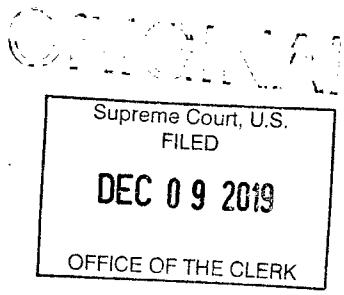
IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

NO. 19-7197




Darryl William Young, Petitioner

v.

United States of America, Respondent

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

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# PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES AND
TO THE HONORABLE JUSTICES OF THE COURT

Darryl William Young
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December 9th, 2019

## QUESTIONS PRESENTED

1. The United States Supreme Court is asked to resolve a federal question of jurisdictional law, whether the district court for the Eastern District of Washington had jurisdictional venue to accept Petitioner's plea agreement, plea, and sentence Petitioner, on four counts of bank robbery that occurred and was pending in the Western District of Washington, when the mandated congressional requirements of Federal Rules of Criminal Procedure Rule 20, was not complied with to transfer venue for plea and sentence?

2. This Court is asked to resolve a federal question of statutory law, whether the Court of Appeals for the Ninth Circuit has entered a decision in this case, that departed from the accepted and usual course of statutory judicial proceedings, by invoking an overbroad interpretation of Federal Rules of Criminal Procedure Rule 20 procedural requirements, to dismiss Petitioner's jurisdictional venue challenge on direct appeal?

3. This Court is asked to resolve an important constitution question of procedural law, whether the district court for the Eastern District of Washington failure to colloquy Petitioner at change of plea hearing, on waiver of right to collaterally attack sentence, violated Federal Rules of Criminal Procedure Rule 11 procedural requirements, invalidated not only the application of the "waiver", but also the validity of Petitioner's plea as being knowingly and voluntarily made?

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## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

Darryl William Young, Petitioner

v.

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## CITATIONS AND OPTIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit was filed on June 6, 2019, as appears as Appendix Exhibit D. This opinion is officially noted "Not For Publication", cited as United States of America v. Darryl William Young, No. 18-30039(9th Cir. 2019).

## JURISDICTION

1. Dates of Judgements Sought to be Reviewed.

The Judgement of the United States District Court for the Eastern District of Washington was filed on February 20, 2018, and appears as Appendix E. The Judgement of the United States Court of Appeals for the Ninth Circuit was filed on June 6, 2019, and appears as Appendix Exhibit C.

2. Date of Order Denying Rehearing and Rehearing En Banc.

The petition for rehearing en banc and the petition for rehearing by the panel was denied on September 4, 2019, and the Order appears as Appendix Exhibit B. The jurisdiction of this Court to review the Judgement of the United States Court of Appeals for the Ninth Circuit is

invoked under 28 U.S.C. § 1254.

## FEDERAL STATUTORY RULES INVOLVED

Federal Rules of Criminal Procedure Title V, Rule 20(a)(1) Transfer for Plea and Sentence, provides:

> (1) The Defendant states in writing a wish to plead guilty or nolo contendere and to waive trial in the district where the indictment, information, or complaint is pending, consents in writing to the court's disposing of the case in the transferee district, and files the statement in the transferee district.

Federal Rules of Criminal Procedure Title V, Rule 11, which provides:

> (1) Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the Defendant must be placed under oath, and the court must address the Defendant personally in open court. During this address, the court must inform the Defendant of, and determine that the Defendant understands, the following:
> (C) The right to a jury trial.
> (N) The terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.

## UNITED STATES CONSTITUTION AMENDMENT

Amendment Sixth, provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed which district shall have been previously ascertained by law...

## STATEMENT OF THE CASE

1. Nature of the Case.

This case is an appeal from the affirmance of Petitioner's plea, conviction and sentence of 180-months, after pleading guilty in the Eastern District of Washington to five counts of bank robbery under 18 U.S.C. § 2113. Four of those five counts (count 1-4) involved conduct occuring in the Western District of Washington and count five involved conduct occuring in the Eastern District of Washington.

The United States District Court of the Eastern District of Washington had original jurisdiction over the prosecution pursuant to 18 U.S.C. §3231. However, it is the Petitioner's contention that the Eastern District lacked appropriate venue to enter judgement on counts one through four, thereby invalidating the plea in its entirety.

2. Course of Proceedings.

A. Federal District Court of the Eastern District of Washington.

1. Court of Proceedings.

Petitioner was indicted on one count of Bank Robbery in violation of 18 U.S.C. § 2113(a)&(d) on August 9, 2016, in the Eastern District of Washington. Petitioner was arraigned on the charge on August 24, 2016, at which time an order was signed by Magistrate Dimke appointing the federal defender's office to represent Petitioner.

Subsequently, on October 11, 2017, a superseding information, waiver of indictment, and plea agreement were filed in district court. On that same day, a change of plea hearing was conducted, after which the district court accepted Petitioner's plea of guilty to the now five-count superseding information.

The superseding information charged five counts of Bank Robbery under 18 U.S.C. § 2113. The first four of those five counts charged

conduct occurring in the Western District of Washington. Count five, the subject of original indictment, alleged conduct occurring in the Eastern District of Washington. As previously stated, in addition to the superseding information, a waiver of indictment was filed by which Petitioner waived grand jury indictment on the four Bank Robberies in the Western District of Washington. However, no other written waivers were filed on that date.

The plea agreement consisted of 14 pages. Under that agreement, Petitioner agreed to plead guilty to all five counts of the superseding information. In exchange, the United States agreed to recommend a sentence of 135 months. Petitioner was requesting the Court to impose 97 months, the high end of the guidelines.

The plea agreement contained a clause regarding venue. However, that clause merely stated, "[d]efendant understands that he has a right to be tried in the District in which the crimes allegedly were committed. Defendant agrees to waive venue as to the crimes charged in the superseding information."

At the plea hearing held on October 11, 2017, the court conducted a colloquy with Petitioner, regarding the plea agreement. The court did briefly summarize the venue waiver by indicating the charges that occurred in the Western District of Washington and that Petitioner was giving up the right to having those charges heard in that district.

Regarding the rights that Petitioner was giving up by pleading guilty, that court stated that Petitioner was giving up the right to go to trial, to call witness, to cross-examine government witnesses, to present evidence, and to testify or remain silent. The Court however, did not specify that Petitioner was giving up the right to be

tried by a jury.

During the colloquy, there was some confusion expressed by Petitioner regarding where the Western District was bound by the plea agreement. Exhibit F. In fact, there were no assurances or agreements in the plea agreement itself, or in any writing, that bound the Western District.

The sentencing hearing was held on February 14, 2018. At the hearing the court adopted the presentence report. That report calculated the guideline range at 78-97 months. The government recommended and argued that a prison sentence of 135 months, which was above the guidelines range, was appropriate. Exhibit E.

Therefore, the Court sentenced Petitioner to a 180-month prison term 45 months over the government's recommendation.

On February 15, 2018, judgement was entered. Subsequently, Petitioner timely filed a notice of appeal on February 20, 2018, to the Ninth Circuit Court of Appeals.

**B. United States Court of Appeals for the Ninth Circuit.**

On appeal to the United States Court of Appeals for the Ninth Circuit, Petitioner argued that the district court did not have jurisdictional venue to accept plea agreement or plea from Western District of Washington, four counts of Bank Robbery, in the Eastern District of Washington, pursuant to the procedural violations of Federal Rules of Criminal Procedure Rule 20. Petitioner also raised procedural violations of Federal Rules of Criminal Procedure Rule 11, by district court, during plea colloquy waiver of right to collaterally attack the sentence, Rule 11(b)(1)(N).

A panel of the Court issued its opinion on June 6, 2019, dismissing Petitioner's direct appeal issues. Judgement was entered on June 6, 2019. Petitioner petitioned for rehearing and rehearing en banc by the panel. The Order denying the petition for rehearing and rehearing en banc was entered on September 4, 2019. The Mandate was issued on September 12, 2019. Petitioner now timely petitions for Writ of Certiorari to this Honorable Court.

## REASONS FOR GRANTING THE PETITION

1. ---- The United States Supreme Court is asked to resolve a federal question of jurisdictional law, whether the district court for the Eastern District of Washington had jurisdictional venue to accept Petitioner's plea agreement, plea, and sentence Petitioner on four counts of bank robbery, that occurred and was pending in the Western District of Washington, when the mandated congressional requirements of Federal Rules of Criminal Procedure Rule 20, was not complied with to transfer venue for plea and sentence?

This case presents an extraordinary and compelling question of federal jurisdictional venue, of constitutional magnitude. Whether Federal Rules of Criminal Procedure Rule 20 requirements are prerequisites that must be adhered to for venue to transfer for plea and sentence, from the district where crimes have occurred, to another jurisdictional venue where Petitioner is being held?

The United States Constitution, Sixth Amendment, provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state or district wherein the crime shall have been committed,

which district shall have previously assertained by law..."

However, Congress has enacted Federal Rules of Criminal Procedure Rule 20, allowing the transfer of jurisdictional venue for plea and sentence, from the district where crimes have occurred and are pending, to another jurisdictional district's venue where the Defendant is being held, "if" the mandated requirements of Fed. R. Crim. P. Rule 20 are complied with, which states;

> (a) CONSENT TO TRANSFER. A prosecution may be transferred from the district where the indictment or information is pending, or from which a warrant on a complaint has been issued, to the district where the defendant is arrested, held, or present "if":
>
> 1. The defendant states **in writing** a wish to plead guilty or nolo contendere and to waive trial in the district where the indictment, information or complaint is pending, **consents in writing** to the court's disposing of the case in the transferee district, and files the statement in the transferee district; and;
> 2. The United States attorney's in both districts approve the transfer **in writing.**

It is a well recognized rule that the plain meaning of the statute controls, and the courts must presume that the legislative says in statutory Rule 20 (a)(1) and (2), "it says what it means and means what it says." RIGHT TO LIFE v. HARRIS, 2016 U.S. Dist. Lexus 94913 (9th Cir.); SIMMONS v. HIMMELREICH, 136 S. Ct. 1843, 1848, 195 L. Ed 2d 106 (2016);

Congress is clear and concise, by the statutory language, pursuant

to the explicit requirements that must be met, in order for jurisdictional venue to transfer districts, for plea and sentence.

It should be noted that Congress placed "in writing", in Fed. R. Crim. P. Rule 20 (a)(1) and (2) three times, and in the prominent first position of Rule 20 (a)(1), to indicate that documentation of this request must be by the defendant and in writing, to request the jurisdictional venue change for plea and sentence, "before" the U.S. attornies can comply.

The ramifications of constitutional magnitude is made clear by the percise manner in which Congress drafted this statutory rule, as Congress made a point clarifying Rule 20 intention and the requirements that must be met "before" jurisdictional venue to transfer, to avoid overbroad interpretations of Fed. R. Crim. P. Rule 20.

Generally, the prosecution of a federal crime shall occur in a district in which the offense was committed. 18 U.S.C. § 3232 (1948; Fed. R. Crim. P. 18 (2008)). Whether venue exists in this case is a question of law.

A defendant does have the ability to consent to prosecution in a district that does not have jurisdiction under the statue. Federal Rules of Criminal Procedure Rule 20, states this clearly. However that rule requires that;

1) the defendant state in writing a wish to plead guilty and to waive trial in the transferring district;
2) consent's in writing to the transferee court disposing of the case;
3) files that statement in the transferee district; and
4) the U.S. attornies in both districts approve such a transfer in writing.

Fed. R. Crim. P. Rule 20 (a)(2002).

In this case, Petitioner did not sign or enter any other waiver of venue forms into the record. Petitioner's waiver was merely contained in a paragraph of the plea agreement which stated:

> "defendant understands that he has a right to be tried in the District in which the crime allegedly was committed. Defendant agrees to waive venue as to the crimes charged in the Superseding Information."

The court did briefly discuss that clause at the change of plea hearing, stating, "that Petitioner had a right to be tried in the district where the crimes allegedly occurred and that that right was being waived."

However, under these circumstances, there was no compliance with the dictates of Fed. R. Crim. P. Rule 20. In fact, Rule 20 appears to require much more formality in regards to a waiver of venue. Contrary to the demands of Rule 20, there was no statement by Petitioner, **in writing**, that consented to the transferee' courts jurisdiction, nor was any statement to that effect filed with the court, other than the plea agreement. In addition, there was **no written consent** to the U.S. Attornies of both or either jurisdictions, to the transfer of those alleged four counts. In fact, there was no written agreement or assurances from the transferring prosecuting attorney at all, from the Western District of Washington, at Seattle.

It is Petitioner's contention that the Eastern District of Washington was without jurisdictional venue to accept the plea agreement, plea, and sentence Petitioner on four counts' that occurred in the Western District of Washington, because Petitioner's waiver of venue was not sufficient under Federal Rules of Criminal Procedure Rule 20.

2. ---- This Court is asked to resolve a federal question of statutory law, whether the Court of Appeals for the Ninth Circuit has entered a decision in this case, that is in conflict and contrary to Congress intent, pursuant to the statutory rule requirements of Federal Rules of Criminal procedure Rule 20, by an overbroad interpretation of Rule 20 procedural requirements, in their decision?

The Ninth Circuit panel's decision in Petitioner's case, UNITED STATES OF AMERICA v. DARRYL WILLIAM YOUNG, COA No. 18-30039, decided on June 6, 2019 (Exhibit D), departed from the accepted and usual course of statutory judicial proceedings, by invoking an overbroad scope of interpretation, contrary to Congress intent and the statutory language of Federal Rules of Criminal Procedure Rule 20.

On direct appeal, Petitioner raised paramount procedural violations, pursuant to the application of Fed. R. Crim. P. Rule 20 (a)(1), that directly challenged the sufficiency of the waiver of venue and the validity of the Eastern District Court of Washington, jurisdictional venue, over crimes that had occurred in the Western District of Washington.

Therefore, it is Petitioner's contention that the mandated statutory requirements of Federal R. Crim. P. Rule 20 must be complied with fully in order for jurisdictional venue was to transfer for plea and sentence.

In this case before the Court the failure to comply with all the mandated requirements of Fed. R. Crim. P. Rule 20, nullifies the transfer of jurisdictional venue for the crimes of bank robbery that occurred in the Western District of Washington to the Eastern District of Washington for plea and sentence.

However, the panel for the Ninth Circuit decided not to address the jurisdictional venue challenge on procedural violations of Fed. R. Crim. P. Rule 20. Instead the panel eluded Petitioner's constitutional challenge to jurisdictional venue of the Eastern District of Washington per application of Fed. R. Crim. P. Rule 20 mandated requirements and stated in the panel's decision;

> "Young expressly, waived any right he might have had to a different venue, both in his plea agreement and after express advice during his plea colloquy." EXHIBIT D

Petitioner raised specifically the procedural violations of Rule 20 (a)(1), that are mandated prerequisites that must be complied with "before" the U.S. attornies can intervene to make the transfer of jurisdictional venue viable.

It appears, the panel's reasoning to rely on Petitioner's plea agreement and plea colloquy, to support a waiver of venue was a matter of their interpretation by adding to the statutory language of Fed. R. Crim. P. Rule 20.

Without compliance by Petitioner, "to state 'in writing' a wish to plead guilty...and to waive trial in the district where indictment, information, or complaint is pending," also " to consent in writing to the court's disposing of the case in the transferee district" and "files the statement in the transferee district." Transfer of venue cannot transfer. Petitioner did not comply with any of the stated requirements of Fed. R. Crim. P. Rule 20 (a)(1). Jurisdictional venue is at challenge.

If Federal Rules of Criminal procedure Rule 20 is to be adhered to, failure of Petitioner to comply with Rule 20 (a)(1), would make

the panel's decision without merit, because the district court for the Eastern District of Washington, did not have jurisdictional venue to except the plea agreement charging the four crimes occurring in Western District of Washington or a plea.

The panel for the Ninth Circuit may not insert qualifying provisions not included, and may not rewrite the statute to conform to an assumed intention which does not appear from the language. FOWLER v. WELLS FARGO, 2017, U.S. Dist. Lexis 146732 (9th Cir.); CMTY VOICE v. U.S. EPA, 878 F. 3d 779, 793 (9th Cir. 2017); DOD v. U.S., 545 U.S. 353, 359, 162 L. Ed 2d 343, 347 (2005).

The decision of the panel for the Ninth Circuit, not to address the procedural violations of Federal Rule of Criminal Procedure Rule 20 (a)(1), that challenges the jurisdictional venue of Eastern District of Washington, to accept plea agreement and plea, for crimes that occurred in the Western District of Washington by Petitioner must be decided by this Court.

3. ---- This Court is asked to resolve an important constitutional question of procedural law, whether the district court for the Eastern District of Washington failure to colloquy Petitioner at change of plea hearing, on waiver of right to collaterally attack sentence, violated Federal Rules of Criminal Procedure Rule 11 procedural requirements, invalidated not only the application of the "waiver", but also the validity of Petitioner's plea as being knowingly and voluntarily made?

The panel's decision for the Ninth Circuit addressed Petitioner's Fed. R. Crim. P. Rule 11 procedural violation, stated;

"Young did not object to the nowclaimed omissions in his plea colloquy, so our review is limited to review for plain error. See United States v. Ross, 511 F. 3d 1233, 1235 (9th Cir. 2008). As we held in United States v. Ross, an unobjected to Rule 11 violation does not rise to the plain error standard unless the defendant shows "a reasonable probability that, but for the error he would not have entered a [guilty] plea."
"Id at 1236 (alteration in original)(quoting United States v. Dominquez Benitez, 542 U.S. 74, 76 (2004). Young has not done so." Exhibit D.

The panel's decision, is in conflict with the stand of review for plain error in UNITED STATES v. VONN, 535 U.S. 55, 59, 152 L. Ed 2d 90, 122 S. Ct. 1043 (2002); and UNITED STATES v. OLANO, 507 U.S. 725, 113 S. Ct. 1770, 123 L. Ed 2d 508, (1993). Petitioner raised the plain error standard in Supplemental Brief. Exhibit G.

The panel's failure to address the procedural violations of Rule 11, has departed from the accepted and usual course of judicial proceedings. When a plea colloquy, at a change of plea hearing, is not sufficient by failure to inform a defendant of the rights he is waiving, the waiver is at challenge and jeopardy has attached to the validity of defendant's plea, being knowingly and voluntarily given.

When a court fails to comply with Fed. R. Crim. P. Rule 11, prejudice results to a defendant as the rule is designed to "facilitate a more accurate determination of the voluntariness of a plea." MCCARTHY v. U.S., 394 U.S. 459, 468-472, 89 S. Ct. 1166, 22 L. Ed 418 (1969). Thus, whenever a district court accepts a plea without fully adhearing to the procedural outline in Rule 11, a defendant's conviction must be reversed. U.S. v. BOONE, 543 F. 2d 1090, 1092 (4th Cir. 1976), or the plea must be considered invalid and defendant has

a right to plead anew. MCCARTHY v. UNITED STATES, 394 U.S. 459, 89 S. Ct. 1166, 22 L. Ed 418 (1969).

The district court for the Eastern District of Washington, failed to adhere to the procedural requirements of Rule 11, regarding "waiver" of appeal right to collaterally attack the sentence. Rule 11 (b)(1)(N) (2002)(formally Rule 11 (c)(6)(1999) mandates;

> "Before the court accepts a plea of guilty...the court must address the defendant personally in open court... During this address the court must inform the defendant of and determine that the defendant understands...the terms of any plea-agreement pro-vision waiving the right to appeal or collaterally attack the sentence. Fed. R. Crim. P. Rule 11 (b)(1)N."

There was no mention of the waiver of appeal rights made in open court until the time of sentencing on February 14, 2018, when in passing the district court noted that the record shows that [Young] waived his right to appeal.

The district court failed to address the waiver of right to appeal, to ascertain whether the Petitioner's waiver of appeal rights was knowingly and voluntary "before" the acceptance of the plea on October 11, 2017, as Rule 11 requires. UNITED STATES v. ANGLIN, 215 F.3d 1064, 1068 (9th Cir 2000)(The sole test of a waiver's validity is whether it is made knowingly, and voluntarily.")

In this case before the Court, Petitioner was not provided the opportunity to accept or refuse, waiver of the right to appeal, by collaterally attacking the sentence. Simply, the sentencing Judge's comment, the record shows he waived his right to appeal, does not satisfy the mandated requirements of Fed. R. Crim. P. Rule 11.

The district court change of plea Judge, or the sentencing Judge, failed to address the Petitioner personally regarding the waiver of right to appeal nor did he direct or determine that Petitioner understood the meaning of the waiver.

This is not a technical violation of Rule 11, but rather a wholesale procedural omission of constitutional magnitude that seriously affects the fairness, integrity and public reputation of the plea proceedings. UNITED STATES v. PENA, 314 F. 3d 1152, 1158 (9th Cir. 2003).

In light of this important question of procedural federal law, in regards to the application of the mandated requirements of Federal Rules of Criminal Procedure Rule 11, this Court should review the Ninth Circuit Court of Appeals decision under UNITED STATES v. VONN, 535 U.S. 55, 59, 152 L. Ed 2d 90, 122 S. Ct. 1043 (2002), plain error standard.

## CONCLUSION

Wherefore, the Petitioner, Darryl William Young, prays that this Court will grant certiorari to further review the important questions and conflict in the United States Court of Appeals for the Ninth Circuit, in their decisions in this case.

Respectfully Submitted on this 9th day of December, 2019.

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