No. 19-7359

IN THE

SUPREME COURT OF THE UNITED STATES

DANNY GUZMAN-CORREA — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DANNY COREA-GUZMAN #17846-069
(Your Name)

FCI COLEMAN PO. BOX. 1032
(Address)

COLEMAN, FLORIDA 33521 - 1032
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether reasonable jurist could find it debatable that Petitioner's public-trial violation warranted .. reversal at the minimum for an evidentiary hearing based on the Governments concession that one was then necessary to determine prejudice after the District court precluded Petitioner's retained jury consultant from attending the trial ?

2. Whether a reasonable jurist could find it debatable counsel provided bad advice to stand trial, rather than plead guilty under Lafler v. Cooper / Missouri v. Frye, ?

TABLE OF CONTENTS

INDEX TO APPENDICES

LIST OF PARTIES

[x] 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:

RELATED CASES

SEE APPENDIX A-B RESPECTIVELY

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.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix C 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[ ] is unpublished.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[ ] is unpublished.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[ ] is unpublished.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

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 16, 2019.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 17, 2019, and a copy of the order denying rehearing appears at Appendix B.

[ ] 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

AMENDMENT 5

Criminal actions-Provisions concerning-Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

Rights of the accused.

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, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

Petitioner is serving a LWOP sentence after being convicted in the district court September 30, 2009, Petitioner appealed his sentence and conviction which were affirmed by the First Cir Court of Appeals. On November 17, 2014, the U.S. Supreme Court dnied his writ of certiorari. See Correa v. United States, 135 S. Ct. 689 (2014).

Petitioner filed a 28 U.S.C. § 2255 arguing (1) innefective assistance of counsel because his trial counsel failed to advise him to plead guilty; (2) timely object to a "structural" trial error during jury selection; (3) prove that Petitioner did not have two prior convictions and (4) contest incorrect calculation of drug quantities attributed to Petitioner.

The district court denied the § 2255, in a 18 page written OP/ORDER on 3/29/2018. Thereafter, Petitioner filed a COA as to whether the district court erroneously denied the § 2255 without holding an evidentiary hearing based on the fact his jury consultant was omitted from attending trial, in .. addition to other members of the community. And whether Petitioner's misadvise to stand trial was

in violation of this Court's precedents in .. Lafler v. Cooper / Missouri v. Frye.

On September 16, 2019, the First Circuit Court of Appeals issued an **endorsed order** / perfunctory review denying Petitioner's Certificate of Appeal ability, leaving him - stranded on certiorari.

Petitioner filed a timely reharing / reharing en banc which was denied in the same fasion, with out any explication whatsosver. Petitioner submits those as appendix **A** and **B**, respectively.

Petitioner here files this writ of certiorari timely based on the questions presented herein, and in good faith. Petitioner notes that other than the United States District Court's denial of the § 2255, he has not received any meaningful review or opinion from the First Circuit Panel or Sitting En Banc.

Petitioner's claims are structural in violation of his Fifth Amendment and Sixth Amendment of the United States Constitution. Petitioner reiterates he is serving a **L W O P** .... sentence, and has not received any proper review in his 28 U.S.C. § 2255, proceeding.

The writ of certiorari must issue for the ... reasons stated below.

REASONS FOR GRANTING THE PETITION

The question presented by Petitioner was in fact debatable to reasonable jurist as to whether his - trial counsel was ineffective for failing to timely object to the district court's blatant public trial violation. The District Court conceded in Petitioner's 28 U.S.C. § 2255 proceeding "The United States, in turn, believes that one [evidentiary hearing] may be necessary as to the courtroom closure claim." See OP ORDER pg 9¶C.[2] However, the district court made the finding ..... citing Weaver v. Massachusetts, 137 S. Ct. 1899, 1910-12 (2017). "For the sake of argume nt, the court will assume that the Strickland incomp etence prong is satisfied because counsel unreasona bly failed to object to structural error." See OP at pg9¶3. What the district court and the First Circuit failed to address was the fact that in conjunction with Petitioner's family members being barred from attending the trial, his jury consultant was also barred from attending the voir dire process. The Petitioner's allegation should have been fleshed - out during the evidentiary hearing process as the United States recommended in order to assure that

[2] See App C.

Petitioner received a "fair trial." Reasonable jurist in this court after conducting plenary ... review of Petitioner's papers will conclude that - Petitioner demonstrated absent his jury - consultant,[2] there was a "reasonable probability of a different outcome but for counsel's failure to object to the closure or that such failure by counsel rendered his trial fundamentally unfair." Weaver, 137 S. Ct. at - 1910-12.

At least two jurist in this court would agree Petitioner in conjunction with the United States - concession that an evidentiary hearing was warranted questioning (prejudice) prong under Strickland. See Weaver, 198 L. Ed 2d 441:

Dissent by: Breyer

Justice Breyer, with whom Justice Kagan joins, dissenting.

{198 L. Ed. 2d 441} The Court notes that *Strickland*'s ``prejudice inquiry is not meant to be applied in a 'mechanical' fashion," *ante,* at ___, 198 L. Ed. 2d, at 434 (quoting *Strickland* v. *Washington*, 466 U. S. 668, 696, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)), and I agree. But, in my view, it follows from this principle that a defendant who shows that his attorney's constitutionally**{2017 U.S. LEXIS 37}** deficient performance produced a structural error should not face the additional-and often insurmountable-*Strickland* hurdle of demonstrating that the error changed the outcome of his proceeding.

In its harmless-error cases, this Court has ``divided constitutional errors into two classes": trial errors and structural errors. *United States* v. *Gonzalez-Lopez*, 548 U. S. 140, 148, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006). Trial errors are discrete mistakes that ``occu[r] during the presentation of the case to the jury." *Arizona* v. *Fulminante*, 499 U. S. 279, 307, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991). Structural errors, on the other hand, ``affec[t] the framework within which the trial proceeds." *Id.*, at 310, 111 S. Ct. 1246, 113 L. Ed. 2d 302.

---

[2] Rachel Hartje, Comment, *A Jury of Your Peers?: How Jury Consulting May Actually Help Trial Lawyers Resolve Constitutional Limitations Imposed on the Selection of Juries,* 41 Cal. W. L. Rev. 479, 499 (2005).

The Court has recognized that structural errors' distinctive attributes make them ``defy analysis by 'harmless-error' standards." *Id.*, at 309, 111 S. Ct. 1246, 113 L. Ed. 2d 302. It has therefore *categorically* exempted structural errors from the case-by-case harmlessness review to which trial errors are subjected. Our precedent does not try to parse which structural errors are the truly egregious ones. It simply views *all* structural errors as ``intrinsically harmful" and holds that *any* structural error warrants ``automatic reversal" on direct appeal ``without regard to [its] effect on the outcome" of a trial. *Neder* v. *United States*, 527 U. S. 1, 7, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (1999). The majority here does not take this approach. It assumes that *some* structural errors-those that ``lead to fundamental**{2017 U.S. LEXIS 38}** unfairness"-but not others, can warrant relief without a showing of actual prejudice under *Strickland*. *Ante,* at ___, ___ - ___, 198 L. Ed. 2d, at 432, 434-435. While I agree that a showing of fundamental unfairness is sufficient to satisfy *Strickland*, I would not try to draw this distinction.

{137 S. Ct. 1917} Even if some structural errors do not create fundamental unfairness, *all* structural errors nonetheless have features that make them ``defy analysis by 'harmless-error' standards." *Fulminante*, *supra,* at 309,111 S. Ct. 1246, 113 L. Ed. 2d 302. This is why *all* structural errors-not just the ``fundamental unfairness" ones-are exempt from harmlessness inquiry and warrant automatic reversal on direct review. Those same features mean that *all* structural errors defy an actual-prejudice analysis under *Strickland.*

For instance, the majority concludes that some errors-such as the public-trial error at issue in this case-have been labeled ``structural" because they have effects that ``are simply too hard to measure." *Ante,* at ___, 198 L. Ed. 2d, at 431; see, *e.g., Sullivan* v. *Louisiana*, 508 U. S. 275, 281-282, 113 S. Ct. 2078, 124 L. Ed. 2d 182 (1993) (explaining that structural errors have ``consequences that are necessarily unquantifiable and indeterminate"). But how could any error whose effects are inherently indeterminate prove susceptible to actual-prejudice analysis under *Strickland*? **{198 L. Ed. 2d 442}** Just as the**{2017 U.S. LEXIS 39}** ``difficulty of assessing the effect" of such an error would turn harmless-error analysis into ``a speculative inquiry into what might have occurred in an alternate universe," *Gonzalez-Lopez*, *supra,* at 149, n. 4, 150, 126 S. Ct. 2557, 165 L. Ed. 2d 409, so too would it undermine a defendant's ability to make an actual-prejudice showing to establish an ineffective-assistance claim.

The problem is evident with regard to public-trial violations. This Court has recognized that ``the benefits of a public trial are frequently intangible, difficult to prove, or a matter of chance." *Waller* v. *Georgia*, 467 U. S. 39, 49, n. 9, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984). As a result, ``a requirement that prejudice be shown 'would in most cases deprive [the defendant] of the [public-trial] guarantee, for it would be difficult to envisage a case in which he would have evidence available of specific injury.'" *Ibid.* (quoting *United States ex rel. Bennett* v. *Rundle*, 419 F. 2d 599, 608 (CA3 1969) (en banc)) (alteration in original). In order to establish actual prejudice from an attorney's failure to object to a public-trial violation, a defendant would face the nearly impossible burden of establishing how his trial might have gone differently had it been open to the public. See *ibid.* (``'[D]emonstration of prejudice in this kind of case is a practical impossibility . . .'" (quoting *State* v. *Sheppard*, 182 Conn. 412, 418, 438 A. 2d 125, 128 (1980))).

I do not see how we can read *Strickland* as requiring defendants**{2017 U.S. LEXIS 40}** to prove what this Court has held cannot be proved. If courts do not presume prejudice when counsel's deficient performance leads to a structural error, then defendants may well be unable to obtain relief for incompetence that deprived them ``of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence." *Neder*, *supra,* at 8-9, 119 S. Ct. 1827, 144 L. Ed. 2d 35 (internal quotation marks omitted). This would be precisely the sort of ``mechanical" application that *Strickland* tells us to avoid.

In my view, we should not require defendants to take on a task that is normally impossible to

perform. Nor would I give lower courts the unenviably complex job of deciphering which structural errors really undermine fundamental fairness and which do not-that game is not worth the candle. I would simply say that just as structural errors are categorically insusceptible to harmless-error analysis on direct review, so too are they categorically insusceptible to actual-prejudice analysis in *Strickland* claims. A showing that an attorney's constitutionally deficient performance produced a structural error should consequently **{137 S. Ct. 1918}** be enough to entitle a defendant to relief. I**{2017 U.S. LEXIS 41}** respectfully dissent.

The Weaver decision held that courtroom closure during voir dire process did not pervade the whole trial or "lead to basic unfairness." 137 S. Ct. at 1910-1912. The Weaver court and the District of PR, in conjunction with the First Circuit Court failed to address whether the omission of Petitioner's .. jury consultant, warranted an evidentiary hearing, in order to determine prejudice. The United States conceded an evidentiary hearing was warranted. The Court should vacate and remand this case to be sure Petitioner's Fifth and Sixth Amendment rights will be upheld under Stricklands standard. The Weaver - decision held that the Strickland prejudice was not shown automatically, and instead, the burden was on the defendant to show either a reasonsble probability of a different oucome in his or her case or to show that the particular public-trial violation was so .. serious as to render the trial fundamentally unfair. Weaver headnotes. Petitioner presents Jury Consultant Affidavit. App D .

Prejudice is satisfied in this case according to the Maximino Rivera Laporte Affidavit whic is sworn testimony July 2, 2018, in relevant part:

> My responsibilities as an investigator was to assist in the jury selection process by observ ing each cantidate for the jury and assist the defense in the evaluation of each. I observed behaviors, the apparent relationships among .. them while they were not answering questions - to recognize whether or not there was a relati onship between candidates, and also the reacti on of each jury candidate to what the judge or the attorneys were saying, and other details - that are normally missed by ones facing the .. judge. I also gave my opinion based on my prof fessional experience of potential significance of the of the potential juror's profession, wh ere they live, what they do for a living, which newspapers they read, or even the way they dre ssed. When we had the opportunity, we investig ated some of the candidates as to their special interest and/or personal affairs.

The Affiant-Rivera Laporte went on to swear: "I saw people close to the courtroom, but once I was closer to the door of the courtroom, plain clothed officers did not permit me to enter, indicating that

the coutroom would be closed during the phase of jury selection."

In conjunction with this affidavit, Petitioner presents another jury asistant that was precluded from entering the corroom. Ms. Santana Monge then testified that her presence was requested to make a determination of whether the candidates made-up a fair coross section of the Community. Her sworn testimony concludes that after only being allowed to read the list of potential candidates: "There is not even one from Ponce, which was strange to me." App D.

Justice Breyer and Kagan opined "I do not see how we can read Strickland as requireing defendan ts to prove what this court held cannot be proved. If courts do not presume prejudice when counsel's defficient performance leads to structural error, then defendants may well be unable to obtain reli ef for incompetence that deprived them "of basic protections whithout which a criminal trial cann ot reliably serve its function as a vehicle for - determination of guilt or innocence." Certiorari should issue as to whether an evidentiary hearing was proper and whether petitioner could establish prejudice based on the fact his jury consultant - was precluded from voir dire process.

2. The district court attempted to resolve the Petitioner's claim as to the bad advice he receiv ed during plea negotiations by simply stating on the record "While the record shows that Guzman - Correa entered a plea of not guilty on all counts, and proceede to trial, **the record is silent** as to any plea negotiations between the Governmnet - and the petitioner at the pre-trial stage." TR. This Court will find the First Circuit's conclusion - debatable. For example, the record is replete ... with plea negotiations at the pre-trial stage, specifically as to the 15 year plea deal. See (PSI ¶96).[2] The PSI clerly reflects that "There are .. oather members of the conspiracy that occupied a higher hierarchical position that benefited from a sentence of 180 months." See App **E**. SUBJECT:- PONCE HOUSING PLEA OFFERS, this document reflects - there were [1-18 DEFENDANT'S], Petitioner was .. listed as #6 in the scheme; "parties agree to rec ommend sentenc of 180 months for Count one, plus five year consecutive for Count two. Petitioner - Guzman submitted a detailed affidavit that his ..

[2] The PSI indicated that a sentence of life "may be greater than necessary to comply with the statutory sentencing factors." ¶96PSI.

counsel communicated a 15 year plea deal "on the table" but never provided the ple-offer extended by the United States to defendant's 1-18 as stated in the PONCE PLEA OFFERS. Petitioner did not obtain a copy of this document until May Of 2018, acting .. with dilligence. See App F.

Notwithsanding the PONCE LEA OFFERS, the record is corroborated by Petitioner's affidavits ¶'s 4-5 whereas the minuted order reflects that defendant Rodriguez, then informed the court he was ready to enter a "strait plea," and that "Defendant Guzman would go to trial. Due to the hour, and because the Court is trying another case in the afternoon." DE #2812. In fact, DE#2698 demonstrates that "Plea ag reement due by 7/03/2009" during the June 30, stat us conference. Petitioner's affidavit for the reco rd in this Court undisputed and irrefutable, that Counsel insisted that trial was in his best inter est because "there is no physical evidence to ... accuse you." Petitioner requested that Counsel then communicate with the United States that he was will ing to accept a plea, however, Counsel failed to .. commnunicate any last minute offers by the United States in lieu of trial.

What the district court and the Appellate court - failed to address is whether a sentence of 15 years verses LIFE is sufficiently significant to be cons idered prejudicial. The law is not devoid of common sense, which is why cases such as Lafler v. Cooper, 132 S. Ct. 1376 (2012), acknowledge the importance of a criminal defendant beaing able to consider a - plea offer avoid of defect, coercion, or duress. A criminal defendant is entitled to have knowledge of the existance of a viable plea offer and then reli es on counsel for advise as to the soundness of the said plea. If a lawyer renders an offer as unconci onable to the client because of a potential expone ntial prison exposure (or lack of merit of the .. prosecutions case), which is founded on improper - advice, such plea offer is not viable to a criminal defendant **not trained in law**, is, well, unavailable.

Petitioner was assured by his trial counsel that his case would result in acquittal or favorable - verdict. Counsel's failure to communicate the avai lable plea offer, in conjunction with Petitioner's inability to consider a plea offer falls strictly under Lafler. See Thou Shalt Communicate With Your Client: Laurie Levenson, Proffessor of law and holds

the david W. Burcham Chair in Ethical Advocacy at Loyola Law School, Los Angles, noting "The rea lity is that plea bargains have become so central to the administration of the criminal justice sys tem that defense counsel have responsibilities .. that must be met to render the adequate assiatance of counsel that the Sixth Amendment requires in the criminal process at the critical stage."

The fact remains, Petitioner has resolved **all of his criminal matters by a plea[.]** The Supreme Court's decision in Missouri v. Fry, 132 S. Ct. 13 99 (2012), settles this issue. If the plea offer was presented as unavailable to him due to the ... unfounded representation of a favorable outcome in his federal trial, such plea offer is as good as - nonexistent to Petitioner. Frye, like Petiieoner .. was never disclosed a plea offer and the Missouri Court of Appeals agreed with Frye. It applied the two part Strickland standard and determined that Counsel's defficient performance in "failing to - inform him of a plea offer" was prejudicial to Frye. The Court found that Frye was denied his constitut ional roght to effective assistance of counsel.

The Supreme Court here will conclude after ... plenary review of the record that (1) the record as to the existance of the plea was not silent; (2) that Petitioner meets the two prong standard under Strickland.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Danny Lynn Correa - DANNY GUZMAN Correa

Date: January, 10, 2020