making counsel's advise to plea guilty without any investigation ineffective of assitance of counsel in violation of sixth Amendment.

II. Whether Indictment was invalid and counsel ineffective to litigate the Indictment issue where the crime alleged in the Indictment does not have the [InterState nexus] elements of the Statute, and if left uncorrected, would deeply undermine confidance in the criminal justice system.

III. Whether evidentiary hearing is necessary when this court find that the 5-Sheets of paper only contained names and birthdays which was a public information, and Mtaza was convicted with invalid Indictment, and also attorney was ineffective for advising Mtaza to plea guilty when attorney did not investigate the case.

## ARGUMENTS

I. Mtaza is entitled to a Certificate of Appealability (COA) based on fact that nobody can file tax returns without Social Security Numbers (SSNs).

Petitioner Mtaza has raised claim that entitles him to relief because of ineffective assistance of counsel under Strickland v. Washington, 466 U.S. 668 (1984). The claim of counsel's failure to investigate is subjected to same standard of Strickland v. Washington, 466 U.S. 668, 686-87 (1984). Counsel has a duty to make reasonable investigation or to make a reasonable decision to make particular investigations that are necessary. Id., Nelson v. Hargett, 989 F.2d 847 (5th Cir. 1993). At the same time, bare allegations do not suffice. "A defendant who alleged a failure on the part of his counsel must allege with specificity what the investigation would have revealed and how it would altered the outcome of the trial". United States v. Green, 882 F.2d 999, 1003 (5th Cir, 1989).

Agent Boyden who is "arresting officer" stated in his affidavit in support of the criminal complaint that:

> "These five sheets of paper contained in excess of 210 names and birthdays". (Doc. 1, p.3, §9). Appendex [E] also please

See the actual 5-sheets in Appendix [E]. But then changed his statement when he went in front of grand jury and the district court under oath, to induce the grand jury to issue the indictment by stating that:

> "Mtaza brought Ms. Hatch five sheets of social security numbers and birthdays of stolen IDs that were used for filing the frudulent tax returns." (Doc. 19, p.3).

See Appendix [I].

Here, had attorney Washington investigated the issue of 5-sheets, the investigation would have revealed the fact that the 5-sheets did not contain any SSNs, and that information from 5-sheets could not have been used in filing fraudulent tax returns as agent has suggested. And, that would have forced

the government to dismiss counts (2-7) of wirefraud which would have altered the outcome of the case. United States v. Green, 882 F.2d 999, 1003 (5th Cir. 1988). Mtaza argue that under these conditions any waiver could not have been knowingly and intelligently.

The Fifth Circuit has held that failure to investigate falls below the customary level of skill and knowledge required. Proffit v. Waldron, 831 F.2d 1245 (5th Cir. 1987). Failure to investigate is not a discretionary technical decision. Beabers v. BalkCom, 636 F.2d 114 (5th Cir. 1981). Under the Bouchillon v. Collins, 907 F.2d 589 (5th Cir. 1990) standard, counsel who fails to investigate may be guilty of an appalling lack of professionalism.

On attorney's failure to investigate the case against the defendant and to interview witness can support a finding of ineffective assistance. See, Moore v. Johnson, 194 F.3d 586, 608, 616 (5th Cir. 1999); and Bryant v. Scott, 28 F.3d 1411, 1435 (5th Cir. 1994). "It is the [lawyer's] job to provide the accused an understanding of the law in relation to the facts, and a lawyer who is not familiar with the fact and law relevant to his client's case cannot meet that required minimum level [of assistance]". Herring v. Estelle, 491 F.2d at 128; See VonMalteke v. Gillies, 332 U.S. 708, 729 (1984).

The 5-sheets is compelling evidence supporting Mtaza's claim of dismissing counts (2-7) of wirefraud. As the district court noted, the two-prong test set forth in Strickland, governs the court's analysis. It is well established that "[C]ounsel has a duty to make reasonable investigation or to make a reasonable decision that makes particular investigation unnecessary." Strickland, 466 U.S. at 691. The duty to investigate derives from counsel's basis function, which is "'to make the adversarial testing process work in the particular case.'" Kimmelman v. Morrision, 477 U.S. 365, 384 (1986)(quoting Strickalnd, 446 U.S. at 690). "The relevant question is not whether counsel's choices were strategic, but whether they were reasonable." Roe v. Flores-

Ortega, 528 U.S. 470 (2000). A purportedly strategic decision is not objectively reasonable "when the attorney has failed to investigate his options and make a reasonable choice between them." See Horton v. Zant, 941 F.2d 1449, 1462 (11th Cir. 1991).

The United States Supreme Court has not hesitated to find constitutionally ineffective assistance when counsel fails to conduct a reasonable investigation into one or more aspects of the case and when that failure prejudices his or her client. See, e.g., Wiggins v. Smith, 539 U.S. 510, 524-29 (2003) (holding that the petitioner was entitled to writ of habeas corpus because his counsel had failed to conduct a reasonable investigation into potentially mitigating evidence with respect to sentencing because "counsel choose to abondon their investigation at an unreasonable juncture, making a fully informed decision with respect to sentence strategy impossible.") Mtaza's trial counsel's failure to conduct a reasonable investigation into the 5-sheets of paper similarly violated his Sixth Amendment right to effective assistance of counsel. Any reasonable attorney would have conducted that investigation. The investigation into 5-sheets of paper was necessary, and the new findings was essential, thus defense counsel's failure to investigate further violated duty to make reasonable investigation or to make a reasonable decision that make a particular investigation unnecessary. Strickland, 466 U.S. at 691.

Now with regard to deficiency prong, the facts demonstrate that counsel did not investigate the facts surrounding the 5-sheets, infact the Government has concluded that Washington's [Attroney] "affidavit does not provide any detail about the investigation he conducted ..." (Doc. 139, p.19, n.11) See Appendix [H].

Attorney Washington knew or should have known that the 5-sheets of paper that contained names and birthdays could not have been enough to induce the grand jury to issue the indictment on counts (2-7) of wirefraud under

Title 18 USC §1343, had Washington conducted investigation and paid attention with massive experience he had, at minimum would have found out that, since Mtaza was charged with wire fraud under §1343, and one of element of §1343 is that, the "wire communication cross state lines", and here the 5-sheets or indictment or criminal complaint had no such information. Attorney Washington was deficient for failure to investigate the 5-sheets. There was no indication that attorney Washington conducted either conducted an independent investigation of the facts or issues related to the case, on an independent review of how trial counsel's investigation and subsequent preparation compared to such an investigation.

To establish prejudice, Mtaza must show a reasonable probability that, "but for counsel's unprofessional conduct, the result of the proceeding would have been different." Strickland, 466 at 694. The United States District Court, Southern District of Texas, Houston Division, convicted Mtaza on counts (2-7) of wirefraud under §1343 that did not cross state lines, government made an assumption that the 5-sheets "were used in filing fraudulent tax returns". The Government has obviously failed to respond to claim that 5-sheets did not contained any SSNs and failed to show that 5-sheets were used to file fradulent tax returns. Thus, Washington's failure to investigate the 5-sheets prejudiced Mtaza.

With regard to Strickland's prejudice prong, the record contains ample evidence indicating that, but for counsel's ineffectiveness, there is a reasonable probability that Mtaza's Indictment would have beed dismissed. Both lower courts set aside this issue by failure to address the merits of the claim. Mtaza does not know why this claim was not addressed. When a court "gave no reason at all for it's decision" and "we do not know the basis for its action", it establishes that the court did not "provide [a] full consideration and resolution of the matter" Ander v. California, 386 U.S.

738 (1967). The records shows that the "court did not give full consideration to substantial evidence Petitioner put forth in support of the case." Miller-El v. Cockroll, 537 U.S. 322 (2003).

Petitioner Mtaza has attempted, at every stage, to raise the claim of the 5-sheets not containing SSNs and ineffective assistance of counsel in violation of the Sixth Amendment. This issue builds on the arguments presented supra. Mtaza notes that since he has never been afforded an opportunity for a hearing on this matter, and since a claim of the 5-sheets and ineffective assistance of counsel, involves an examination of these questions, a hearing is essential for a fair opportunity to be heard and to determine if infact the 5-sheets contained any SSNs. Reasonable jurists could debate the district court's failure to address the merits of the 5-sheets whether it contained any SSNs or no. When the government stated that these 5-sheets were used in filing fraudulent tax returns, and at the same time the actual 5-sheets of paper does not contain no SSNs, is debatable, and a COA should issue.

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II. Indictment was invalid and Counsel was ineffective to litigate this issue:

For how long this court is going to tolerate defendants be convicted based on invalid indictment, for the simple fact that the crimes alleged in the Indictment does not have the elements of the statute, and if left uncorrected, will deeply undermine confidence in the criminal justice system.

Mtaza was arrested without probable cause after passed the 5-sheets of paper that contained only names and birthdays. Agent Boyden admitted this in his own affidavit in support of criminal complaint, which stated that:

> "These five sheets of paper contained in excess of 210 names and birthdays." (Doc. 1, p.3 §9).

See Appendix [E]. But when he went to testify in front of the grand jury and the

court, he changed his own previous testimony in Doc.1 and stated that:

> "Mtaza brought Ms. Hatch five sheets of social security number and birthday of stolen IDs that were used for filing fraudulent tax returns." (Doc.19, p.3)

See Appendix[I]. Then these false statement was used to induce the grand jury to issue the indictment, and without this false statement, indictment would have never issued. The court then stated that:

> "Evidence presented at probable cause and detention hearing shows the grand jury has made a probable cause determination that Amon Rweyemamu Mtaza "Mtaza" committed the offenses described in the Indictment and testified to at the hearing."

See Appendix [I]. Even though the grand jury issued the Indictment but the Indictment was defective under the law terms. But Mtaza would argue that the Indictment is invalid because can not prosecute on its face.

In United States v. Hess, 124 U.S. 483, 487-88, the Court stated:

> The object of the indictment is, first, to furnish the accused with such a description of the charges against him as well as enable him to make his defense, and avail himself of his conviction or acquittal for protection against a further prosecution for same cause, and, second, to inform the court of the fact alleged, so that it may decide whether they are sufficient in law to support the conviction, if one should be held.
>
> For this facts are to be stated, not conclusion of law alone.
>
> Crime is made up of facts and intent, and these must be set forth in the indictment with reasonable particularity of time, place, and circumstances.
>
> The universal rule regarding the indictment, is, that all the material facts and circumstances embraced in the definition of the offense must be stated, or the indictment will be defective.
>
> No essential element of the crime can be omitted without destroying the whole pleading.
>
> The ommission cannot be supplied by intendment, or implication, and the charges must be directly and not inferentially or by way of recital.

First, Mtaza's indictment does not furnish Mtaza with such a description of the charges against him as could enable him to make his defense as suggested with Indictment definition, especially under §1343. A conviction under §1343 "requires that the wire communication crosses state lines." Smith v. Ayers, 845 F.2d 1360, 1366 (5th Cir. 1988).

Here, the Indictment fails to inform Mtaza of where the wire transmission originated, passed through, or was received, or from which it was orchestrated. "Venue is established in those locations where the wire transmission at issue originated, passed through, or was received, where each use of the wire constitutes an independent violation of law." United States v. H. Pace, 314 F.3d 344, n.23 (9th Cir. 2002). See Indictment in Appendix[K].

Here, again NOWHERE in counts (2-7) of wire fraud in the Indictment alleges from which location each wire transmission originated, where it passed through, or from which location it was received. Where a defendant has been indicted on multiple counts, venue must be proper for each count. United States v. Corona, 34 F.3d 876, 879 (9th Cir. 1994).

Mtaza argues that, when the law states that such indictment like Mtaza's own is defective, the meaning of defective is that, anything that is defective, there is a possibility that the defectiveness can be fix or repaired. But on Mtaza's Indictment, we cannot say it is defective for the simple fact the Indictment on its face cannot be fixed, only those indictment that can be fixed on its face should be called defective. But when Indictment alleges the crime and then, the crime alleged does not have an element of the statute, that means that defendant has been convicted on invalid indictment. Mtaza now states that he was convicted on invalid indictment, for the simple fact the proper conviction of wire fraud under §1343 "requires that the wire communication crosses state lines." Smith v. Ayers, 845 F.2d 1360, 1366 (5th Cir. 1983). There is no evidence in the entire record to suggest or show such information. Infact, the Government stated that the 5-sheets were used in filing fraudulent tax returns. So attention has been called to look on these 5-sheets and determine whether containing the SSNs or not. See Appendix [J]. Mtaza's so called Indictment does not furnish Mtaza with such information as required by statute. The only thing that the Government have used to convict Mtaza, it is just a

peice of paper which the Government presented to the court as an Indictment with Mtaza's name on it.

The Government has been working with an attorney to secure conviction by threatening defendants, regardless of how bogus is the indictment, and, as we all know that once you take a plea, and even if you can show that you are innocence, or if you can show that your waiver is unkowingly and unintelligently, still hard to prevail. There is nothing that you can do, especially if you are pro se. So to protect defendants on this issue, Supreme Court should agree that, if indictment alleges the crime and then the crime alleged does not have an element of statute and if the defendant can prove to the court that his/her indictment does not have those information, demonstrated supra, that should be considered that the defendant was convicted with an invalid indictment.

District court in its response stated that "A plea guilty admits all the elements of formal criminal charge and waives all non-jurisdictional defects in the proceedings leading to conviction." (Court Memorandum Opinion and Order, p.5). See Appendix [C]. But in Mtaza's so called Indictment the alleged crime does not have an element of the statute, so, district court's conclusion is debatable.

With regard to deficiency, Washington was deficient and unreasonable by failure to conduct an independent investigation of the facts in "5-sheets" and issues in-accordance with established precedent and pertinent performance standard required by law. There is no telling why an experienced attorney of over 30-years will just abondon his client and failed to even do a minimum investigation. Any reasonable attorney would have concluded that investigating the 5-sheets of paper with only names and birthdays was necessary, and the new findings essential. This defense counsel's failure to investigate further violated duty to make reasonable investigation or to make reasonable decision

that makes a particular investigation unnecessary. Strickland, 466 U.S. at 691.

Mtaza was prejudiced on all fronts, when the district court decided not to review and address the merits of the claim that 5-sheets of paper did not contained any SSNs, and 5-sheets were the core of the entire case. Mtaza was not afforded one full, fair opportunity to have his claim heard, as suggested by the Supreme Court.

Under these circumstances, Mtaza has found himself in exact same position he was before the Supreme Court's decision, he has not, and he will not ever been given one full, fair opportunity for his claim to be heard. The fact that the district court failed to review all the claims and rejected the merits of the claims, does not under these circumstances, stand for the proposition that he received what he was entitled to under Supreme Court's decision. His expection that the court would undertake a rigorious review of evidence presented in a combination of documentary support in his pleadings. The Court missed the value of the 5-sheets, these 5-sheets of paper could turn the case. And that means the results would have been differnt. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. Deficient and Prejudice is debatable under these circumstances.

III. Whether evidentiary hearing is necessary when this court find that the 5-sheets of paper only contained only names and birthdays which was a public information, and Mtaza was convicted with invalid Indictment, and also attorney was ineffective for advising Mtaza to plea guilty when attorney did not investigate the case.

Mtaza contends that because of the nature of his claim in the present motion he should be granted an evidentiary hearing to further prove his claims. Section § 2255 provides that a petitioner is entitled to an evidentiary hearing on his motion unless the motion, files, and records of the case conclusively show that the prisoner is entitled to no relief. Rule 4(b) of the rules governing Section § 2255 proceedings in the United States District Court provides that a hearing need not be held if it plainly appears from the face of the motion that Mtaza is entitled to no relief. " thus, a petition can be dismissed without a hearing if the petitioner's allegations, accepted as true, would not entitled the petitioner to relief, or if the allegations cannot be accepted as true because they are contradicted by the record, inherently incredible, or conclusion, rather than statements of fact." Dzivrot v. Luthor, 897 F.2d 1527, 1529 (5th Cir. 1988).

In the present case, if the court takes Mtaza's claims as true, as it must for the determination, it is apparent that Mtaza has stated claims for which relief would be granted. Further. Mtaza has shown, through statutes and case law, that there is merit to all of his contentions, especially, Mtaza pointing out to this court to consider and review at least the claim of the 5-sheets of paper, if these 5-sheets of paper that are the core of the entire case do not contain NO SSN's, this court should grant evidentiary hearing so that Mtaza can be given a full opportunity to be heard and perfect the record, and show that he is in fact innocent. Second issue that Mtaza pointing out and request an attention from this court, is the Indictment issue. Mtaza's Indictment is actually invalid on it face, under § 1343 wire fraud, Mtaza's so called Indictment does not furnish him with the information that counts 2-7 of wire fraud " wire communication did cross state line" Smith v. Ayres, 845 F.2d 1360,1366 (5th Cir.1983) and second " each use of the

wire constitutes an idependent violation of law." United States v. H.Pace, 314 F.3d 344, n.23 (9th Cir. 2002), third, when defendant has been indicted on multiple counts, venue must be proper for each count. United States v. Corona, 34 F.3d 876, 879 (9th Cir. 1994). Please see Mtaza so called Indictment Appendex [ k ]

Mtaza has find another way to convice this court to look at this issue of Indictment by obtaining an Indictment from an Inmate who was convicted on wire fraud case same as Mtaza. Mtaza now is using his Indictment as an evidence that, this court can make a comparison and understand his argument, and see why Mtaza is calling his Indictment invalid. Mtaza has been seeking for justice and an opportunity to show that he is infact innocent in all charges, and this court, it is his last hope, it never to late for justice. Please see the Indictment for the inmate that showing the"wire communication crossed state line", " each use of the wire constitutes an indepent violation of law" and " venue for each count" Appendex [ AA ].

Under these circumstances the attorney was ineffective for advising Mtaza to plea guilty without first investigate the case, and evidentiary hearing is necessary when this court find out that the five sheets contained only names and birthdays, and the district court did not make this conlusion, and the 5-sheets does not support it, reasonable jurists could debate that the conclusion of the district court , when district court did not address the merit surrounding the five-sheets.

Therefore to ensure that the fundamental tenants of due process are comported within this case, and evidentiary hearing should be held to determine the facts surrounding the issue raised by Mtaza.

Conclusion.

For the foregoing reasond, Mtaza prays that this court grant a writ of Certiorari and Certificate of Appealability.

Respectfully Submitted.

Date: 02/02/2020

/s/ _____

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IN THE SUPREME COURT OF THE UNITED STATSES

AMON RWEYEMAMU MTAZA

Petitioner

v

UNITED STATES OF AMERICA

Respondant.

CERTIFICATE OF GOOD FAITH

On February 02,2020, I Amon rweyemamu Mtaza, Filed a petition for a writ of certiorari [ petition for rehearing] seeking Certificate of Appelability on issues presented in petition for rehearing under Supreme Court Rule Sup. Ct. R. 44.2

I Amon Rweyemamu Mtaza, Certify that this petition for rehearing is presented in good faith, and not in any other negative reasons.

Date: 02/02/2020

/s/ Amon Rweyemamu Mtaza

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