No. 19-6799

IN THE

SUPREME COURT OF THE UNITED STATES

Aamir A. Hafiz Thompson — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court Western District of Missouri
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Aamir A. Hafiz Thompson
(Your Name)

Forrest City Correctional Complex P.O Box 3000
(Address)

Forrest City Arkansas 72336
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Nationally, where counsel admittingly is inaccurate, misinforms and fails to make specific inquiry regarding Petitioner's prior predicates (ACCA) does the lower courts findings that "guessing suffice for effect assistance of counsel" conflict with Supreme Court precedent.

2. Should the "original files of the District Court suffice or warrant Appellate Court silence, in denying Certificate of Appealability, where Petitioner identifies non existing precedent District Court used in reaching findings.

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:

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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 _____ to the petition and is

[ ] reported at _____; 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[X] is unpublished.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

[X] reported at 2019 U.S. Dist. Lexis 29872; 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[ ] is unpublished.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[ ] is unpublished.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 July 15, 2019.

[ ] 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: September 18, 2019, 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. § 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).

STATEMENT OF THE CASE

1.) On July 24, 2015, the Petitioner Aamir Anwar Hafiz Thompson was arrested in the Western District of Missouri for "carrying a Concealed Weapon." See Indictment.

2.) On or about August 25, 2015, Federal Proceedings originated with the Government's Indictment, charging the Petitioner with Count One (1) "Felon in Possession of a Firearm," (18 U.S.C. 922(g) citing the statutory penalty (18 U.S.C. 924(a)(2)) and attaching "or" followed by the statutory enhancement 18 U.S.C. 924(e)(1)). See Indictment.

3.) The Government's Indictment also included a Count Two (2) "Possession of a Stolen Firearm" (18 U.S.C. 924(j) and the statutory penalty 18 U.S.C. 924(a)(2). See Indictment

4.) Counsel Willis Lee Toney, being defense counsel, originally informed the Petitioner that because he had two prior convictions that counted or qualified under the Armed Career Criminal Act (ACCA) as four prior predicates, his other convictions were irrelevant. See Petitioner Affidavit (Pet. Aff.) Pg. 2 Paragraph (Para) 9-10

5.) Counsel Toney convinced the Petitioner that "by entering a plea agreement with the Government (which involved a 10 year statutory maximum sentence) admitting guilt to Count Two (2) of the Indictment (Possessing a Stolen Firearm) he would avoid the ACCA enhancement, which carries the statutory penalty of 15 years to life. See Pet. Aff. Para.9.

6.) So on May 26, 2016, based on counsel Toney's advice the Petitioner entered a plea agreement, agreeing "that no one will seek or make any efforts or allow anyone to seek or make any efforts for any sentence to be imposed upon the defendant other than a sentence of ten (10) years imprisonment." See Rearraignment Hearing.(Re-argn. Hrg.)

7.) Though on November 21, 2016, the Honoable Dean W. Whipple, notably, in imposing a sentence of 120 months, the Court sought to cover his backside by substantiating reasons for imposing a statutory maximum sentence, outside the Petitioner's guideline range and by other than the Government's plea agreement. See Sentencing Transcript (Sent Trans) Pg. 14-15.

8.) However, while serving his prison sentence the Petitioner acquired more information regarding his status and ascertained that at the time he entered into the Government's plea agreement, he had been misinformed by counsel Toney. See Pet. Aff. Para. 9.

9.) On March 27, 2017, realizing that his legal circumstances were other than what he was told by counsel, the Petitioner filed in the District Court for which he had been sentenced a Motion to Vacate, Set Aside or to Correct sentence. See 28 U.S.C. 2255 Motion

10.) Actually asserting that the Government inappropriately used the threat of an ACCA enhancement to gain his willingnes to enter a plea of guilt to a statutory maximum sentence and that such had been accomplished by and through the assurances he received from counsel Toney. 2255 Motion (entirety)

11.) On January 31, 2019, a Motion Hearing was held in the District Court, counsel Alex Scott McCauley was assigned to represent the Petitioner during the hearing. See Motion Hearing (Mot. hrg.)

12.) Notable is that counsel Toney openly admitted that the assurances he gave to the Petitioner that "he would qualify as an ACCA candidate" if he did not enter the Government's plea agreement," as based on discussions he had with people from probation and pretrial services officers. See Mot. hearing. Pg. 8

13.) Also distinguishable and relevant is that during the Mot. Hrg. McCauley and Toney both erroneously agree the United States v. Sykes, 844 F.3d 712, 712, was decided at the time the Petitioner was considering entering the plea agreement of question. See Mot. Hrg. Pg. 12

14.) Though more importantly, is the fact that the Honorable Stephen R. Bough, in denying relief, relied on Sykes, in determining that "at the time the Petitioner was considering entering the Government's plea agreement, he qualified as an ACCA candidate." Eventhough, Sykes, was not filed by the Eighth Circuit Court of Appeals until December 21, 2016, a month after the Petitioner had been sentenced. See United States v. Sykes, 844 F.3d 712, 712. (Submitted September 15,, filed December 21, 2016.)

15.) also notable is that although counsel admittingly foreclosed further consideration on prior convictions he found to be irrelevant, judge Bough still accepted as significant, contrary statement of counsel Toney; "that he errored on the side of caution," with regards to the use of the offenses he found to be unneccesary to qualify the Petitioner as an ACCA offender. See Motion Hrg. pg. 10-12

16.) In seeking issuance of a Certificate of Appealability in the United States Eighth Circuit Court of Appeals, by pointing to the fact that he had been coerced and misinformed regarding his legal circumstances while in the District Court the Petitioner also asserted that the District Court erroneously used Circuit precedent (that had not been filed at time he entered plea agreement) to substantiate allegations that Petitioner's status was in fact ACCA offender. See Motion for Certificate of Appealability.

17.) On July 15, 2019, in denying issuance of Certificate of Appealability, the Appellate Court Panel, made no reference to it's precedent as it existed at time the Petitioner entered plea agreement. See. Appendix-A

18.) On September 18, 2019, Rehearing and Hearing En banc was denied and it can be inferred that the Panel turned a blind eye to the facts that supported the Petitioner's claims. See Appendix-B

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment of the United States Constitution.

28 U.S.C.2255-provisions to vacate, set aside or to correct.

28 U.S.C. 2253-provisions to for issuing Certificate of Appealability.

18 U.S.C. 922(g)-provisions (felon in possession of firearm)

18 U.S.C. 924(a)(2)-provision (penalty for unlawful possess of firearm)

18 U.S.C. 924(e)(1)- provision (Armed Career Criminal Act).

18 U.S.C. 922(j) -provision (possession of stolen firearm)

SUMMARY

The United States (U.S.) Supreme Court has long agreed with the statistic that "ninety-seven percent of federal convictions and ninety four percent of state convictions are the result of guilty pleas. See Dept. of Justice, Bureau of justice Statistics, Sourcebook of criminal justice Statistic Online, table 5.22.2009, http;//www. albany.edu/sourcebook/pdf/t5222009, pdf. The reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process responsibilities, that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages. Because ours is for the most part a system of pleas, not a sytem of trials, see Lafler v. Cooper, 182 L.ed. 2d 398, it is in sufficient simply to point to the guarantee of a fair trial as a backstop that inoculates any errors in the pretrial process. "To a large extent... horse trading [between prosecutor and defense counsel] determines who goes to jail and for how long. That is what plea bargaining is. It is not some adjunct to the criminal justice system; it is the criminal justice system. Scott & Stuntz, Plea Bargaining as Contract, 101 Yale L.J. 1909, 1912 (1992) See also Barkow, Seperation of Powers and the Criminal Law, 58 Stan L. Rev. 989, 1034 (2006). In today's criminal justice system, therefore, the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant. So under the proper interpretation of Strickland v. Washington, 466 U.S. 668 (1984) "when a Court is evaluating an inef-

fective assistance claim," the ultimate inquiry must concentrate on the fundamental fairness of the proceeding." See Gonzalez-Lopez, 548 U.S. 140 (2006) Consideration should be given to the concerns of the process that involves a formal court appearance with the defendant and all counsel present. Paying close attention to the fact that before a guilty plea is entered the defendant's understanding of the plea and it's consequences can be established on the record. This affords the State or the Government substantial protection against later claims that the plea was the result of inadequate advice. Because at the plea entry pro ceeding the trial court and all counsel have the opportunity to establish on the record that the defendant understands the process that led to any offer, the advantages and diadvantages of accepting it, and the sentencing consequences or possibilities that will ensue once a conviction is entered based upon the plea. See, e.g. Fed. Rule Crim. Proc. 11. The District Court record should not be void of the judge accepting the defendant's plea of guilty establishing that the Petitioner did in fact qualify as an ACCA offender and that it was to the Petitioner's advantage to enter the Government's plea offer. Of course the responsibility was counsel's to insure, the error still lays within the framework of the proceedings and with regards to it's wrongful deprivations it has been found by the U.S. Supreme Court that "courts may not even ask whether the error harmed the defendant. Gonzalez-Lopez, see id. at 150. Yet it suffice to say that the Petitioner was not an ACCA offender at the time he entered into a plea agreement with the Government and the Lower Courts have carved a way around this very fact. The entry pro ceedings are void of an analysis of the Government's plea offer because of this the ruling by the Low Court is substantiated by counsel's specu-

lations and erroneous use of the law. Reasonable jurist would find the Court's ruling to be wrong. Transparency is hitched to forethought not hindsight.

REASONS FOR GRANTING THE PETITION

Because counsel failed to commit himself to basic research on a point of law, resulting in negligent misinformation, District court remedy in hindsight conflicts with the concept that "defendant has a right to competent counsel, particularly, where the original proceedings lacked transparency and finding is based on inaccurate reference to case law.

With respect to the right to effective counsel in a plea negotiation, a proper beginning point is to discuss two cases from the U.S. Supreme Court considering the role of counsel in advising a client about a plea offer and ensuing guilty plea: Hill v. Lockhart, 474 U.S. 52 (1985); and Padilla v. Kentucky, 559 U.S.___, (2010). Hill, established that claims of ineffective assistance of counsel in the plea bargain context are governed by the two-part test set forth in Strickland v. Washington, 466 U.S.668 (1984). In Hill, the decision turned on the second part of the Strickland test. The defendant claimed his counsel had misinformed him of the amount of time he would have to serve before he became eligible for parole. The Court there determined that the defendant had not alleged that, even if adequate advice and assistance had been given, he would have elected to plead not guilty and proceed to trial. Thus the Court found that no prejudice from the inadequate advice had been shown or allged. Hill, supra at 60. In Padilla, the Court rejected the argument made by Respondent that a knowing and voluntary plea supersedes errors by counsel. The case pertains to counsel misinforming defendant regarding immigration consequences of

the conviction. Yet as the Petitioner in the instant case asserted that officers of the court were deceptive and coerced him into entering the plea agreement, analysis of those circumstances should have been based on the Supreme Courts instuctions in Missouri v. Frye, 566 U.S. 134. Pointing to the fact that the Government and trial court itself, have had a substantial opportunity to guard against the contingency that counsel was ineffective. The record can be established at the plea entry proceedings to reflect that; (1) the defendant understands the process that led to any offer; (2) the advantages and disadvantages of accepting it, and (3) sentencing consequences or possibilities that will ensue once a conviction is entered. So, the judge in the instant case accepting the Petitioner's guilty plea was very much aware that the Government's allegations involved an increase of the statutory penalty. Those circumstances warranted the Court to determine whether or not the defendant had been given proper advice or if the advice received appears to have been inadequate before the plea is accepted and the conviction entered. The District Court record is void of judge accepting the plea, examining or making record that the Petitioner could actually qualify as an ACCA offender and that by entering the Government's agreement he avoided such. Id., at 389. Thus granting transparency in the record which prevents the ensuing ballyhoo at the Evidentiary Hearing. The District Court in using hindsight got it wrong and miappropriated case law lacking reference to the record of the court on the subject of whether "at the time the Petitioner entered the Government's plea agreement he was an ACCA offender."

Strickland v. Washington, 466 U.S. 668 (1984) recognized that the Sixth Amendment's guarantee that "In all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defence" entails that defendants are entitled to be represented by an attorney who meets at least a minimal standard of competence. Id,,685-687. Under Strickland, we first determine whether counsel's representation 'fell below an objective standard of reasonableness.' Then we ask whether 'there is a reasonable probability that, but for counsel's unprofessional errors the result of the proceeding would have been different.' Padilla v. Kentucky, 559 U.S. 356, 366 (2010). Also see Hinton v. Alabama, 571 U.S. 263 (2014) That right applies to "all critical stages of the criminal proceedings." Montejo v. Louisiana, 556 U.S. 7-78, 786. (2009). Critical stages include arraignments, postindictment interrogations, postindictment lineups, and the entry of a guilty plea. See Hamilton v. Alabama, 368 U.S. 52 (1961). (arraignment); Massiah v. United States, 377 U.S. 201 (1964) (postindictment interrogation); Wade, supra (postindictment lineup); Argersinger v. Hamlin, 407 U.S. 25 (1972) (guilty plea). In Gideon v. Wainwright, 372 U.S. 335 (1993) the U.S. Supreme Court upon the relevance of having effective assistance of counsel, explained that; "the right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or othwise in-

admissible. He lacks both the skill and knowledge adequately to prepare his defense, eventhough he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.' Id., at 344-345 (quoting Powell v. Alabama, 287 U.S. 45 (1932)). In the instant case the Government asserted by indictment that the Petitioner may be subject to an ACCA enhancement, The Petitioner relied on counsel to properly inform him regarding the Government's allegations, as he had no knowledge (at that time) how such would be substantiated by law. He depended on counsel's truthfulness when giving consideration to the Governments offer. The problem with that is counsel's advice on the subject excluded mere questioning the Petitioner regarding what took place at time of previous arrest on the first offense he believed to count as two ACCA prior predicates. Something the normal person would do if seeking the truth or when uncertain about a persons arrest or charges, who better to question on the subject than the defendant? However, it can be inferred that counsel had an ulterior motive to coerce the plea, rather than substantiate it. Nothing is sensible about his determinations and lackadaisical efort, what he posits is contradictory, particularly, at Evidentiary Hearing where he openly admitted to committing three errors, exemplifying quintessential unreasonable preformance. See William v. Taylor, 529 U.S. 362 ("finding an attorneys ignorance of a point of law that is fundamental to his case combined with his failure to preform basic research ... unreasonable performance under Strickland.") Also see Kimmelman v. Morrison, 477 U.S. 365, 385 (1986) (Finding deficient per-

formance where counsel failed to conduct pretrial discovery and that failure was not based on 'strategy' but on counsel's mistaken belie[f] that the state was obliged to take initiative and turn over all of it's inculpatory evidence to the defence.). Petitioner's counsel of this case admittingly did no more than question probation and pretrial officer regarding the Petitioner's status. Regardless of his claim that law pertaining to whether or not Missouri Second Degree Burglary, "was in a flux, and so he errored on the side of caution," his actions are still based on speculation that caused him to foreclose consideration on the matter. Each offense that he counted as being two ACCA predicates, were in fact to be counted as one and you can not ignore the fact that he found the Petitioner's other prior offenses to be irrelevant, meaning that disregarding what he said at Motion Hearing, at the time he was speaking to the Petitioner about entering the Government's agreement, he was erroneously telling him that he Qualified as an ACCA offender. The Petitioner was not told that his Second Degree Burglary offense qualified him as an ACCA offender until the District Court filed his erroneous ruling following Evidentiary Hearing. If counsel is held to account for the advice that he gave the Petitioner, it is indisputable that he was ineffective counsel. Particularly, for all appearances it can be inferred that it was his intent to misinform. He made no attempt to cause himself to be informed on the point of law of issue. Nothing in the Court's record shows competent decision making on his part. He show no regard for accuracy on the matter, clearly stating that he never elaborated or investigated the two offenses that he found to be irrelevant. The District Court used the mentioning of the Second Degree Burglary offense as a cloak to shield counsel from the bare facts

determining the Petitioner to be an ACCA offender at the time he enters the plea wipes away all allegations of corruption but whether or not devine intervention is at hand the truth is ever wavering and the wrong is shown to be corrected by wrong. The ruling made by the District Court and adopted by the Eighth Circuit Court Of Appeals is flawed, it is based on the Court's mistakened belief that at the time the Petitioner entered the Government's plea agreement, the Circuit's precedent supported the finding that Missouri Second Degree Burglary offense qualified as an ACCA offense, which is an untruth. Though there was a momentary buzz on the matter to that effect, that plane had not landed at the time of the Petitioner's conviction. It occurred some months later on in the aftermath of the District Court proceedings involving the ill advice that leads us to this honorable Court's doorstep. United States v. Sykes, 844 F.3d 712, 712 (filed December 21, 2016), is the case that the Court hung it's hat on but the Petitioner pled guilty on May 26, 2016, and the United States Eighth Circuit Court of Appeals turned a blind eye to this very fact. It takes the cake that such a finding was reached and adopted, though the Appellate Court gave no inpu on the matter, it's judgment speaks alot, that matter was swept under the rug and the concept of fundamental fairness with it. The door that the District Court opened leads way to truancy for a defense counsel and a Government Attorney to act in union to bring about a certain end for a defendant. Deception is at hand in the instant case. Wrongful persuasion hits closer to home. The Supreme Court has long recognized the involuntary nature of a guilty plea obtained by subjecting a criminal defendant to some form of coercion, frequently, expressing this recognition bya holding that; "a guilty plea obtained in such a manner is in-

valid as violating the defendant's constitutional rights. Kercheval v. United States, 274 U.S.220 (1927) also see Marchibroda v. United States, 368 U.S. 487 (1962) (finding that a guilty plea, if induced by promises or threats which deprive it of the character of a voluntary act, is void."); see also Milani v. Illinois, 386 U.S. 12 (1967) ("reversed the judgment of the Supreme Court of Illinois, that rejected the defendant's contention, inter alia, that he had been deprived of due process because his plea agreement was coerced by his own counsels acting in collusion with the prosecuting attorney.) Sounds familiar, yes, this was the claim that the Petitioner originally submitted under 28 U.S.C. 2255, the evidence in the record of the court supported the claim, counsel stuck his foot in his mouth and to avoid getting tagged with his corruption, he changed what he had previously found to be irrelevant and then asserted that he errored on the side of caution. This still infringed the Petitioner's constitutional rights, counsel is----telling someone something that admittingly he had not a clue as to it's relevance, his advice does not even include the aspect of "knowingly," the information is still false, see Waley v. Johnston, 316 U.S. 101 (1942) the Petitioner is induced by it and the guilty plea should be void because that advice deprived it of the character of a voluntary act. It is very doubtful that the Petitioner would have plead guilty to the statutory maximum of a ten (10) year sentence had he known that counsel was wrong and under a mere assumption regarding the relevance of his status. Meaningful, is that the Petitioner never had a crack at the entire truth regarding his legal circumstances, regardless of which side of the road counsel chose to veer

on he was in cahoots with the government and it's a malady that his deception was categorized----as mistaken belie[f], examining his affairs in the science of law, particularly, his experience in plea negotiations more than hints at "disregard" and "delinquency." Counsel Willis Toney knows his trade and he knew what was involved in the point of law that was of issue, definately is astute in research of law and very capable of interrogating a client on the subject of his arrest. He found these things to be unnecessary because his intent was to extract a ten (10) year sentence and he should not be afforded the claim that "he errored on the side of caution." He had no substantiated theory or case law to support his assertion that "he believed that Missouri Second Degree Burglary may have qualified under the ACCA enhancement." Particularly, in the relvant period of the Petitioner's prosecution. So looking at the fact that eventhough, the Petitioner had no viable defense or likelihood of success at a trial, the Government's offer was not a better resolution and being afforded the truth regarding his legal circumstances, he would have rejected the Government's offer. The U.S. Supreme Court has recognized that "there is more to consider than the likelihood of success at a trial. The decision whether to plead guilty also involves assessing the respective consequences of a conviction after trial and by plea. See INS v. St. Cyr., 533 U.S. 289 (2001) Whether or not the Petitioner would have went to trial is not the determinative issue, particularly, where those circumstances end with the same result of the statutory ten (10) year maximum sentence, which is only what the Government offered, the analysis should be based on the consideration as to whether the Petitioner would have accepted the plea offer "but for counsel's errors." The Petitioner's legal circumstances differs from what the--normal individual finds in a plea offer, there was no benefit absent -------a false promise

that it would save him from the ACCA enhancement. The Government's blanket of thorns it has wrapped him in.

SHOULD THE "ORIGINAL FILES OF THE DISTRICT COURT SUFFICE OR WARRANT APPELLATE COURT SILENCE" IN DENYING CERTIFICATE OF APPEALABILITY WHERE PETITIONER IDENTIFIES NON EXISTING PRECEDENT THE DISTRICT COURT USED IN REACHING FINDINGS.

Unless a Circuit Justice or judge issues a certificate of Appealabilit an appeal may not be taken to the Court of appeals. See 28 U.S.C. 22-53(c)(1)(A). A District Court also possesses the authority to issue a certificate of appealability under 28 U.S.C. 2253(c) and Fed. R. App. 22(b). See Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997). Under 28 U.S.C. 2253(c)(2), a certificate of appealability may issue only if a movant has made a substantial showing of the denial of a constitutional right. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003) Garrett v. United States, 211 F.3d 1075, 1076-77 (8th Cir. 2000) To make such a showing, the issue must be debatable among reasonable jurist a court could resolve the issues differently, or the issues deserve further proceedings. Miller-El, 537 U.S. at 335-36. Courts reject constitutional claims on the merit or on procedural grounds. "[W]here a District Court has rejected the constitutional claims on the merits, the showing required to satisfy [28 U.S.C.] 2253(c) is straight forward; the [movant] must demonstrate reasonable jurist would find the District Court's assessment of the Constitutional claims debatable or wrong." Miller-El, 537 U.S. 338 (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). In the instant case the Constitutional claim was decided on the merits. The District Court was wrong (hands down) following the claim raised by the Petitioner that he had been coerced by counsel's delibe-

rate acts of deceit. See Smith v. O'Grady, 312 U.S. 329 (1941). It would seem that counsel; (1) admitting that he actually misinformed the Petitioner that he was an ACCA candidate predicated on two convictions that he counted as four; and (2) that because he found the other prior convictions erroneously irrelevant, the second prong of Strickland, is met. Right then and there the Petitioner makes his case. particularly, where the letter the Petitioner received from counsel Toney, after his sentencing and during his appeal, supporting the fact that long after the Petitioner had entered the guilty plea, counsel Toney was still telling him "the two offenses counted as four and that Missouri Second Degree Burglary, was one of the offenses, he found to be irrelevant. His asserted revelation to "error on the side of caution," would have come long after the proceedings had in tne District Court, if such could be found to be true. Relevant to the Petitioner's claim, is the information that he received from counsel, not counsel's asserted speculations, the advice was wrong, the District Court's inquiry into whether or not the Petitioner qualified as an ACCA offender, fails to address the fact that counsel consistently misinformed the Petitioner, the record shows that he never gave consideration to the relevancy of the burglary offense. The Court's determination on the matter in hindsight, overlooks, the fact that the guilty plea is invalid, "when the defendant is deceived, misled or tricked. See Marvel v. United States, 380 U.S. 262 (1965). Though in the instant case it can be inferred that the harm is counsel's delinquency, it's the advice that came with it that deprives the Petitioner the opportunity to ascertain the truth regarding his status while facing Government alle-

gations. Honesty prevents "what he was told to be irrelevant," from later surprisingly, being found to be the deciding factor. Unquestionably, there was contention "at the time Petitioner entered plea agreement" that warranted opposition to any claim that Missouri Second Degree Burglary qualified as an ACCA crime of violence. Particularly, the U.S. Supreme Court's ruling in Mathis v. United States 579 U.S. ___, 136 S.Ct. ___ (Argued April 26, 2016, Decided June 23, 2016), settling conflict amongst the Ciruit Courts, determining "when a statute is divisible under the ACCA." Some Circuits including the Eighth Circuit, held; "a statute is divisible when it sets out alternative ways to commit the crime "and it does not matter whether they are alternative means or elements." See United States v. Olsson, 742 F.3d 855. Other Circuits determined a statute is divisible "only when it list alternative elements defining seperate crimes." Mathis, 136 S.Ct. at 2253. also see Henderson v. United States, 207 F.Supp. 3d 1047 (W.D. Mo. Sept. 16, 2016)¦ United States v. Rockwell, F.supp. 3d 915 (W.D. Sept. 14,2016)¦ Johnson v. United States, 2016 U.S. Dist. LEXIS 152342 (W.D. Ark. Nov. 3, 2016)¦ and United States v. Bess, 2016 U.S. Dist. LEXIS 151788 (E.D. Mo. Nov. 2, 2016) ("Eighth Circuit stated that Missouri Second Degree Burglary Statute covers a broader range of conduct than generic burglary, and therefore a conviction under the statute cannot qualify as a predicate violent felony under the categorical approach for ACCA sentencing.") The Eighth Circuit remanded Bess, to the District Court to determine in the first instance whether a Missouri Second Degree Burglary conviction may qualfy as a predicate offense under the Modified Categorical Approach. The honorable E. Richard Webber, examined the statute and concluded that it includes alternative

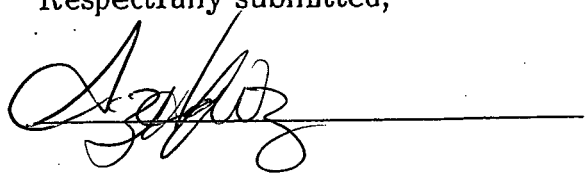
means, not elements and therefore is divisible. United States v. Bess 2016 U.S. Dist. LEXIS 151788 (E.D. Mo. 2016). It can be inferred that counsel found Eighth Circuit and U.S. Supreme Court precedent to be irrelevant, if you can ever at any time credit counsel with looking in those directions, at the time the Petitioner entered a plea agreement. It was advantageous to the Petitioner to maintain an argument based on those Court rulings, that's the ship that counsel must catch if he is to be lawfully found effective counsel, it was a crucial argument that should have originated in the District Court and it shows at the end run, that substantiating whether ---------- Missouri Second Degree Burglary qualified as an ACCA offense was not a matter for counsel to brush aside. It was adversarial and counsel rolled over on his belly in submission to the United States Government. Powerful People, but the United States Supreme Court is of a match and very much needs to instruct the District Court and that of the Appellate Court, That "it was wrong to use United States v. Sykes, 844 F.3d 712, 712," as the healing balm, for counsel's transgressions, it's ruling had not reached the landscape at the time of the Petitioner's guilty plea and sentencing. It was not Circuit Court Precedent at that time, not unless it-- was a misprint in the Federal Reporters and U.S. Supreme Court Reporter. The District Court was absolutely wrong, as was the Appellate Court in adopting it's ruling based on "the original files of the District Court," which did not extend to the happening in the text of caselaw.. The Petitioner was denied the right to effective assistance of counsel, his legal circumstances remain debatable particularly on misapplication of Circuit Court precedent and how the Disrict Court

reached it's decision under the Strickland, rule. He has demonstarated that "reasonable jurist would find the District court's assessment of the constitutional claims debatable or wrong. Miller-El, 537 U.S. at 338 (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000), the Court could decide the issue differently and the questions deserve further proceedings. Certificate of Appealability should have issued. See 28 U.S.C. 2253(c)(1)(B)

CONCLUSION

Because counsel failed to commit to basic research, resulting in misinformation and District finding is of inaccurate reference to law. The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 10/24/19