No. _____

_____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

In Re: Corey Devon Eaton

_____ PETITIONER
(Your Name)

-V-

United States of America

_____ RESPONDENT(S)

ON PETITION FOR A WRIT OF PROHIBITION PURSUANT TO THE ALL WRITS ACT 28 U.S.C. 1651(a), DIRECTED TO ASSOCIATE JUSTICE WITH SUPERVISORY CONTROL OVER THE FIFTH CIRCUIT UNDER SUPREME COURT RULE 22-1.

U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

NAME OF COURT THAT LAST RULED ON THE MERITS OF YOUR CASE

PETITION FOR A WRIT OF PROHIBITION

In Re COREY DEVON EATON

(Your Name)
FED. REG. # 51250-424

FEDERAL CORRECTIONAL INSTITUTION

(Address)

P.O. BOX 7000, TEXARKANA

TEXAS, 75505-7000

(City, State, Zip Code)
N/A

(Phone Number)

QUESTIONS PRESENTED

ISSUE I

(A) WHETHER CONSTITUTIONAL, STATUTORY INFIRMITIES, AND VIOLATIONS OF RULE 11 MAY HAVE RENDERED COREY DEVON EATON'S PLEA AGREEMENT, AND HIS PLEA WAIVER INVOLUNTARY, UNKNOWING AND UNINTELLIGENTLY MADE, BY REASON OF THE COURT, THE GOVERNMENT AND RETAINED COUNSEL'S FAILURE TO ENSURE HE WAS ENTITLED TO HIS RIGHTS TO APPEAL AND GET RELIEF UNDER THE SAFETY VALVE PROVISION AND 782 AMENDMENT.

(B) COREY DEVON EATON'S ENTITLEMENT TO SAFETY VALVE

(C) WHETHER IN LIGHT OF PETITIONER'S CONSTRUCTIVE DENIAL OF COUNSEL AND CUMULATIVE ERRORS, THIS HONORABLE COURT HAS THE POWER TO GRANT RETROACTIVE RELIEF ON THE 782 AMENDMENT, BY REASON OF THE SUPREME COURT'S 2018 HOLDING IN HUGHES V. UNITED STATES, (CITATIONS OMITTED).

ISSUE 2

WHETHER PETITIONER'S INVOCATION OF THE CAUSE AND PREJUDICE DOCTRINE, ALLIED WITH AN ACTUAL INNOCENCE CLAIM, ENTITLES HIM TO A MERITS DETERMINATION OF HIS OTHERWISE PROCEDURALLY DEFAULTED CLAIMS.

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LIST OF PARTIES

In Re Corey Devon Eaton

-V-

United States of America

The names of all parties appear in the caption of the case on the cover page. There are no additional parties.

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STATEMENT OF JURISDICTION

The Supreme Court of the United States has original jurisdiction over three categories of cases. First, the Supreme Court can exercise original jurisdiction over "actions proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties." See, Maryland v. Louisiana, 451 U.S. 725, 737 (1981). Second, the Supreme Court also possesses original jurisdiction for "(all)n controversies between the United States and a State." 28 U.S.C. Section 1251 (b)(2). Finally, Section 1251 provides for original jurisdiction in the Supreme Court, for "all) actions or proceedings by a state against the citizens of another state or against aliens." See, e.g. Oregon v. Mitchell, 400 U.S. 112 (1970), United States v. Louisiana, 339 U.S. 699 (1951), United States v. California, 332 U.S. 19 (1947).

The statutes defining the Supreme Court's jurisdiction between "appeal" and "certiorari" as vehicles for appellate r review of the decisions of state and lower federal courts. Where the statute provides for "appeal" to the Supreme Court, the Court is obligated to take and decide the case when appellate review is requested. Where the state provides for review by "writ of certiorari," the Court has complete discretion to hear the matter.

The Court takes the case if there are four votes to grant certiorari. Effective September 25, 1988, the distinction between appeal and certiorari as a vehicle for Supreme Court review was virtually entirely eliminated. Now almost all cases come to the Supreme Court by writ of certiorari. Pub. L. No. 100-352, 102 Stat. 662 (1988). The date on which the United States Court of Appeals decided my case July 2018.

WRIT OF PROHIBITION PURSUANT TO 28 U.S.C. SECTION 1651(a) IN AID OF THE SUPREME COURT'S JURISDICTION.

(A) The Supreme Court and all courts established in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule may be issued by a justice (Chief Justice Roberts) to whom an application to a writ of Prohibition is submitted may refer it to the Court for determination.

The date on which the United States court of Appeals decided my case was October 22, 2019

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

As relevant, the Fifth Amendment provides: "No person shall be...deprived of life, liberty, or property, without due process of law."

STATEMENT OF CASE

As relevant here, a grand jury in the Eastern District of Texas charged Eaton with conspiring to possess cocaine with intent to distribute it, violation of 21 U.S.C. Section 846. See ROA. 181-182, 383, 410. In exchange for the discharge of other charges, Eaton pleaded guilty ROA. 383, 385. He entered as plea agreement in which the parties agreed to a special sentence of 132 months. ROA. 384; see Fed/ R/ Crim. p. 11(c)(1)(c).

A magistrate judge conducted the plea hearing, found that Eaton entered his guilty plea knowingly and voluntarily and recommended that the district court accept the plea. ROA. 184-187. The court entered judgment on March 15, 2018. Corey Devon Eaton filed his notice of appeal on January 2, 2019. The Fifth Circuit Court of Appeals dismissed his appeal.

REASONS FOR GRANTING

It is settled, that a decision of the Supreme Court of the United States, based solely upon its construction of Rule 11 of the Federal Rules of Criminal Procedure, with regard to the acceptance of a guilty plea, is made pursuant to the Supreme Court's Supervisory Power over the lower courts. See e.g. Arizona v. California, 373 U.S. 546 (1963); Wisconsin v. Pelican Ins. Co. 127 U.S. 265, 300 (1888); Kennedy v. Denison, 65 U.S. (24 How) 66, 98 (1860).

As a logically corollary of this Supreme Court Supervisory Power, Petitioner Corey Devon Eaton, seeks a grant of the Writ of Prohibition for two primary reasons, and directs his application to the Associate Justice with supervisory control over the Fifth Circuit Court of Appeals, utilizing Supreme Court Rule 22-1 which states in pertinent part the following;

> "1. An application addressed to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned, if an individual Justice has the authority to grant the relief sought."

Petitioner Corey Devon Eaton contends the Fifth Circuit Court of appeals may have abused its discretion without stating findings of fact and conclusions of law, essentially rubber-stamping the District Court's own abuse of discretion, including several Rule 11 violations, pre-eminent amongst hem is not granting Petitioner Safety Valve in spite of the fact the latter satisfied the five predicates for granting it.

By so doing the District Court undermined the powers granted it by Congress under 28 U.S.C. 3231. This abuse of discretion may have led to the possible loss of its subject matter jurisdiction to entertain the case, Thus, Corey Devon Eaton avers that upon a challenge to subject matter jurisdiction, the court has jurisdiction only to the extent of determining the issue of subject matter jurisdiction. To hold otherwise, would imbue federal courts with the power to decide any case or controversy, whether jurisdiction existed or not.

In the case at bar, the government initially established subject matter jurisdiction in the indictment mere by tracking the language of he criminal statute. In general, a ruling "that the indictment is defective does not affect the jurisdiction of the trial court, to determine the case presented by the indictment. "United States v. Cotton, 535 U.S. 625, 631, 122 S.Ct. 1782, 152 L.Ed,2d 860 (2002)(quoting United States v. Williams, 341 U.S. 58, 66, 71 S.Ct. 595, 95 L.Ed 747 (1951)

Intervention by this Honorable Court would be propitious and timely, because as a consequence of the denial by the Fifth Circuit of petitioner's rights to appeal, he has no other way for which to redress the thinly disguised res judicata, he has been thrust in. Thus, the action he seeks by application for the Writ of Prohibition by invoking Rule 22-1, is judicial in nature, for which irreparable prejudice and harm would be averted. See, 208 S.W. 835, 839.

Petitioner therefore seeks leave of this Honorable Court and the Associate Justice in charge of the Fifth Circuit to direct the United States Court of Appeals for the Fifth Circuit to restore his rights to appeal his sentence and conviction by reason of cumulative errors, the least of which is the denial of Safety Valve an other Rule 11 violations, so that further litigation should proceed on its merits.

Petitioner Corey Devon Eaton avers that motions to dismiss for lack of jurisdiction fall into two generally categories;

A facial attack and a factual attack. A facial attack is a challenge to the sufficiency of the pleading itself. On such a motion, the court must take the material allegations of the petition as true and construed in the light must favorable to the non-moving party. A factual attack, as it does here, is not a challenge on the sufficiency of the pleading's allegations, but a challenge to the factual existence of subject jurisdiction.

On such a motion no presumptive truthfulness is applied to the factual allegations and the court is free to weight the evidence and satisfy itself as to the existence of its power to hear the case. Nicholas v. All points Transport Corp. of Michigan Inc. 36

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULE 11 VIOLATIONS MAY HAVE RENDERED COREY DEVON EATON'S PLEA AGREEMENT INVOLUNTARY, UNKNOWING AND UNINTELLIGENTLY MADE, BY REASON OF FAILURE OF THE COURT, THE GOVERNMENT, AND RETAINED COUNSEL TO ENSURE PETITIONER, WAS ENTITLED TO RELIEF UNDER THE SAFETY VALVE PROVISION, AND THE 782 AMENDMENT.

(A)

To be valid, a guilty plea must be made voluntarily and with full knowledge of the consequences. Boykin v. Alabama, 395 U.S. 238 (1969). Stano v. Dugger, 921 F.2d 1125 (11th Cir. 1991), overruled by United States v. Garey, 540 F.3d 1253 (11th Cir. 2008). In Coleman v. Alabama, 827 F.2d 1469 (11th Cir. 1987), the court construed Boykin to require that an accused have information concerning each range of punishment prescribed by the act to which he may be sentenced. In order for a guilty plea to be entered knowingly, and and intelligently made, the defendant must have the mental competence to understand and appreciate the nature and consequences of the plea.

Clearly, the record of Corey Devon Eaton's judicial proceedings, especially from the inception of the plea negotiations to its culmination, Counsel left him in the dark, without access to his discovery, and with respect to the nitty gritty of the plea, especially to what punishment he was looking at.

Corey Devon Eaton was not reasonably informed about his legal options and the alternatives that were available to him. A plea may be involuntary, because the accused, like Corey Devon Corey does not understand the nature of the constitutional protections that he is waiving or because the accused has such an incomplete understanding of the charge that his plea cannot stand and an intelligent admission of guilt. Gaddy v. Linahan, 780 F.2d 935 (11th Cir. 1986).

(B)

COREY DEVON EATON'S ENTITLEMENT TO SAFETY VALVE.

A guilty plea is not knowing and voluntarily made when the defendant has been misinformed about the critical elements of the charged offense, even when the misinformation is the result of the court's erroneous interpretation of a criminal statute, and even if the interpretation was correct at the time the plea was entered. United States v. Brown, 117 F.3d 471 (11th Cir. 1997). On the issue of Safety Valve, Corey Devon Eaton avers that the Safety Valve provision in the Constitution allows for a two-point reduction, as well as a sentence below the statutory mandatory minimum in certain drug cases. U.S.S.G. Sub-Section 2D1.1(b)(6) and 5C1.2; 18 U.S.C. 3553(f); United Stats v. Carillo-Ayala, 713 F.3d 82 (11th Cir. 2013); United States v. Reid, 139 F.3d 1367 (11th Cir. 2013);

Corey Devon Eaton avers that in order for a defendant like him to be eligible for safety valve, he must satisfy five criteria which he clearly satisfies;

(1) the defendant does not have more than one criminal history point, as determined by the sentencing guidelines' application of section (b) of 4A1.3;

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so, in connection with the offense;

(3) The offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, and;

(5) not later than the time of the sentencing hearing, the defendant had truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful information to provide or that the government is already aware of the information shall not preclude a determination by the court that the defendant has complied with the requirement.

Even if the law was not clear at the time it was entered , the attorney had the duty to inform the defendant that the law was not clear., rather than advising him incorrectly that there was no chance of any additional confinement after the criminal sentence was served. Bauder v. Department of Corrections, State of Florida, 619 F.3d 1272 (11th Cir. 2010). In the case at bar, for the reasons adopted by the Supreme Court in Kimbrough, 552 U.S. 85, and the mitigation set forth in his moving papers, the court should have imposed a non-guideline sentence by reason of his safety vale eligibility.

This revelation itself rendered the plea unknowing, unwilling an unintelligently made.

The Supreme Court considered whether the government is required to provide Brady or Giglio information to the defendant before a plea is entered in United States v. Ruiz, 536 U.S. 622 (2002). In the Southern District of California, a defendant is sometimes given the opportunity to enter a "fast track " guilty plea. Pursuant to his program, the government will furnish Brady information to the defendant, but will not provide Giglio material (impeachment information about its witnesses does not taint the guilty plea or violate Due Process Clause). The Court held (reversing the Ninth Circuit) if the entry of the guilty pleas is otherwise free and voluntary, the government's decision to withhold impeaching information about its witnesses does not taint the guilty plea or violate Due process Clause.

The fact that a defendant enters a guilty plea and states at the time of the plea that it was given freely and voluntarily does not necessarily preclude the defendant from subsequently challenging the voluntariness of the plea. Blackledge v. Allison, 431 U.S. 63 (1977). In Martin v. Kemp, 760 F.2d 1244 (11th Cir. 1985), for example, the defendant entered a guilty plea and acknowledged that it was freely and voluntarily entered with no duress. In a collateral attack, however, he offered evidence that the state threatened to prosecute his wife if he did not plead guilty.

(C)

WHETHER IN LIGHT OF PETITIONER'S CONSTRUCTIVE DENIAL OF COUNSEL AND CUMULATIVE ERRORS, THIS HONORABLE COURT HAS THE RIGHT TO GRANT RETROACTIVE RELIEF ON THE 782 AMENDMENT, IN LIGHT OF THE SUPREME COURT'S 2018 HOLDING IN HUGHES V. UNITED STATES (CITATIONS OMITTED).

Thus, the defendant is entitled to an evidentiary hearing on this claim. A defendant's claim that the indictment failed to charge a legitimate offense is jurisdictional and is not waived upon pleading guilty. United states v. Sac, 632 F.3d 1203 (11th Cir. 2011). Thus a guilty plea does not waive the right of an accused to challenge the constitutionality of the statute under which he or she is convicted. If a defendant believes he or she is entering a conditional guilty plea pursuant to Fed. R. Crim. P. 11(a)(2), but for some reason, due to ineffective assistance of counsel, the appellate issue has not been preserved properly, then the plea has not been entered intelligently, voluntarily and knowingly. United states v. Pierre, 120 F.3d 1153 (11th Cir. 1997).

Petitioner's contention that he was denied the benefits of Amendment 782 is supported by Hughes v. United States, 138 S.Ct 1765 (2018), establishing that the court of appeals erred under the plain error standard of review in finding him ineligible for a sentencing reduction under 18 U.S.C. 3582(c)(2) because his plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C) did not explicitly reference the Sentencing Guidelines. Applying the analytical framework for sentence reduction under 18 U.S.C.3582(c)(2), Amendment 782 lowered the offense levels in the drug quantity table of U.S.S.G. Section 2D1.1(c) . Petitioner avers the denial of relief constitutes an "imprimatur for a miscarriage of justice."

The 782 Amendment revises the guidelines, inter alia, or to drug trafficking offenses by changing how the base offense levels in the Drug Quantity Table of Section 2B1.1(unlawful manufacturing, importing or trafficking, including possession with intent to commit these pffense); Attempt or conspiracy incorporates the statutory minimum for such offenses. When Congress passed the ant--Drug Act in 1986, PUB 1, 99-570, the Commission responded and extrapolating upward and downward to set guidelines sentencing ranges for all drug quantities. The quantity thresholds into the drug quantity table wee set so as to provide base offense offense levels, corresponding to guideline ranges that sere slightly above the statutory mandatory minimum penalties. Accordingly, offenses involving drug quantities that trigger a five year statutory minimum were assigned a base level (level 26) corresponding to a sentence of 63-78.

The above cumulative errors committed during Cory Devon Eaton's judicial proceedings may have had the effect of nullifying his appeal waiver, a view supported by the holdings of several circuits some of which are listed hereunder, for which he seeks his appeal rights restored by this Honorable Court.

Ineffective assistance of counsel qualifies as a miscarriage of justice to overcome a waiver of appeal provision. United States v. Shedrick, 493 F.3d 292, 298 n.6 (3d. Cir. 2007).

United States v. Johnson, 410 F.3d 137, 151 (4th Cir. 2005) (ineffective assistance of counsel claims following entry of guilty plea cannot be waived).

United States v. Oliver, 630 F.3d 397, 411 (5th Cir. 2011)(court allowed plea challenge, despite existence of appeal waiver).

In re Acosta, 480 F.3d 421, 422 (6th Cir. 2007) (waiver of right to appeal or collateral attack sentence may be attacked as involuntary or product of ineffective assistance).

United States v. Flucker, 516 Fed. Appx.. 580, 581 (6th Cir. 2023)(a a waiver of appeal right may be challenged on the grounds that it was not knowing or voluntary, was not taken in compliance wit Fed. R. Crim. P. 11, or was the product of ineffective assistance of counsel).

United States v. Joiner, 183 F.3d 635, 645 (7th Cir. 1993)(same)

WHETHER PETITIONER'S INVOCATION OF THE CAUSE AND PREJUDICE DOCTRINE, ALLIED WITH AN ACTUAL INNOCENT CLAIM, ENTITLES HIM TO A MERITS DETERMINATION ON HIS OTHERWISE PROCEDURALLY CLAIMS.

The Supreme Court has emphasized that both cause and prejudice must be demonstrated to permit a defendant to raise on habeas matters not presented in State Court. See Murray v. Carrier, 477 U.S. at 496. An illustration of the need to prove cause and prejudice is Stickler v. Greene, 527 U.S. 263 (1999). The Court found that the failure of the prosecution to disclose information under Brady v. Maryland, 373 U.S. 83 (1963), even inadvertently was sufficient cause for the federal court to hear a habeas petition.

The principles of res judicata and collateral estoppel generally preclude a party from relitigating a matter already presented to a court and decided upon. Brown v. Allen, decided in 1953, created an important exception to collateral estoppel and res judicata to habeas petitions. 344 U.S. 443 (1953).

In fact, the Warren Court so valued the importance of the opportunity to relitigate constitutional issues to ensure correct decisions at trial. Kaufman v. United states, 394 U.S. 217 (1969). The Court concluded that "the provisions of federal collateral remedy rests...fundamentally upon a recognition that adequate protection of constitutional rights...requires the continuing availability of a mechanism for relief. Id. at 226.

Petitioner contends, beginning in two decisions decided the same day, Murray v,. Carrier, 477 U.S. 478 (1988) and Smith v. Murray, 477 U.S. 527 (1986), the Supreme Court has held that as an alternative to demonstrating cause, a habeas petitioner as in the case at bar, may raise matters hitherto not raised by demonstrating he is probably innocent of the charge.

Petitioner can show cause because his counsel never raised it at sentencing, or any subsequent appeal. Thus Petitioner can show cause for the procedurally defaulted claims, by reason of ineffective assistance of counsel. The issue in Murray v. Carrier, 477 U.S. 478 (1986) was whether a habeas petitioner could show cause for a procedural default by demonstrating the the Defense Counsel inadvertently failed to raise an issue. Justice O'Connor emphasized that 'Ineffective assistance of counsel, then is cause for a procedural default." Murray v. Carrier, 477 U.S. 478, 488 (1986).

PETITIONER'S FURTHER PROFFER OF ACTUAL INNOCENCE.

In four cases, the Supreme Court has elaborated the meaning of actual innocence. In Sawyer v. Whitley (citations omitted) the issue was what actual innocence meant in the context of challenging a sentence. Petition invokes Herrera v. Collins (citations omitted) for the proposition that "actual innocence itself is not a constitutional claim, but a gateway through which a habeas petitioner, must pass to have his otherwise barred constitutional claims considered on the merits. " 506 U.S. 390 404 (1993).

Following Herrera v. Collins, the Court decided Schlup v. Delo (citations omitted). The Court held, to prove actual innocence, a habeas petitioner must show there was a constitutional violation that "probably resulted" in the conviction of one who is actually innocent. 513 U.S. 298, 327 (1995) as in the case at bar.

In House v. Bell (citations omitted), the Supreme Court found that the requirements for showing actual innocence were met to allow a procedurally defaulted claim of ineffective assistance of counsel to be added. 547 U.S. 518 (2006) Thus, petitioner contends, he was prejudiced pursuant to United States v. Frady, where the Supreme Court indicated that "prejudice" could be demonstrated by showing that the results in the case likely would have been different absent the complained of violation of the constitution or federal law. These errors would be to petitioner's actual and substantial disadvantage, infecting the entire judicial proceedings with errors of constitutional dimensions, 456 U.S.at 170 (emphasis in original). The results would have been different, but for the violation of federal law. See also Murray v. Carrier, 477 U.S. 478, 496 (1986 (1986). Strickler v. Greene, 527 U.S. 253 (1993).

COREY DEVON EATON
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FEDERAL CORRECTIONAL
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SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC, 20543-0001

RE: In EATON

SUBJECT - CORRECTION OF DEFICIENCY RE: APPLICATION FOR THE WRIT OF PROHIBITION PURSUANT TO ALL WRITS ACT 28 U.S.C. SECTION 1651(a)(28 U.S.C.S. SECTION 1651(a)).

COMES NOW, Petitioner Corey Devon Eaton respectfully seeking leave of this Honorable Court to entertain the above referenced cause, in which petitioner corrects the deficiency ordered by the Office of the Clerk, delineated below in its letter dated December 13, 2019.

> "The petition does not show how the writ will be in aid of the Court's appellate jurisdiction, what exceptional circumstances warrant the exercise of the Court's discretionary powers, and why adequate relief cannot be obtained in any other form or from any other court Rule 20.1."

HOW THE WRIT WILL BE IN AID OF THE COURT'S APPELLATE JURISDICTION

As a threshold matter, Corey Devon Eaton avers that the Writ of Prohibition, which he has applied for, is an extraordinary Writ under the All Writ Act 28 U.S.C. 1651(a) which in pertinent part states that, all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions, and agreeable to the usages and principles of law."

Like the case at bar, Corey Devon Eaton contends what he seeks is a "drastic and extraordinary remedy "reserved for really extraordinary causes," where through a combination of constructive denial of counsel, prosecutorial misconduct, a biased judge, he has been impermissibly denied of not only Safety Valve, but also the right to appeal his unconstitutional sentence and conviction. See, Ex Parte Fahey, 332 U.S. 258, 259-260, 91 L.Ed.2d 2041, 67 S.Ct. 1558 (1947). As here, the traditional use of the Writ of Prohibition or Mandamus of the Writ in aid of appellate jurisdiction both at common law and in the federal court, has been to confine (the court(s) against which the writ is sought) to a lawful exercise of its prescribed jurisdiction." Roche v. Evaporated Milk Assn., 319 U.S, 21, 26, 87 L.Ed 1185 .

COREY DEVON EATON'S CONTENTION THE ALLEGATIONS HE MAKES CONSTITUTE "EXCEPTIONAL CIRCUMSTANCES" THAT WARRANTS THE INTERVENTION OF THIS HONORABLE COURT'S DISCRETIONARY POWERS.

As a threshold matter, Corey Devon Eaton contends that his failure to make the above captioned assertion, would worst case scenario, lead to a miscarriage of justice or trigger res judicata, or at best, a procedural default. None of these options, would further the goals of the administration of justice. This assertion is predicated on the following claims implicating;

(1) Acts of Clear Error, Mistake of Law and abuse of discretion, committed by the lower courts (Fifth Circuit Court of Appeals and District Court) that the Constitution and the Supreme Court consider to be ministerial acts that compels both the Fifth Circuit Court of Appeals and the District Court of the Eastern District of Texas, to the fulfillment of requirements of Fed. R. Crim. P. Rule 11(b)(1)(G) that a defendant understand the essential elements of the crime. This is integrally related to the requirement of Fed. R. Crim. P. Rule 11(b)(3), that the district court determine that Corey Devon Eaton's plea has a factual basis. Because a guilty plea is an admission of all the elements of formal criminal charges, it cannot be truly voluntarily unless the defendant

possesses an understanding of the law, in relation to the facts. Corey Devon Eaton contends because of the constructive denial of counsel, prosecutorial misconduct, and the validation of both, abuse of discretion a panel of the Fifth Circuit Court of appeals, judicial intervention by the Associate Justice with supervisory authority over the Fifth Circuit, would be provident, to avoid a miscarriage of justice.

Thus, in addition to the need to direct the Fifth Circuit Court of Appeals and District Court judge to inquire into defendant's understanding of the nature of the charge and the consequences of the plea, Rule 11 also requires the District Court judge to ascertain that a factual basis exists for the plea, especially in light of the fact that, Corey Devon Eaton was denied a right to appeal this unconstitutional sentence and conviction. Through the Plain Error standard of review, the Fifth Circuit Court of Appeals should have discovered the error of not granting Corey Devon Eaton, Safety Valve, for which the lower courts also had the right to afford Corey Devon Eaton, the right to file an appeal, since counsel was hopelessly negligent in doing so.

In sum, the lower courts in this case, failed to perform an absolute duty, as distinct from other types of acts that may be a matter of the lower court's discretion. For this reason alone the he should be granted the writ.

(2) Corey Devon Eaton has no other vehicle of getting relief, because the above issues not only have to be addressed now, but thy ought to be directed to the Associate Justice with supervisory control over the Fifth Circuit to right this egregious wrong. "Under the doctrine of procedural default, a defendant generally must advance an available challenge to a criminal conviction or sentence on direct appeal or else the defendant is barred from presenting that claim in a section 2255 proceeding." Mackay v. United States, 657 F.3d 1190, 1196 (11th Cir. 2011)(internal citations omitted).

Thus, Corey Devon Eaton contends he is invoking the use of the Writ of Prohibition and directing the petition by utilizing Rule 22-1 of the Associate Justice in charge of the Fifth Circuit, because his situation is extraordinary, which other judicial remedies at this tine would be inadequate to redress. See, 9 F. Supp. 422, 423. It is an emergency situation that only an emergency writ can address. 74 P. 695, 501.

(3) Even if the first two reasons have been satisfied, the Honorable Court in the exercise of it discretion, must be satisfied that the merit s appropriate under the circumstances. Kerr, supra, at 403, 48 L.Ed.2d 725, 96 S.Ct. 2119 (citing Schlagenhauf v. Holder, 379 U.S. 104, 112 n8, 13 L.Ed.2d 152, 85 S.Ct. 234 (1964).

In conclusion, the Supreme Court has issued the writ to restrain a lower court when its actions would threaten the separation of powers by "embarrassing the executive arm of the government," Ex Parte Peru, 318 U.S. 578, 588, 87 L.Ed 1014, 63 S.Ct. 793 (1943), or result in the "intrusion by the federal judiciary on a delicate area of federal-state relations. "Will, supra, at 95, 19 L.Ed.2d 305, 88 S.Ct. 269 (citing Maryland v. Soper (No. 1), 270 U.S. 9, 70 L.Ed.2d 305, 88 S.Ct., 269 (citing Maryland v. Soper (No. 1), 270 U.S. 9, 70 L,Ed.2d 305, 88 S.Ct., 269 (citing Maryland v. Soper (No. 1), 270 U.S. 9, 70 L.Ed 449, 46 S.Ct. 185 (1926).

CONCLUSION

The Court should grant the petition for a writ of prohibition.

Date: December 2, 2019.

Respectfully Submitted,

Corey Devon Eaton