

19-6871

No. 15-CR-156-FPG;

APP. No.: 17-1660

ORIGINAL

Supreme Court, U.S.
FILED

OCT 31 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JUSTIN VAZQUEZ — PETITIONER
(Your Name)

vs.

USA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS (2D CIR.)

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JUSTIN VAZQUEZ, REG.#24119-055
(Your Name)

FCC COLEMAN-USP#1, POB 1033
(Address)

COLEMAN, FL 33521-1033
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1) WHETHER ASSIGNED COUNSEL(S) WERE, AT ANY POINT FROM INCEPTION-CONCLUSION OF CASE-IN-CHIEF, INEFFECTIVE OF ASSISTANCE IN VIOLATION OF 6TH AMENDMENT (U.S. CONST.)?
- 2) WHETHER ASSIGNED COUNSEL (M. KIRK OKAY) VIOLATED CODE OF ETHICS AND PROFESSIONAL CONDUCT — THUS, CREATING A CONFLICT OF INTEREST — WHEN HE BEFRIENDED COMPLAINANT (IN INSTANT CASE) AND MET AND SPOKE WITH HER OUTSIDE OF COURT, ALLOWING SUCH TO AFFECT HIS PERFORMANCE IN THIS CASE REPRESENTING DEFENDANT, IN FURTHER VIOLATION OF 6TH AMENDMENT?
- 3) WHETHER M. KIRK OKAY, DEFENSE COUNSEL, WAS INEFFECTIVE OF ASSISTANCE AT ANY OR EVERY PART OF TRIAL, AND ON APPEAL TO U.S.C.A., IN VIOLATION OF 6TH AMENDMENT?
- 4) WHETHER M. KIRK OKAY'S FAILURE TO COMMUNICATE AND ADVISE DEFENDANT, ESPECIALLY WHEN U.S.C.A. ISSUED IT'S OPINION ON DEFENDANT'S APPEAL 6-MONTHS AGO AND HE FAILED TO NOTIFY HIM OR SUPPLY HIM WITH DOCUMENTS, CONSTITUTES INEFFECTIVE OF ASSISTANCE?
- 5) WHETHER GOVERNMENT PROVED BEYOND A REASONABLE DOUBT THE "KNOWING" STATUS, POSSESSION, JURISDICTION, FIREARM ELEMENTS OF 922-G-1, IN LIGHT OF THIS COURT'S (SCOTUS) DECISION AND OPINION IN, REHAIF V. U.S., 139 S. CT. 2191? (2019)
- 6) WHETHER SENTENCING COURT GAVE IMPROPER JURY INSTRUCTIONS?
- 7) WHETHER SENTENCING COURT'S RULING WAS IMPROPER TO ALLOW COMPLAINANT TO INVOKES 5TH AMEND. PRIVILEGE (AGAINST SELF-INCRIMINATION) AND REFUSE TO TESTIFY, AND SUBSEQUENTLY, DECLARE AND ISSUE AN UNAVAILABLE WITNESS CHARGE, IN VIOLATION OF DUE PROCESS AND CONFRONTATION CLAUSES (6TH AND 5TH/14TH AMENDMENTS.)?
- 8) WHETHER SENTENCING COURT'S RULING TO ADMIT INTO TRIAL THE 911-CALL OF COMPLAINANT AS ADMISSIBLE HEARSAY, AS A PRESENT-SENSE/EXCITED UTTERANCE EXCEPTION, WAS IMPROPER AND IN VIOLATION OF DUE PROCESS AND CONFRONTATION CLAUSES — WHICH WAS THE ONLY INCULPATORY "EVIDENCE" OFFERED BY GOVERNMENT?
- 9) WHETHER SENTENCING COURT'S RULING NOT TO ADMIT INTO TRIAL A RECORDED CALL MADE BY COMPLAINANT TO U.S. ATTORNEY'S OFFICE RECANTING (AS FALSE) HER STATEMENTS AND ALLEGATIONS OF THE 911-CALL, WAS IMPROPER AND VIOLATION OF DUE PROCESS/CONFRONTATION CLAUSES, AND INTERESTS OF JUSTICE — AS IT WAS EXCULPATORY EVIDENCE, ALBEIT HERESAY?

QUESTION(S) PRESENTED

- 10) WHETHER SENTENCING COURT WAS IMPROPER IN IT'S QUESTIONING THE JURY DURING VOIR DIRE WHEN IT COMES TO CRIMES/OFFENSES, AND THUS, POSITIONING THE JURORS TO DECIDE FOR THEMSELVES IF THEY COULD MAKE A FAIR AND UNBIASED JUDGMENT?
- 11) WHETHER SENTENCING COURT ^{IMPROPERLY} LEAD-SWAYED THE JURY OR WITNESSES?
- 12) WHETHER SENTENCING COURT IMPROPERLY FAILED TO CONDUCT HEARINGS (E.G. EVIDENTIARY, SUPPRESSION, ETC.) BEFORE OR DURING TRIAL, OR OUTSIDE THE PRESENCE OF THE JURY?
- 13) WHETHER SENTENCING COURT OR GOVERNMENT WAS IMPROPER WHEN IT DECIDED NOT TO GRANT IMMUNITY TO COMPLAINANT AND HAVE HER TESTIFY REGARDING THE 911-CALL AND SUBSEQUENT RECANITATION CALL?
- 14) WHETHER SENTENCING COURT WAS IMPROPER OR FAILED TO CONDUCT A DNA EVIDENTIARY HEARING (OUTSIDE PRESENCE OF JURY AND BEFORE ADMITTING TO JURY DNA EVIDENCE FOR DISPUTE), DESPITE GOVERNMENT ~~EXPERT~~ WITNESS' TESTIMONY THAT DNA ANALYSIS CANNOT PROVE HOW A DEFENDANT'S DNA GETS ON AN ITEM — SO AS NOT TO CONFUSE JURY?
- 15) WHETHER ATF AGENT'S COLLECTING DNA BUCCAL SAMPLE UPON ARREST AND BOOKING WAS A VIOLATION OF DEFENDANT'S RIGHTS (E.G. DUE PROCESS, SELF-INCRIMINATION, ETC.) WHEN HE INITIALLY REFUSED TO SUPPLY DNA SAMPLE AND REQUESTED AN ATTORNEY BEFORE ANY QUESTIONING OR EVIDENCE COLLECTING BEGAN? (ATF AGENT DID NOT HAVE A COURT-ORDER)
- 16) WHETHER SENTENCING COURT IMPROPERLY COERCED DEFENDANT TO GO TO TRIAL WITH M. KIRK OKAY, VIOLATING DEFENDANT'S RIGHTS?
- 17) WHETHER SENTENCING COURT WAS IMPROPER OR FAILED TO RULE ON DEFENDANT'S MOTIONS (E.G. MISTRIAL, NEW TRIAL, JUDGMENT OF ACQUITTAL, SUPPRESSION, ETC.)?
- 18) WHETHER JURY SELECTION WAS IMPROPER AT ANY POINT, ESPECIALLY WHEN JURY WAS DEFINITELY AND CLEARLY NOT OF DEFENDANT'S PEERS?
- 19) WHETHER SENTENCING COURT VIOLATED DEFENDANT'S RIGHTS BY, HOWEVER BRIEFLY, ORDERING THAT HE PROCEED PRO-SE WITHOUT HIM INVOKING HIS (5TH AMEND.) RIGHT TO SELF-REPRESENTATION, AND FURTHER EXCLUDING TIME FOR THIS PURPOSE PURSUANT TO SPEEDY TRIAL ACT (STA), CITING "IN THE INTERESTS OF JUSTICE", IN VIOLATION OF HIS S.T.A./CONSTITUTIONAL RIGHTS?

* 30) WHETHER IT WAS IMPROPER AND/OR VIOLATED APPELLANT'S RIGHTS FOR COURT TO ADMIT INTO EVIDENCE AND TRIAL AN ALLEGED SPONTANEOUS STATEMENT THAT WAS ALLEGEDLY MADE AT THE TIME OF ARREST BY APPELLANT — ABSENT AN EVIDENTIARY HEARING?

31) WHETHER APPELLANT WAS PROPERLY IDENTIFIED PRIOR OR DURING PROCEEDINGS BY COMPLAINANT?

QUESTION(S) PRESENTED

20) WHETHER SENTENCING COURT WAS IMPROPER AND VIOLATED DEFENDANT'S RIGHTS WHEN, AT THE CONCLUSION OF TRIAL AND FOR THE PURPOSES OF SENTENCING, DEFENDANT INVOKED HIS (5TH AMEND.) RIGHT TO SELF-REPRESENTATION AND WAS DENIED?

21) WHETHER SENTENCING COURT VIOLATED DEFENDANT'S S.T.A./CONSTITUTIONAL RIGHTS (PURSUANT TO SPEEDY TRIAL ACT) FOR ABUSE AND EXCESSIVE EXCLUSIONS OF TIME, CLAIMING "IN THE INTERESTS OF JUSTICE"?

22) WHETHER SENTENCING COURT WAS IMPROPER AND DID NOT COMMIT HARMLESS ERROR BY ALLOWING, AT 11TH-HOUR (LAST MOMENT), AUSA MICHAEL FELICETTA TO APPEAR AND BE PRESENT AT TRIAL, AND TO LITIGATE FOR THE GOVERNMENT, WHEN HE/GOVERNMENT FAILED TO FILE ANY TIMELY NOTICE OF VOIR DIRE, PARTICULARLY OF IT'S INTENT TO UTILIZE AUSA FELICETTA, AT TRIAL, COMPLETELY IN VIOLATION AND INCOMPLIANCE OF COURT'S ~~PRE~~TRIAL ORDER?

23) WHETHER COURT OR GOVERNMENT FAILED TO COMPLY WITH THE TIME LIMITS SET-FORTH IN S.T.A., INCLUDING, BUT NOT LIMITED TO, FAILING TO INDICT DEFENDANT WITHIN 30-DAYS?

24) WHETHER SENTENCING COURT'S RULING TO APPLY 4-POINT ENHANCEMENT FOR "HOSTAGE TAKING" — WHEN DEFENDANT WAS NEVER CHARGED WITH SUCH AN OFFENSE — WAS IMPROPER?

25) WHETHER SENTENCING COURT'S RULINGS ON DEFENDANT'S OBJECTIONS (E.G., PSR, TRIAL, ETC.) WAS IMPROPER?

26) WHETHER IT WAS IMPROPER FOR COURT TO SENTENCE THE DEFENDANT OVER HIS SENTENCING GUIDELINES?

27) WHETHER SENTENCING COURT ABUSED IT'S DISCRETION/AUTHORITY AND VIOLATED DEFENDANT'S (8TH AMEND.) RIGHT TO BAIL, HOLDING HIM IN CUSTODY SOME 2-YRS. PRIOR TO TRIAL — AND PREJUDICING HIM THEREBY?

28) WHETHER ASSIGNED COUNSEL'S (M. KIRK OKAY) SUBMISSION OF ONLY ONE ISSUE (911-CALL) FOR APPEAL WAS INEFFECTIVE OF ASSISTANCE?

29) WHETHER COURT AND ATF AGENT HAD SUFFICIENT PROBABLE CAUSE TO FILE COMPLAINT, ISSUE AN ARREST WARRANT, AND ARREST DEFENDANT? *

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
1) REHAIF V. U.S. , 139 S. CT. 2191 (2019)	
2) U.S. V. BEVERLY	
3) U.S.V. FRYE	
4) STRICKLAND V. WASHINGTON	
5) U.S.V. MIRANDA	
6) U.S.V. CACCIUS	
7) U.S. V. WADE	

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* UNABLE TO CONDUCT RESEARCH FOR CASE-LAW. PRISON IS CURRENTLY ON EXTENSIVE EMERGENCY LOCKDOWN AND DEF. DOESN'T HAVE A LAWYER.

STATUTES AND RULES

SPEEDY TRIAL ACT

922-G-1

FEDERAL RULES OF EVIDENCE

FEDERAL RULES OF CRIMINAL PROCEDURE

OTHER

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

☒ For cases from **federal courts**:
OPINIONS BELOW ** DEFENSE COUNSEL NEVER ADVISED DEFENDANT THAT AN OPINION WAS RENDERED BY U.S.C.A. (2D CIR). MOREOVER, COUNSEL NEVER PROVIDED ANY DOCUMENTS TO DEFENDANT AS TO THE OPINION RENDERED BY U.S.C.A.*

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,
☐ 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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was ON OR ABOUT 04-05/2019

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1) SPEEDY TRIAL ACT.
- 2) 922-G-1 (STATUS, POSSESSION, ^{"KNOWING"} JURISDICTION, FIREARM ELEMENTS).
- 3) RIGHT AGAINST SELF-INCRIMINATION.
- 4) RIGHT TO AN ATTORNEY AND/OR SELF-REPRESENTATION.
- 5) RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.
- 6) RIGHT TO A FAIR AND JUST TRIAL.
- 7) RIGHT TO JURY OF PEERS.
- 8) RIGHT TO BAIL/CRUEL UNUSUAL.
- 9) RIGHT TO DUE PROCESS.
- 10) FEDERAL RULES OF EVID. AND CRIMINAL PROCEDURE.
- 11) RIGHT TO CONFRONT AND CROSS-EXAMINE ACCUSER.

* COMPLAINANT NOR DEFENDANT TESTIFIED AT TRIAL.

STATEMENT OF THE CASE

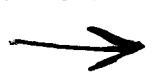
THE APPELLANT WAS FORMALLY ACCUSED IN THE UNITED STATES DISTRICT COURT (WDNY), CITY OF BUFFALO, BY INDICTMENT FILED ON AUGUST 27, 2015, WHICH CHARGES ONE COUNT OF VIOLATING 18 U.S.C. §§ 922(G)(1) AND 924(A)(2), FELON IN POSSESSION OF FIREARM, TOGETHER WITH A FORFEITURE ALLEGATION. THE SUBJECT MATTER OF COUNT-1 IS A SMITH & WESSON MODEL M&P, 5.56 MM RIFLE, BEARING SERIAL NUMBER: SV00172.

THERE WERE NO MOTIONS FILED PURSUANT TO RULE 12 OF F.R.C.R.P. BY ANY OF THE 4-5 COUNSELS OF RECORD FOR THE APPELLANT IN DISTRICT COURT. A MOTION IN LIMINE WAS FILED BY THE DEFENSE ON DECEMBER 5, 2016 (A-165 ET SEQ.) WHICH ADDRESSES EVIDENTIARY ISSUES SUBJECT OF THE APPEAL (U.S.C.A.). ORAL ARGUMENT WAS HELD ON THE DEFENSE MOTION IN LIMINE ON JANUARY 27, 2017 (A-277 ET SEQ.). THE DISTRICT COURT RULED THAT THERE WAS A BASIS TO ADMIT THE 911-CALL INTO EVIDENCE AS BOTH A PRESENT SENSE IMPRESSION AND EXCITED UTTERANCE PURSUANT TO FRE §§ 803(1) AND 803(2).

THE JURY TRIAL OF THE GENERAL ISSUE COMMENCED ON JANUARY 30, 2017 — WITH JURY SELECTION — OPENING ARGUMENT COMMENCING ON THE 31ST, AND THE TRIAL CONCLUDING ON FEBRUARY 2, 2017. THE GOVERNMENT WAS REPRESENTED AT TRIAL BY AUSA'S MICHAEL J. ADLER, ESQ. AND MICHAEL P. FELICETTA, ESQ. THE CASE AGENT, SEATED AT THE PROSECUTION TABLE DURING THE TRIAL, WAS ATF AGENT ROBERT GRUNDER.

THE APPELLANT WAS REPRESENTED AT TRIAL BY M. KIRK OKAY, WHO CONTINUED REPRESENTATION ON APPEAL TO THE U.S.C.A. (2D CIR.). THE DEFENDANT WAS FOUND GUILTY ON THE SINGLE-COUNT INDICTMENT BY JURY VERDICT RENDERED ON FEBRUARY 2, 2017. (A-695 VERDICT FORM) AT SENTENCING ON MAY 11, 2017, THE APPELLANT WAS SENTENCED TO A 72-MONTH PERIOD OF INCARCERATION, 2-YRS. PERIOD OF SUPERVISED RELEASE, AND A \$100 SPECIAL ASSESSMENT. THERE ARE NO CO-DEFENDANTS IN THIS CASE. *

A TIMELY NOTICE OF APPEAL WAS FILED ON JUNE 1, 2017 WITH THE CLERK OF COURT IN THE U.S.D.C. (WDNY). AN APPEAL BRIEF WAS FILED ON OR ABOUT AUGUST 24, 2018 BY M. KIRK OKAY, WITH THE U.S.C.A. (2D CIR.) ON OR ABOUT APRIL-MAY 2019, THE JUDGMENT WAS AFFIRMED BY THE U.S.C.A. ON AUGUST 28, 2019, APPELLANT FILED WITH THE U.S.C.A. A SUPPLEMENT BRIEF. ON SEPTEMBER 24, 2019, APPELLANT'S PLEADINGS AND DOCUMENTS WERE ALL RETURNED TO HIM BY THE U.S.C.A., WHOM ADVISED THAT HIS APPEAL WAS CLOSED. M. KIRK OKAY NEVER ADVISED APPELLANT THAT AN OPINION HAD BEEN HANDED DOWN BY THE U.S.C.A.



STATEMENT OF THE CASE

THE U.S.C.A. (2D CIR.) AFFIRMED THE JUDGMENT OF THE LOWER COURT IN OR ABOUT APRIL-MAY 2019 — SOME 4-5 MONTHS BEFORE APPELLANT ACTUALLY BECAME AWARE OF IT. M. KIRK OKAY HAS NOT — AND DOES NOT — COMMUNICATE OR ADVISE APPELLANT AS TO THE STATUS OR PROGRESS OF HIS CASE. M. KIRK OKAY ONLY SUBMITTED ONE ISSUE (911-CALL) FOR APPEAL-REVIEW. COUNSEL'S INEFFECTIVENESS IS A SUBJECT OF THIS WRIT OF CERTIORARI WHICH APPELLANT HAS PREPARED ON HIS OWN ACCORD WITHOUT HELP FROM ANY ATTORNEY NOR ANYONE.

APPELLANT NOW PETITIONS FOR A WRIT OF CERTIORARI FOR THIS HONORABLE COURT TO REVIEW HIS CASE IN IT'S ENTIRETY — AS HE APPEALS FROM ALL AND ~~EVERY~~ PART OF THE JUDGMENT, CONVICTION, SENTENCE AND PROCEEDINGS.

IT SHOULD BE NOTED THAT THE U.S.C.A. (2D CIR.) DID NOT NOTIFY OR SERVE IT'S OPINION-JUDGMENT ON APPELLANT AT ALL. APPELLANT DID NOT BECOME AWARE OF THE JUDGMENT OF THE U.S.C.A. UNTIL SEPTEMBER 24, 2019, WHEN HE ATTEMPTED TO FILE A SUPPLEMENT BRIEF TO THE U.S.C.A. AND IT WAS RETURNED TO HIM WITH A CASE-CLOSED NOTICE. APPELLANT AFFIRMS THIS UNDER PENALTY OF PERJURY.

THE U.S.C.A. HAS NOT ONLY ENTERED A DECISION IN CONFLICT WITH THE DECISION OF ANOTHER U.S.C.A. ON THE SAME IMPORTANT MATTER, IT HAS DECIDED AN IMPORTANT ~~QUESTION~~ OF FEDERAL LAW IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

REASONS FOR GRANTING THE PETITION

NOT ONLY TO SUBMIT TO THIS HONORABLE COURT FOR REVIEW ~~THE~~ EVERY SIGNIFICANT GROUND AND ISSUE, CONSTITUTIONAL AND PROVISIONAL, RAISED HEREIN; BUT TO ALSO FURTHER THE INTERESTS OF JUSTICE, TO CORRECT ALL INJUSTICES, AND IN DOING SO, UPHOLDING THE CONSTITUTION OF THE UNITED STATES OF AMERICA. MOST IMPORTANTLY, APPELLANT MAINTAINS HIS INNOCENCE WITHIN THE FOREGOING PROCEEDINGS, AND PROCLAIMS THAT HE IS BEING CONVICTED AND INCARCERATED FOR A CRIME — AND ALLEGATIONS — HE DID NOT COMMIT. THE LOWER COURTS' JUDGMENTS OF AFFIRMATION ARE FLAWED AND ERRONEOUS AND CAN ONLY BE REVIEWED, AND RELIEF OBTAINED THEREFROM, BY THIS HONORABLE COURT. APPELLANT HAD INEFFECTIVE ASSISTANCE OF COUNSEL THROUGHOUT THIS ENTIRE PROCEEDINGS; HAD IT'D BEEN OTHERWISE, THE RESULTS OF THIS PROCEEDINGS WOULD'VE BEEN COMPLETELY DIFFERENT.

WHEREFORE, APPELLANT RESPECTFULLY PRAYS THAT THIS HONORABLE COURT GRANT HIS WRIT FOR CERTIORARI.

RESPECTFULLY SUBMITTED



CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A stylized, handwritten signature in black ink, consisting of a large, looped 'S' shape with a horizontal line through the middle.

Date: 10/23/19