APPEAL NO: 19-7154

CLERK OF COURT
SUPREME COURT OF THE
UNITED STATES

PETITION FOR A WRIT OF PROHIBITION
ON DENIAL FROM THE
FIFTH CIRCUIT COURT OF APPEALS

In Re: Corey Devon Eaton
Petitioner,

-V-

United States of America
Respondent.

Petition For Rehearing
Pursuant to a Writ of Prohibition
under 28 U.S.C. Section 1651(a)

COREY DEVON EATON
FED.REG.#51250-424
FEDERAL CORRECTIONAL
INSTITUTION - TEXARKANA
P.O. BOX 7000
TEXARKANA, TX 75505-7000

THE DELIBERATE, UNREFUTED, CUMULATIVE EFFECTS OF CONSTITUTIONAL AND STATUTORY PROVISIONS, WHICH THE GOVERNMENT COULD NOT REFUTE MAY HAVE RENDERED DEVON COREY EATON AGREEMENT INVOLUNTARY, UNKNOWING AND UNINTELLIGENTLY MADE, BY REASON OF CONSTRUCTIVE DENIAL OF COUNSEL.

(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 Devon Corey Eaton judicial proceedings, when it was imminent he was going to proceed to trial, without explanation he was informed he was going to plead guilty. From the inception of the plea negotiations to its culmination, Counsel left him in the dark, without full access to his discovery, not asserting an early withdrawing from the conspiracy early during his judicial proceedings or as a mitigating element at sentencing.. Further, at sentencing, Counsel did not fully impress upon the court that the government was disingenuous in not conceding to the fact that there was an abundance of exculpatory evidence, amongst which was the withdrawal from the conspiracy, which in effect would have affected the drug quantity he was charged and sentenced with.

The government had already made up his mind, an issue counsel should have raised pointing to malicious prosecution. A malicious prosecution that continued to this instant Section 2255 petition, where the Government pursuant to the Court's Order had occasion to provide an affidavit from Movant's Counsel to clarity the veracity of movant's claims but failed to.

It was patently obvious that 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 Eaton 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)

HAD COREY DEVON EATON'S ERSTWHILE COUNSEL, FILED AN APPEAL TO THE COURT OF APPEALS INVOKING THE PLAIN ERROR DOCTRINE, IT WOULD HAVE BEEN ABUNDANTLY CLEAR THAT HE WAS IMPERMISSIBLE DENIED SAFETY VALVE, RELIEF UNDER THE 782 AMENDMENT AND HIS CONVICTION WOULD HAVE BEEN ENTITLED TO FULL APPELLATE RIGHTS, EXPOSING DEEP SEATED CONSTITUTIONAL VIOLATIONS.

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).

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.

In this instant case, Corey Devon Eaton Plea Agreement, which counsel procured in circumstances that were shrouded in mystery revealed the whole process was tainted with cumulative errors. Further, the failure of Counsel, in light of the totality of

the evidence of the case should have argued for a minimum role, and not been construed by the government as playing an integral role in the enterprise.

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.

The cumulative errors committed during Corey Devon Eaton judicial proceedings may have had the effect of nullifying his appeal waiver, if that is the view taken by the Government or erstwhile counsel for Movant, a view supported by the holdings of several circuits some of which are listed hereunder.

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).

(C)

WHETHER FAILURE BY THE GOVERNMENT (SOLICITOR GENERAL) TO OBTAIN AN AFFIDAVIT, AND FURTHER FAILURE FOR THE GOVERNMENT TO EXPLAIN WHY THE PROSECUTORS IN THE LOWER COURTS DIDN'T, CONSTITUTES ADDITIONAL PREJUDICE?

To be entitled to habeas corpus relief, on the grounds that counsel rendered ineffective assistance, a petitioner must show that counsel's performance was constitutionally deficient and that the deficient performance prejudiced the defense., Burnett v, Collins, 982 F.2d 922, 928 (5th Cir. 1993). Bates v. Blackburn, 805 F.2d 569, 577 (5th Cir.. 1986), cert.. denied, 482 U.S. 916 (1987). Failure to demonstrate prejudice pretermits the Court's inquiry regarding the alleged deficiency of counsel's performance.

The court's supposed inquiry has been frustrated by the government's obstinacy in procuring an affidavit=davit from movant's erstwhile counsel regarding the deficiency of counsel's performance. See, United states v. Rosales-Orozco, 8 F.3d 198, 199 (5th Cir. 1993); United States v. Piece, 959 F.2d 1297, 1302 (5th Cir.) cert. denied, 506 U.S. 1007 (1992). The prejudice prong of the two part Strickland test, however, continues to be the primary hurdle to be cleared in sixth amendment assistance of counsel cases; "it turns on what a reasonable person in the f=defendant's shoes would do." United States v. Smith, 844 F.2d at 209. Reasonable effective assistance is he proper standard of attorney performance. Strickland, 466 U.S. at 787, and judicial scrutiny of counsel's performance must be highly deferential. Id. at 689.

In the Fifth Circuit, the standard for constitutional effective of counsel is not errorless counsel and not counsel judged ineffective by hindsight, but counsel reasonably likely to render and rendering reasonable effective assistance. See, Lockhart v. Fretwell, 506 U.S. 364, 372 (1993); Green . Johnson, 116 F.3d 1115, 1122 (5th Cir. 1997); United States v. Gaudet, 81 F.3d 585, 592 (5th Cir. 1996). In this case, Jose Reyes Valdez has met his burden to show a reasonable probability that, but for counsel's errors and the obstinacy of the government to obtain an affidavit form him, the result would have been different. Strickland, 466 at 694.

CERTIFICATE FOR A PARTY (COREY DEVON EATON) UNREPRESENTED BY COUNSEL.

This is to certify that Petitioner Devon Corey Eaton that pursuant to Rule 39, he is proceeding in this petition for proceeding under informa pauperis. Devon Corey Eaton, is currently under the custody of the B.O.P. under the custody of Federal Correctional Institution, Texarkana P.O. Box 7000, Texarkana, TX 75505.

Petitioner further certifies that this application for Rehearing is presented in good faith and not for delay. Petitioner understands that the filing of this motion is predicated on intervening circumstances of a substantial or controlling effect or to other substantial grounds mot previously previously presented.

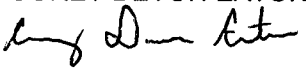
QUESTIONS PRESENTED IN GOOD FAITH AND NOT FOR DELAY.

WHETHER THE DENIAL OF PETITIONER'S WRIT OF PROHIBITION CONSTITUTES "an imprimatur for a miscarriage of justice" by the absence of the Honorable using the plain Error standard, and transfer of his application to the Associate Justice with supervisory control of the 5th Circuit. At the Fifth Circuit even, it was unclear even if, pursuant to 28 U.S.C. Section 2241, which is unclear in light of the Antiterrorism and Effective Death Penalty Act of 1996. See Felker v. Turpin, 518 U.S., 660-61 & N.3 (1996), Any such authority rests in the hands of the individual circuit judges, not the court of appeals itself. See Zimmerman v. Spears, 565 F.2d 310, 316 (5th Cir. 1977).

DATE: MARCH 10, 2020

RESPECTFULLY SUBMITTED,

COREY DEVON EATON



THE COURT SHOULD IMPOSE A REDUCED SENTENCE OF TIME BY REASON OF THE FIRST STEP ACT!!!

The only guidance Congress has given regarding authorized extent of Section 404 relief is to say that the district court may impose a reduced sentence "a if the FSA's reduced crack-cocaine penalties "were in effect at the time the covered offense was committed."This broad grant of resentencing authorities contains one implied limitation, the the Court cannot impose a sentence lower than the statutory mandatory minimum applicable one the FSA to the defendant's offense of conviction.

Petitioner pled guilty to an offense involving cocaine. Under the raised penalty structure for Section 841(b), an offense involving more than 28 grams of cocaine base but less than 280 grams yields a statutory penalty range of 5 to 40 years imprisonment. However, due to the sentencing guidelines under this scheme, petitioner's mandatory minimum term of imprisonment would be 10 years.

The Government may argue that because petitioner was found accountable for several kilograms or more of cocaine at sentencing, his offense would still fall under Section 841(b)(1)(A). However, petitioner submits that it would be inappropriate rely on drug quantities found at sentencing to raise mandatory minimum. See Alleyne v. United States, 133 S.Ct. 2151 (2013). Further, Congress enacted Section 404 to rectify wrongs. It would be untenable to assume that Congress, hen acting to rectify wrongs, meant to direct courts to perpetuate unconstitutional practices.

If the FSA were in effect at the time of Eaton's sentencing, his offense Level and Criminal History Category would have resulted in a guideline range fart less than he was actually sentenced with, well below the pre-FSA statutory minimum of 240 months. However, a reduction under Section 404 of the First Step Act does not have the same limitations as a reduction under 18 U.S.C. Section 3582(c)(2). Accordingly, this Court is free to reduce Corey Devon Eaton's sentence to the present mandatory minimum to 10 years Corey Devon Eaton, submits that a reduction to time served is also warranted. In Pepper v. United States, 131 S.Ct. 1229, 1241 (2011), the Supreme Court emphasized the important nature of post-sentence rehabilitation, stating that "there would seem to be no better evidence than a defendant's post incarceration conduct." Id.

> In addition, evidence of post-sentencing rehabilitation may be highly relevant to several of the (18 U.S.C.) Section 3553(a) factors that Congress has expressly instructed district courts to consider at sentencing. For example, evidence of post-sentencing rehabilitation may plainly be relevant to "the history and characteristics of the defendant." Section 3553(a)(1). Such evidence may also be pertinent to the "need for the sentence imposed" to serve the general purpose of sentencing set forth in Section 3553*a)(2) ---in particular to 'afford adequate deterrence to criminal conduct,' 'protect the public from further crimes of the defendant,' and provide the training ---or other correctional treatment in the most effective manner.' Sub-Section 3553(a)(2)(B)-(D); see McManus, 496 F.3d, at 853 (Melloy, J., concurring)("in assessing ...deterrence, protection of the public, and rehabilitation, 18 U.S.C.A Section 3553(a)(2)(B)(C) & (D), there would seem to be no better evidence than a defendant's post-incarceration conduct"). Post sentencing rehabilitation rehabilitation may also critically inform a sentencing judge's overarching duty under Section 3553(a) to 'impose a sentence sufficient, but not greater than necessary 'to comply with the sentencing purposes set forth in Section 3553(a)(2).

Pepper, 131 S.Ct. at 1242 Corey Devon Eaton submits that consideration of the relevant Section 3553(a) factors, including his post-incarceration conduct, warrant a reduction in sentence. Since Corey Devon Eaton's sentencing, he has aptly participated in various educational and vocational programs to obtain professional skills to prepare him for his release date. One of the most important steps he has taken since his incarceration is his journey back towards religion and aspiring to be a productive member of the community.,

His goal right now is to start a viable business, with a view to liaising sand plugging his endeavors with reputable companies like Amazon.com. He is holding conversations with elderly, successful role models, and internalizing positive life changing

principles, and tried and tested business models. This with a view to creating a solid foundation when released..

In addition Corey Devon Eaton is in his late thirties, and has been in federal custody since 2016. Without a reduction under Section 404, he will remain in prison until he is in his forties. Having Eaton serve these additional years of incarceration does not further the goals under Section 3553(a).

CONCLUSION

Section 404 grants the District Court discretion to reduce sentences imposed under the excessively - harsh - penalty structure that Congress has now renounced. Eaton is certainly deserving of such a reduction, and he respectfully asks that the Court reduce his sentence drastically or granting him time served.

Date: March 10, 2020

Respectfully submitted,

Corey Devon Eaton, Defendant **pro se.**