

19-7396

No. _____

Supreme Court, U.S.
FILED

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Extension of time application No. 18A1366
("Granted")

IN THE
SUPREME COURT OF THE UNITED STATES

Mr. Julio Mario Haro-Vergugo,

Petitioner "Pro Se",

vs.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Julio Mario Haro-Verdugo, Fed.Reg.No. 91139-008
Federal Correctional Institution
(FCI) Terminal Island, P.O. Box 3007
San Pedro, CA 90733

Petitioner/Appellant "Pro Se"

ORIGINAL

QUESTION(S) PRESENTED

I

Whether the District Court and the U.S. Court of Appeals for the Ninth Circuit's rejection of Petitioner's ineffective assistance of counsel claim(s) were contrary to, or involved an unreasonable application of Strickland and Cronic [infra], and there progenies in light of the evidence of Sixth Amendment violation(s) presented during court proceedings ?

II

Whether due process of the Fifth Amendment was violated when the District Court denied a pro se habeas Petitioner a fair opportunity to obtain viable discoverable material of his case in order to prove an actual conflict of interest that concerned a prior romantic relationship between defense counsel and the prosecutor, and would that further violate the Sixth Amendment ?

III

Whether this case requires a remand back to the lower Court(s) in the interest of justice when the record demonstrates an overriding need for national uniformity of Federal Law in conjunction with the Supreme Court and other U.S. Court of Appeal(s) legal precedents to the cause and prejudice standard of the Sixth Amendment guarantee, specifically when counsel was absent at a critical stage of the criminal proceedings, allowing the Magistrate Judge to impermissibly participate in plea negotiations, and did that violate Rule 11 of the Federal Rule of Criminal Procedure ?

LIST OF PARTIES

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:

United States District Court,
District of Arizona,
DC No. 4:05-cr-00125-DCB-BPV
DC No. 4:11-cv-00245-DCB
DC No. 4:11-cv-00179-DCB

Related Consolidated Case,
Sergio Antonio Haro,
U.S. Court of Appeals
Ninth Circuit No. 12-16740

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APPENDIX B ; Order from the U.S. Court of Appeals for the Ninth Circuit denying petition for rehearing/en banc.

APPENDIX C; Order of the Ninth Circuit granting Certificate of Appealability ("COA").

APPENDIX D; Order from the U.S. District Court of Tucson Arizona Denying the 28 U.S.C. §2255 motion.

APPENDIX E Excerpts of successor Appellate Counsel's Supplemental Opening Brief showing Defense Counsel conceding to a prior romantic relationship with the prosecutor.

APPENDIX F. Excerpts of Appellant's Opening Brief "F-1";
Excerpts of Court Records, Minute Order "F-2";
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TABLE OF AUTHORITIES CITED

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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,
 is unpublished.

The opinion of the United States district court appears at Appendix "D" 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

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 31, 2018.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 19, 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 June 27, 2019 (date) on Sepetember 16, 2019 (date) in Application No. 18 A 1366.

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

U.S. CONST. AMEND V provides in pertinent part:

No person shall... be deprived of life, liberty, or property without due process of law;

U.S. CONST. AMEND VI provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right... to be confronted with witnesses against him... and to have assistance of Counsel for his defense;

28 U.S.C. §2255 provides in pertinent part:

A prisoner in custody under a sentence of a court established by an Act of Congress claiming the right to be released upon the ground the sentence was imposed in violation of the constitution or laws of the United States, or the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or otherwise subject to collateral attack may move the court that imposed the sentence to vacate, set aside, or correct sentence;

Rule(s) governing 28 U.S.C. §2255 provides in pertinent part:

Requiring an evidentiary hearing when movant has made specific allegations that, if true, states a claim on which relief could be granted;

Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")

A prisoner is eligible for Federal habeas relief if the underlying court's merits ruling was "contrary to, or involved an unreasonable application of clearly established Federal Law as determined by Supreme Court precedents; see e.g., Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984); United States v. Cronic, 466 U.S. 648, 658, 104 S.Ct. 2039 L.Ed. 2d 657 (1984), and progenies;

Federal Rules of Criminal Procedure, Rule 11(c) provides that:

(1) In General. An attorney for the government and defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. "[]The court must not participate in these discussions". Id.

STATEMENT OF THE CASE

Julio Mario Haro-Verdugo is the concerend "Petitioner" in this cause. He is uneducated in law, proceeding indigent without the assistance of counsel. His primary language is Spanish. Although he does speak, read and write English, it is very difficult for him to comprehend, especially when legal terminology is used. Hence, he is forced to present his concerns through assistance and translations from fellow inmates.

Factual Background/Case Summary

The factual background of this case has already been set forth in court document(s) of this appeal. For convenience of this Court, they will not be repeated herein.

This case arises from the District Court's denial of Petitioner's 28 U.S.C. §2255 motion to vacate, set aside of correct sentence. The Petitioner's Case No. CV-11-00179 DCB had been consolidated with his son Sergio Haro's Case No. CV-11-00245 DCB. See Docket Id.¹

The District Court also denied Petitioner's motion for discovery of his case, his request for an evidentiary hearing, his request for appointment habeas counsel, and unreasonably applied Strickland and Cronic [supra] Id. This was error, as court document(s) will prove the Petitioner and his son presented facts that were true and would entitle them to relief. The District Court then denied to issue a Certificate of Appealability "COA", and failed to certify any issues for appeal. See Docket Id., and compare to Appendix "D".

1. District Court Docket Entries for these case numbers will be identified as Docket Id. Ninth Circuit Docket Entries for Case No. CA 12-16611 and CA 12-16740 will be identified as 9th Docket Id.

Petitioner and Sergio filed a pro se request for COA with a request for appointment of counsel because it was obvious that the Petitioner and Sergio had shown; "jurists of reason would find it debatable of whether the petition(s) stated a valid claim of the denials of a constitutional right, and that jurists of reasons would find it debatable on whether the District Court was correct in its procedural ruling." See Slack v. McDaniel, 529 U.S. 473 (2000); and compare to 9th Docket Id. Appendix "C".

"COA" Granted in Petitioner's Case

On October 02, 2012, the Ninth Circuit certified two issues in Petitioner's case:

- 1A. Whether appellant was denied his Sixth Amendment right to the effective assistance of counsel based on trial counsel's failure to effectively use government agents reports to impeach their credibility, including whether the district court erred in denying this claim without first affording pro se appellant opportunity to review those reports, which had been withheld from appellant due to pretrial disclosure agreement; and
- 1B. Whether appellant was denied his Sixth Amendment right to the effective assistance of counsel based on counsel's absence during a pretrial settlement conference.

"COA" Granted in Sergio's Case

The Ninth Circuit further certified two issues in Petitioner's son (Sergio's) case:

- 2A. One identical to Petitioner's above first issue ("1A."), and
- 2B. Whether appellate counsel was ineffective for failing to raise a violation of appellant's double jeopardy rights.

See 9th Docket Id.

The Ninth Circuit then granted the consolidation of these appeals and directed the appointment of counsel(s). See 9th Docket Id., and compare to Appendix "C"

Considerable discrepancies occurred towards Petitioner's discovery request, thus requiring appointed Appellate Counsel(s) to seek a remand back to the District Court to establish additional record for appeal. See 9th Docket Id.

In short, on February 10, 2014, the District Court denied the motions for discovery to expand the record for appeal. See Docket Id., and compare to 9th Docket Id.

Finally, 20-months after the Ninth Circuit certified issues in these case(s), on June 12, 2014, the Court held a case management conference and ordered the government to produce copies to Appellate Counsel(s) of the discovery made available during Petitioner's trial (within 30-days). See 9th Docket Id.

Consolidated Opening Briefs

Appointed Appellate Counsel(s) reviewed the trial record, and then consolidated the Opening Briefs addressing One certified issue for Petitioner (above "1B."), and One certified issue (above "2B.") in Sergio's case. See Opening Brief; 9th Docket Id.

However, the Opening Briefs did not assert (above "1A" and "2A") of the joint certified issue regarding use of the investigative reports. The Briefs raised in addition, the single uncertified issue for the Petitioner:

- 3A. "Did the District Court err in not conducting an evidentiary hearing that his attorney was ineffective in failing to adequately advise him of the benifits of the governments plea offer";

The Two uncertified issues for Sergio were:

- 4A. "Was trial counsel ineffective for failing to raise in the District court a violation of Sergio's double jeopardy rights";

4B. "Did the District Court err in not conducting an evidentiary hearing that his attorney was ineffective in failing to adequately advise defendant-appellant of the benefits of the government's plea offer?" See 9th Docket Id.

The joint uncertified issue was:

5. "Whether the District Court erred by not conducting an evidentiary hearing on the claim that the magistrate judge assigned to the case impermissibly participated in the plea negotiations, which in turn prejudiced appellants!"

See Joint Opening Briefs, 9th Docket Id.

Appellate Counsel for Sergio moved to withdraw from Appeal

After the joint Opening Briefs were filed, appointed Appellate Counsel for Sergio moved to withdraw from this appeal due to a conflict of interest. On November 12, 2015, it was granted by the Ninth Circuit. See 9th Docket Id.

Appointment of Successor Counsel

Attorney Kathleen Williamson had been appointed as successor counsel in Sergio's appeal, and discovered additional viable issues that may warrant further relief to these consolidated appeals. They were presented in her Supplemental Opening Brief:

6A. Was trial counsel for Sergio ineffective because he failed to timely arrange for a critical psychological evaluation for the purpose of mitigation in order to avoid a life sentence;

6B. Did Sergio have a right to be informed of a prior romantic relationship between the prosecutor and appointed attorney for the Father ("Petitioner") and, if informed, object to the prosecutor representing the government based upon the impropriety for and actual prejudice against him.

See Supplemental Opening Brief; CA 12-16740, pp. 2-3; 9th Docket Id., and compare to Appendix "E" Id.

Ground One "A-1" (Certified issue of Petitioner's Case)

During these §2255 proceedings, the Petitioner and Sergio made several good faith attempts to obtain discoverable material to assist in the evaluation process of their cases. They further asked for an evidentiary hearing on this very issue. But the District Court denied their request, preventing them from reviewing any viable information in support of habeas relief. As shown above, the District Court denied a "COA" without affording the Petitioner and Sergio an opportunity to determine the true facts of this case. See Docket Id., and compare to Appendix "D" Id.

Summary Argument for Ground One "A-1"

Court document(s) will prove the District Court erred denying Petitioner and Sergio's request for discoverable material of their cases and the denial of an evidentiary hearing. Because, the evidence presented by Sergio's successor counsel's Supplemental Opening Brief proves she obtained a discovery case file that revealed a romantic relationship between Petitioner's trial counsel and the prosecutor, in which the District Court's denial(s) prevented the Petitioner from discovery, causing prejudice towards habeas relief, which would have proven an actual conflict of interest.

This is reflected in successor Counsel's Supplemental Opening Brief, and during the 9th Circuit Oral Argument(s) as well:

"The prior romantic relationship between appointed trial counsel; Ms. Leslie Bowman and the prosecutor, AUSA Mr. David Kern". See Appendix "E" Id.

These discovery violations were substantial as further shown in the Supplemental Opening Brief:

"It should have been disclosed to the Court when Leslie Bowman was appointed to represent ["Petitioner"] Julio Haro-Verdugo that she and the prosecutor, David Kern, had a romantic relationship in the relatively recent past before this litigation..."

"[...]Since there is no mention of this fact in the record..., counsel provides her avowal to this Court that Ms. Bowman and Mr. Kern had an openly romantic relationship a few years, at most, prior to trial. They did not make a secret of it at the time". See Appendix "E" Id., and compare to 9th Docket Id.

Former Trial Counsel Concedes to this fact

During her avowal to the Ninth Circuit, Appellate Counsel for Sergio presented additional information proving Petitioner's trial counsel conceding to her romantic relationship with the prosecutor.

"[...]During a phone conference on October of 2016... between counsel and now Magistrate Bowman (Jurisdictional District Court) said she had dated Mr. Kern for about two years but she was married to her current husband at the time of representing ['Petitioner'] Julio Haro-Verdugo". See Appendix "E" Id.

Ground One ("A-1") Argument

Due to the District Court's denial(s), as of today's date, the Petitioner still has not received complete discovery of his case, impeding into the truth seeking functions and the discovery of the actual conflict of interest between the prosecutor, Mr. David Kern and trial counsel, Ms. Leslie Bowman (now Magistrate Bowman).

See Appendix "D" Id., and compare to Appendix "E" Id., to 9th Docket Id.; compare to 9th Circuit Oral Argument(s) Id.

Even more appalling, these officer(s) of the court, Ms. Bowman, Mr. Kern, the District Court, and the Ninth Circuit knew, or should have reasonably known: a prior romantic relationship between defense counsel and the prosecutor is an actual conflict of interest that should of—been—disclosed as part of the Petitioner's discovery request. (prejudice must be presumed).

In order to grant the Petitioner habeas relief, he must have suffered a violation of his federal constitutional rights. He must demonstrate both that (1) the District Court committed federal constitutional error, and (2) that he was prejudiced as a result. Ayala v. Wong, 756 F.3d 656 (9th Cir. 2014), reversed on other grounds, Davis v. Ayala, 135 S.Ct. 2187 (2015).

In Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891 (1956), where this Court held that, on appeal, indigent defendants must be provided with a copy of a report of proceedings, defined by the Court as all proceedings in the case from the time of the convening of the court until the termination of the trial, including all of the motions and rulings of the trial court, the evidence heard, instructions and other matters which do not come within the Clerk's mandatory record. Griffin ruled that the denial of transcripts to assist the pro se appellant would violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment. *Id.*, at 13, n. 3.

This Court has further held:

"[...]In our adversary system for determining guilt or innocence, it is rarely justifiable for the prosecution to have exclusive access to a storehouse of relevant facts". See Denis v. United States, 384 U.S. 855, 873 (1966).

The District Court's denial of Petitioner's request for discovery of his case, and an evidentiary hearing on this very issue, caused prejudice, preventing him from discovering the above actual conflict of interest between trial counsel and the prosecutor. This is, and must be considered a Due Process violation of the Fifth Amendment, and the Sixth Amendment right to counsel "conflict free".

This Court has also held:

"[]A defendant has no right to counsel, for example, to an attorney who is not a member of the bar, or who has a conflict of interest due to a relationship with an opposing party. Nor may a defendant insist on an attorney who has a conflict of interest." See Wheat v. United States, 486 U.S. 153, 159, 108 S.Ct. 1692, 100 L.Ed. 2d (1988).

Ground One ("A-1") Relief

Court document(s) reveals several discrepancies in both, the District Court and the Ninth Circuit's denial(s) of §2255 habeas relief pertaining to Petitioner's complete discovery of his case, and seeks a remand back to the lower court(s) with an order to produce his complete case file and conduct an evidentiary hearing in the interest of justice, to determine the truth and scope of all discoverable material.

Ground Two "B-2" Certified issue of Petitioner's case

The Petitioner was prejudiced by trial counsel's failure to appear at a critical stage of the criminal proceedings, allowing the assigned Magistrate Judge to impermissably participate in the plea negotiation process. This violated the Sixth Amendment right to counsel at all critical stages of the criminal proceedings, and violated Rule 11, of the Federal Rule of Criminal Procedures.

In support, the Petitioner has provided excerpts of court records proving the government's attempt to defile the Court(s), which is accompanied by a sworn affidavit by an Attorney Mr. Sean Bruner. See Appendix "F" Id.

Thus, the prejudicial effect caused by the government's improper action, led the District Court and the Ninth Circuit to unreasonably apply Strickland and Cronic [supra], and there progenies to Sixth Amendment violations, which includes the right

to counsel at all critical stages of criminal proceeding(s), including when he enters a guilty plea. Lafler v. Cooper, 132 S.Ct. 1376, 1385 (2012); Hill v. Lockhart, 474 U.S. 52, at 58, 59, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). Id.

Summary Argument for Ground Two ("B-2") Certified issue

Court document(s) shows as a form of concession the government did not dispute the critical stage of the proceedings. Instead, it argued that Petitioner was represented at the pre-trial settlement conference by attorney Sean Bruner who allegedly appeared in behalf of Petitioner's attorney Matthew McGuire. See Excerpts of Appellant's Opening Brief. Appendix "F-1" Id., showing the government relied upon an inaccurate minute order. Appendix "F-2" Id.

In order to prove the government wrong, Petitioner obtain and presented an affidavit from attorney Sean Bruner, who avowed:

"[]I do not believe I ever appeared at a settlement conference in this case notwithstanding the minute entry of 12/01/2006."

See Appendix "F-3" Id.

The truth of this fact is, attorney Sean Bruner was never counsel of record, and the District Court and the Ninth Circuit erred by not conducting an evidentiary hearing, pursuant to 28 U.S.C. §2255(5):

"[]Requiring an evidentiary hearing when the affidavits submitted by the movant and the government raises factual disputes". Blackledge v. Allison [infra], Id.

Without assistance of counsel during this final pre-trial settlement conference to assist the Petitioner, and at convenience for the government, the (Docket 463 settlement hearing 12/01/2006), held before Magistrate Judge #70BJ, Bernardo P. Velasco had "NOT" been recorded as previously stated by an alleged Clerical error.

See Appendix "F-2" Id.

Ground Two "B-2" Argument

The significance to this erroneous 12/01/2006 (Docket 463) minute order has created prejudice against the Petitioner when it alleged no record had been made of this proceeding. Appendix "F-2".

Without assistance of counsel, at this final pre-trial settlement conference, with—NO—record established, enabled Magistrate Judge Bernardo Velasco to impermissably participate in the plea negotiation process, in violation of the Sixth Amendment right to counsel at this critical stage of the criminal proceeding(s), and further violated Rule 11, of the Federal Rule of Criminal Procedure:

"[]The court must not participate in these discussions" Id.

Instead of conducting an appropriate evidentiary hearing during the §2255 habeas proceedings to determine the factual truth of these discrepancies, the District Court erred by:

- (1) deciding this matter without a hearing;
- (2) concluding the Petitioner suffered no prejudice even if he had been unrepresented at the settlement conference; and
- (3) in denying the §2255 motion on this point.

However, approximately 60 days after the settlement conference, on January 31, 2007, a record was established showing Magistrate Judge Velasco did participate in the Rule 11, Federal Rule Criminal Procedure colloquy pertaining to Sergio in the presents of the Petitioner:

The Court: (Unintelligible) have you made any decision?

Mr. Chapman (attorney for Sergio): Sorry, Your Honor?

The Court: I am asking Sergio if he has made any decisions.

Sergio Haro: No

The Court: Do you think you are going to?

Sergio Haro: It's a lot of years. I'm not going to take a lot of years.

The Court: You need to understand that life is a lot of years. 20 years is a lot less than you realize. But it does mean that you will be able to have family and have a life when you are going to be much younger, well, than I am right now.

How old are you?

Sergio Haro: 25

The Court: 25. When you get out, you will be less than 45. When you are 45, if you don't take this deal, you are going to have, if you have a normal life expectancy, 31 years to go.

Do you understand that?

Sergio Haro: Yes, sir.

The Court: So do you understand the difference between 20 and 51?

Sergio Haro: Yes, sir.

The Court: Which is the big number?

Sergio Haro: 51.

The Court: You don't take this deal, you will never arrive at a card game. You will never walk into a movie theater. You will never have cable channels.

Do you have children?

Sergio Haro: Yes, sir.

The Court: You will never go to another birthday party. You will never go to another wedding, You won't be there for your grand kids.

Do you understand what that means?

Sergio Haro: Yes.

See Appellant's consolidate Opening Briefs Id, page(s) 58, 59 of 70, and compare to Case 4:05-cr-00125-DCB-BPV Document 1179 Filed 01/13/09 Page 1 through 12 Id. Hearing January 31, 2007.

Respectfully, Judge Velasco's apparent unsolicited comments were improper on a number of levels, but are presented as evidence to show he was capable of driving his point in a heavy handed way.

Thus, Magistrate Velasco's comments during the Docket 463 Id., 12/01/2006 settlement conference held without assistance of counsel, caused the Petitioner, during the 01/31/2007 settlement conference to move to replace counsel of record; Matthew McGuire because of a total breakdown in attorney/client relationship. See Record of Settlement Conference held on 01/31/2007 Id.

Magistrate Velasco continued to enter his rulings in this case after the settlement conference concluded. Id. This Court as well as the Ninth Circuit precedents has held such improper judicial involvement in plea negotiations is an absolute ban of Rule 11, of Federal Rules of Criminal Procedures, which admits no exceptions. See United States v. Aderson, 993 F.2d 1435, 1438-39. (9th Cir. 1993); United States v. Davila, ____ U.S. ___, 133 S.Ct. 2139, 2142, 186 L.Ed. 2d 139 (2013).

After Judge Velasco's exposition(s) led the Petitioner to wonder if it was based on law and fact, or his displeasure for not pleading guilty at the time of his judicial intervention.

Prejudice Proven

Due to Magistrate Velasco's actions, and appointed counsel; Matthew McGuire's inactions, caused the Petitioner and Sergio to decline to enter into a plea agreement. As a result, they were penalized for proceeding to trial leading to the Petitioner's 25 plus year sentence, and a life sentence for his son Sergio.

Ground Two ("B-2") Relief

As a matter of law, the Ninth Circuit found that the District Court violated the constitutional rights of the Petitioner and Sergio by granting the "COA". Thankfully, Sergio's case has been remanded back for resentencing based upon ineffective assistance of counsel for failing to raise a violation of the double jeopardy clause. See Appendix "A" *Id.*

But the Ninth Circuit rejected the Petitioner's ineffective assistance of counsel claims presented above without a requisite evidentiary hearing on both grounds to determine the truth and scope of these factual allegations. As a result, the record and court files of this case demonstrates the District Court and the Ninth Circuit's rejection of Petitioner's ineffective assistance of counsel claim(s) were contray to, or involved an unreasonable application of Strickland, Cronic [supra], and their progenies. *Id.*

For reasons set forth herein, the Petitioner seeks a remand back to the lower Court(s) for his discovery, additional briefing, and an evidentiary hearing in the interest of justice.

Memorandum of Law/Points and Authorities

The standard for granting an evidentiary hearing pursuant to §2255 entails "assuming the truth" of a movant's factual allegations, which as here, is supported by the record and court document(s) of this case. See Appendix Id. Blackledge v. Allison, 431 U.S. 63, 82-83 (1977); see also Rules Governing 28 U.S.C. proceedings:

"Requiring an evidentiary hearing when a movant has made specific allegations that, if true, states a claim on which relief could be granted." *Id.*

The Antiterroism and Effective Death Penalty Act of 1996 "AEDPA" requires the Court(s) to reasonably apply constitutional standards for effective assistance of counsel. Strickland [supra], Cronic [supra], and Hill v. Lockhart [supra] Id.

According to Strickland, a defendant may establish prejudice by showing "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different". Id.

Petitioner has met this burden of Strickland

"1-A". The Petitioner has shown that the District Court's denials of his complete discovery of his case, prevented him from discovering that his trial counsel; Ms. Bowman labored through an actual conflict of interest with the prosecutor, (AUSA) Mr. Kern. Id.

This information should have been disclosed, but for reasons beyond Petitioner's control, it had never been produced, resulting into prejudice of the §2255 habeas proceeding(s).

"2-B". Court document(s) have proven Petitioner met both prongs of of the Strickland standard of review:

- (1) Appointed Counsel of Record; Mr. Matthew McGuire was absent at the 12/01/2006 critical stage of the proceeding(s) of a pretrial settlement conference;
- (2) This resulted in Magistrate Judge Velasco's improper participation in the plea negotiation process on 12/01/2006 (Docket 463; Appendix "F-2") when no record was made due to an alleged Clerical error;
- (3) The Government submitted the court's (Docket 463 minute order on 12/01/2006) stating Petitioner was represented by Attorney Sean Bruner, which was factually incorrect; Appendix "F-2".
- (4) Petitioner submitted a sworn affidavit from Attorney Sean Bruner to show Mr. Bruner was not at this (12/01/2006) pre-trial settlement conference, and he was "NOT" Attorney of Record. See Appendix "F-3" Id.; and
- (5) The hearing held on January 31, 2007 shows Magistrate Judge Velasco did in fact impermissably participate in the plea negotiation process which caused the Petitioner to move to replace Attorney of Record; Mr. McGuire. See Id.

The cumulative effect that was overlooked by both the District Court and the Ninth Circuit has caused substantial prejudice to the Petitioner's habeas proceedings requiring a remand back to the lower Court(s) for further proceedings.

This Court has relieved defendant's of an obligation under the two prong Strickland test to make that affirmative showing in only a very narrow set of cases, in which the accused has effectively been denied counsel altogether.

These cases include: 1) the actual or constructive denial of counsel; 2) state interference with assistance of counsel; and 3) counsel labors under an actual conflict of interest. Strickland, *Id.*, at 692, 104, *S.Ct.* 2052, 80 *L.Ed.* 2d 674; Cronic [supra], *Id.*, at 466 *U.S.*, at 658-660.

Prejudice can be presumed with respect to these errors because they are so likely to "prejudice the accused that the cost of litigating their effect in a particular case is unjustified". Cronic, *Id.*, at 658; Strickland *Id.*, at 692; Mickens v. Taylor, 535 *U.S.* 162, 175, 122 *S.Ct.* 1237, 152 *L.Ed.* 2d 291 (2002)(noting that the Supreme Court "presumed [prejudicial] effec[t] where assistance of counsel was denied entirely or during a critical stage of the proceedings").

Hence, the District Court and the Ninth Circuit's rejections of Petitioner's ineffective assistance of counsel claim(s) has been an objectively unreasonable application of proven Fifth and Sixth Amendment violations, and an unreasonable determination of facts in light of the evidence presented in Court proceeding(s). See and compare to Wiggins v. Smith, 539 *U.S.* 510, 528, 123 *S.Ct.* 2527, 156 *L.Ed.* 2d 471 (2003) *Id.*

Closing Argument(s)

No one doubts the fundamental character of a criminal defendant's Sixth Amendment right to assistance of counsel at a critical stage of a criminal proceeding.

The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law.

If charged with a crime, he is incapable, generally, of determining for himself whether an indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without proper charges, or convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible.

He lacks both skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step of the proceedings against him.

Without it, though he may be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

See Gideon v. Wainwright, 373 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d (1963) Id., at 344-345 (quoting Powell v. Alabama, 287 U.S. 45, 68-69, 53 S.Ct. 55, 77 L.Ed. 158 (1932)).

Bottom Line: Counsel was absent at a critical stage of the criminal proceeding(s). See Appendix "F" Id. Through assistance and translations from fellow inmates, the Petitioner has tried his best to present his case for review, as these facts are true and correct, which should warrant further review in the interest of justice.

REASONS FOR GRANTING THE PETITION

Court document(s) of this case makes clear that the District Court and the Ninth Circuit Court of Appeals has decided several important factual disputes in a way that has so far departed from the accepted and usual course of the judicial proceedings, and has sanctioned the Petitioner of such departure as to call for an exercise of this Honorable Court's supervisory powers.

The Petitioner prays this Court will use the facts of his case to properly guide the Prosecutors, Courts, and Defense Counsels to prove that: (1) there are certian Constitutional rights under the Fifth and Sixth Amendments to full access to discovery to enable a pro se Petitioner a fair oppotunity to present a meaningful habeas review; and (2) their is a right to counsel during all critical stage(s) of the criminal proceedings, a requirement to be free from judicial interference in the Plea negotiation process, that was enacted by Congress under Rule 11 of the Federal Rules of Criminal Procedures, all of which should be clarified, respected, and enforced. Thank you.

I, Julio Mario Haro-Verdugo, federal registration number 91139-008 am the concerned Petitioner in this cause. I declare (certify, verify, or state) under penalty of perjury, pursuant to 28 U.S.C. §1746, that the information and supporting document(s) are true and correct.

EXECUTED, THIS THE 14 DAY OF SEPTEMBER, 2019; FROM (FCI) TERMINAL ISLAND, CALIFORNIA, 90731.

Julio Mario Haro Verdugo,
Julio Mario Haro-Verdugo, #91139-008
Federal Correctional Institution
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San Pedro, CA 90733

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Julio Mario Haro Verdugo,
Julio Mario Haro-Verdugo, Fed. Reg. #91139-008
Petitioner "Pro Se"
Date: Sept-14-2019