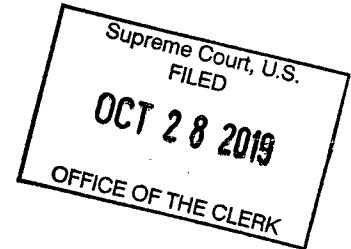


19-7245

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



DARREN LAVALD BOWIE, Petitioner,

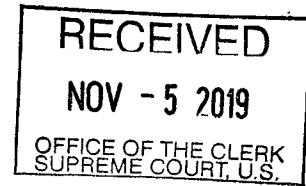
Vs.

UNITED STATES OF AMERICA, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE FIFTH CIRCUIT COURT OF APPEALS

Submitted by:
Darren Lavalid Bowie
#30091-379
FCI-Beaumont Low
POB 26020
Beaumont, TX 77720

-i-



QUESTIONS PRESENTED

1. Does a Plea Agreement which waives challenges to collateral relief forbid challenges to ineffective assistance in proceedings following the entry of the plea?
2. Ought the Court exercise its supervisory power to clarify the above question in light of its effect on the Constitutional right of habeas corpus?
3. Whether ineffective assistance in violation of the Sixth Amendment may be challenged for attorney's serious errors following entry o the Plea Agreement?
4. Does a claim that the waiver was unknowing validate a habeas claim after appeal is denied?

LIST OF PARTIES

All parties are listed in the face page.

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INDEX TO APPENDICES

Appendix A. Judgment of the Fifth Circuit on Petitioner's appeal

Appendix B. Decision of the Southern District of Texas

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR CERTIORARI

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

OPINIONS BELOW

The opinion of the United States court of appeals appears in Appendix A to this Petition and is unpublished.

The opinion of the United States District Court was made on November 6, 2017, appears in Appendix B and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals for the Fifth Circuit rendered its judgment was July 31, 2019, and is unreported.

The date of the judgment denying Petitioner's § 2255 was December 7, 2017, and is unreported.

The jurisdiction of this Court is pursuant to 28 U.S.C. §1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Right of Habeas Corpus

28 U.S.C. 2255

CASES:

Garza v Idaho, Case No. 17-1026 (2019),

Appendix A: Copy of Fifth Circuit decision

Appendix B: Copy of district court decision

STATEMENT OF THE CASE

The issue relates to the ineffectiveness of counsel after Petitioner agreed to a plea of guilty. He did agree not to file a collateral challenge to his sentence (§ 2255), however that was based upon counsel's performance up to that point. A defendant is entitled to effective assistance at all stages of the case.

Petitioner did not receive the decision of the District Court and ultimately had a friend look up to see whether a decision had been made. His friend discovered that the Motion had been denied, not on its merits, rather on the premise that he had waived the right to challenge his sentence collaterally.

He sought the lower court's reconsideration due to his having never received the denial. The district court denied that, but when he appealed to the circuit court, the district court granted leave to proceed IFP. Ultimately the Fifth Circuit remanded it back to the district court entered an order on November 7, 2018—the same day it granted the IFP—denied the § 2255 on the ground that Petitioner had waived his right to challenge the sentence or conviction.

At that point, Petitioner filed an appeal with the Fifth Circuit. On July 31, 2019, the Fifth Circuit denied a COA for the same reason the district court denied him, that his plea waived challenges. No finding on the merit of his issues was attempted. This Petition follows.

REASONS FOR GRANTING THE WRIT

1. This Court is charged with the responsibility of clarifying procedures which the lower courts are applying incorrectly. This is a proper exercise of the Court's supervisory authority. Especially is this true when the Constitution and this Court have underscored the right of habeas corpus.

In similar fashion, appeal waivers are not necessarily a bar to appeals. This Court noted that appeal waivers are subject to challenge if a defendant does not understand what he is waiving. In *Garza v Idaho*, Case No. 17-1026 (2019), this Court said:

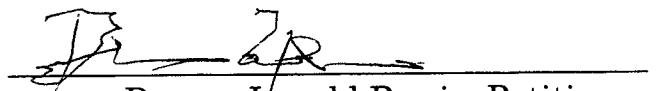
"Separately, all jurisdictions appear to treat at least some claims as unwaivable. Most fundamentally, courts agree that defendants retain the right to challenge whether the waiver itself is valid and enforceable for example, on the grounds that it was unknowing or involuntary. Consequently, while signing an appeal waiver means giving up some, many, or even most appellate claims, some claims nevertheless remain."

Petitioner avers that if the Court's decision in *Garza* involving appeal waivers is constitutionally accurate, the same principle applies to habeas corpus petitions. Almost never does the district court (judge or magistrate) or the attorney representing the defendant explain what is meant by "collateral challenges." Unless the defendant has filed a habeas corpus in a prior case, rarely will he/she understand what right he is giving up. Hence, Petitioner avers that the Court ought to exercise its supervisory authority to clarify this issue.

CONCLUSION

Wherefore, Petitioner prays the Court will grant certiorari and remand his case to the lower courts with instructions.

By executing this Petition this 28th day of October, 2019, Petitioner declares that the statements herein are true on penalty of perjury.



Darren Lavalid Bowie, Petitioner