19-7400

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Christopher Glenn — PETITIONER
(Your Name)

vs.

United States of America RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher Glenn
(Your Name)

USP-Marion PO Box 1000
(Address)

Marion, IL 62959
(City, State, Zip Code)

n/a
(Phone Number)

## QUESTION(S) PRESENTED

Question #1: Did the Eleventh Circuit so far depart from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power when it sanctioned the Southern District of Florida's finding that Glenn's claims, well pled from personal knowledge, that his counsel had rendered ineffective assistance by defrauding him, misleading him, and, tendering a false document to the Court, could be dismissed without either response, or, an, evidentiary hearing?

## 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:

## TABLE OF CONTENTS



## INDEX TO APPENDICES

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[X] is unpublished.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 B to the petition and is

[X] reported at 2017 US Dist LEXIS 214809; 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[ ] is unpublished.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[ ] is unpublished.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[ ] is unpublished.

## TABLE OF AUTHORITIES

### Cases



### Statutes and Rules

## JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was July 15, 2019.

[X] 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: _____, 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. § 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).

## STATEMENT OF THE CASE

### Factual And Procedural Background

1) In 2012, Christopher Glenn was a military contractor who was employed as a computer network systems administrator for Harris Corporation at Soto Cono Air Base in Honduras. United States v Glenn SD Fl 14-cv-80031-KAM-1 ("crim") Doc 3 para 2.

2) On February 18, 2014, the United States indicted, and, arrested, Glenn, charging him on July 15, 2014, in the second superseding indictment with:

   a) one count of gathering, transmitting, or, losing, defense information in violation of 18 USC §793;

   b) three counts of theft of public money, property, or, records, in violation of 18 USC §641;

   c) three counts of computer fraud in violation of 18 USC §1030A;

   d) two counts of structuring transactions to evade IRS reporting in violation of 31 USC §5324;

   e) one count of conspiracy to commit naturalization fraud in violation of 18 USC §371;

   f) two counts of procurement of naturalization fraud in violation of 18 USC §1425; and,

   g) one count of witness tampering in violation of 18 USC §1512(c).

3) During the period March to June 17, 2014, Glenn paid defense counsel Patrick McKamey $220,000.00 in exchange for which McKamey agreed to represent Glenn through trial. Doc 1 para 1-9. Specifically, Glenn paid McKamey $50,000.00 to take the case to trial in March 2014.

Doc 1 para 3. McKamey then, ignoring the written contract, demanded another $50,000.00 for the same representation. Doc 1 para 4. In May 2014, McKamey then demanded another $120,000.00 for the same representation, advising Glenn to obtain the money by defrauding Glenn's creditors. Doc 1 para 5-9.

4) McKamey first presented Glenn with a potential plea agreement to one count of violating 18 USC §793(c), one count of violating 18 USC §1030(a)(1), and, one count of violating 18 USC §371, and, §1425(a), in October 2014. Doc 1 para 10. Glenn declined the offer because he is actually innocent. Doc 1 para 10-14.

5) In November 2014, after receiving discovery indicating that Glenn may have additional funds overseas, McKamey informed Glenn that his $220,000.00 retainer was not adequate to take this case to trial, and, that Glenn would have to pay McKamey an additional $800,000.00. Doc 1 para 19. McKamey stated that if Glenn did not pay the additional $800,000.00, McKamey would withdraw his representation, or, Glenn could plea. Doc 1 para 20-22. Glenn declined to plea.

6) In December 2014, McKamey stated to Glenn that Glenn would most likely receive a sentence of time served. Doc 1 para 23. Glenn still declined to plea.

7) On January 20, 2015, McKamey again brought Glenn the offer of para 4, supra, and, advised Glenn that Glenn would receive a "maximum" sentence of 37-46 months. Doc 1 para 15. Glenn again declined to plea. Doc 1 para 16-18. McKamey then told Glenn that Glenn could plea to having committed the charged offenses negligently, not intentionally, and, again, stated that Glenn would most likely receive a sentence of time served. Doc 1 para 24-27. Again, McKamey threat-

ened to withdraw his representation if Glenn did not plea. Doc 1 para 26.

8) Based solely on the belief that he was pleading to negligent conduct with a likely sentence of time served, and, a maximum sentence of 37-46 months, Glenn signed a plea agreement, crim Doc 101. Doc 1 para 27.

9) On January 21, 2015, McKamey asked Glenn to sign the factual proffer that was eventually tendered with the plea agreement. crim Doc 101; Doc 1 para 28-31. As this Factual Proffer pled to intentional, and, not negligent, conduct, Glenn refused to sign it. Doc 1 para 29-31. McKamey then stated that Glenn could instead make his own Defense Factual Proffer, Doc 1 Exh I, which Glenn did. Doc 1 para 32-33. The signature page of this Defense Factual Proffer is identical to the one proffered to the Court, crim Doc 101.

10) On January 23, 2015, Glenn signed the Defense Factual Proffer. Doc 1 para 36. McKamey then removed the signature page from the Defense Factual Proffer, attached it to the original Factual Proffer, and, tendered the original Factual Proffer, with Glenn's fraudulently obtained signature, to the Court without Glenn's knowledge. Doc 1 para 36-39, 41-42.

11) McKamey then led Glenn to believe that an unwritten deal for time served had been reached with the Office of the United States Attorney for the Southern District of Florida. Doc 1 para 40, 46-50.

12) Glenn discovered at his July 31, 2015, sentencing hearing that there was no deal for time served when he was sentenced to 120 months imprisonment. crim Doc 142. Glenn learned of McKamey's fraudulent proffer in August 2015. Doc 1 para 43, 51.

13) Glenn timely appealed August 12, 2015. Crim Doc 144. The appeal was denied.

14) Glenn's Motion to Vacate Pursuant to 28 USC §2255 was docketed April 18, 2017. Doc 1.

15) A Magisterial Report and Recommendation was entered May 10, 2017, recommending that the Motion to Vacate be denied without response on the basis that Glenn's well-pled facts alleging fraud by defense counsel in the inducement to plea do not constitute ineffective assistance of counsel. United States v Glenn 2017 US Dist LEXIS 72116 (SD Fl 2017).

16) This report was adopted over Glenn's objections on October 20, 2017, with the District Court making additional factual findings, despite having taken no evidence, and, there being no response. Doc 11.

17) Glenn timely appealed the denial of Certificate of Appealability, and, his appeal was summarily denied July 15, 2019. Appx A.

18) Glenn now seeks Writ of Certiorari from this Court.

## REASONS FOR GRANTING THE PETITION

Standards

19) This Court may review the denial of a Certificate of Appealability ("CoA") by the lower courts. Miller-El v Cockrell 537 US 322 (2003). When the lower courts deny a CoA, and, this Court concludes that their reason for doing so was flawed, the Court may reverse and remand so that the correct legal standard may be applied. Slack v McDaniel 529 US 473 (2000).

20) When a lower court's ruling is summarily affirmed, this Court "looks through" that reasoning to the last Court decision providing relevant rationale. Wilson v Sellers 200 L Ed 2d 530 (2018).

21) When a habeas applicant seeks a CoA, the court of appeals should limit its examination to a threshold inquiry into the underlying merit of his claim. Miller-El citing Slack. This inquiry does not require full consideration of the factual or legal basis of support for the claims. Miller-El. Consistent with the Court's precedent, and, the statutory text, the prisoner need only demonstrate a "substantial showing of the denial of a Constitutional right." 28 USC §2253(c)(2). He satisfies this standard by demonstrating that jurists of reason could disagree with the District Court's resolution of the case, or, that the issues presented were adequate to deserve encouragement to proceed further. Miller-El citing Slack. He need not convince a judge that he will prevail, but, must demonstrate that reasonable jurists would find the District Court's assessment of the Constitutional claims either debatable or wrong. Miller-El citing Slack.

22) US Const Amend VI guarantees criminal defendants "the right ... to have Assistance of Counsel for [their] defense." The right to counsel includes "the right to the effective assistance of counsel." Strickland v Washington 466 US 668 (1984) citing McMann v Richardson 397 US 759 (1970). Under Strickland, a defendant who claims ineffective assistance of counsel must prove (1)"that counsels' performance fell below an objective standard of reasonableness", and, (2) that any such deficiency was "prejudicial to the defense." Strickland.

23) To merit a response pursuant to Fed.R.2255.P. 4, a habeas petitioner's obligation in a 28 USC §2255 pleading is to allege in a non-conclusory manner that he had Grounds For Relief("GFRs") which are then proven at an evidentiary hearing. Harris v Nelson 394 US 286 (1969). Claims related primarily to purported occurrences outside the courtroom may not be summarily dismissed. Machibroda v United States 368 US 487 (1962). Similarly, findings may not be summarily made on controverted issues of fact. United States v Hayman 342 US 205 (1982). And, the plausibility of a petitioner's allegations may not be judged ex parte. Waller v Johnson 312 US 275 (1941).

24) A defendant is entitled to effective assistance of counsel in deciding whether, or, not, to accept a plea offer. Padilla v Kentucky 559 US 356 (2010). In contesting a guilty plea colloquy, a defendant must show "that, but for counsel's errors, he would not have pleaded guilty, and, would have insisted on going to trial." Hill v Lockhart 474 US 52 (1985); Premo v Moore 562 US 115 (2011).

Argument

25) In this matter, Glenn pled that his defense counsel first obtained

Glenn's life savings, then, began to extort Glenn to compel Glenn to plead guilty, eventually completing the extortion by fraud, and, by the tendering of a fraudulent document to the Court. para 3-12, supra. Glenn learned of the fraud upon the Court a month after his sentencing in August 2015, and, promptly moved for relief. para 12-13, supra.

26) Glenn's facts are non-conclusory, and, pled from personal knowledge; there is no question that his account of his counsel's fraud upon the Court, if nothing else, is grounds for vacatur of the conviction, as fraud upon the court in which the party did not participate has always been seen as grounds for vacatur of judgment. see, eg, Gonzalez v Crosby 545 US 524 (2005); Hazel-Atlas Glass Co v Hartford Empire Co 322 US 238 (1944); Fed.R.Civ.P. 60(d). The Magistrate did rule that obtaining a client's signature to one factual proffer, removing the signature page, attaching the signature page to a different factual proffer, and, proferring the false document to the Court,did not call for vacatur as a matter of law, but, that finding is so absurd that it does not merit much discussion. Glenn v United States 2017 US Dist LEXIS 72116 (SD Fl 2017).

27) The real question before this Court is whether, or, not, the District Court erred by completely ignoring what was pled, and, by making this finding without taking any evidence, or, even ordering a response:

> "Petitioner is not entitled to an evidentiary hearing based on outrageous and false allegations which have no support in the record."

Glenn v United States 2017 US Dist LEXIS 214809 (SD Fl 2017).

28) As a matter of law, Glenn's non-conclusory allegations sworn to from personal knowledge are not "outrageous", as they are within the

realm of physical possibility. Fed.R.Evid. 602. These allegations, without any corroboration, for example, would be more than sufficient to support a conviction of Glenn's counsel for fraud in a federal criminal proceeding. And, as there was no record, and, no response, the Court has absolutely no basis to determine that the allegations were false as a matter of law. Waller. Thus, the District Court set aside at least 78 years of settled law when it ruled that it could disregard Glenn's factual allegations without further evidentiary development, a departure from the accepted and usual course of judicial proceedings. Sup.Ct.R. 10(a).

29) Similarly, the reliance of both the Distict Court, and, the Magistrate upon the facts proferred in the plea agreement, when Glenn has pled that the submission of said facts was obtained from him by his counsel by fraud was improper. para 9-10, supra. Further, as the facts of the proffer were not discussed at the plea hearing, Glenn's statement he agreed to the factual proffer could not be binding, as he had not been informed what those facts were. para 12, supra.

30) In making findings as to controverted issues of fact, the Magistrate, and, the District Court, also engaged in a departure from the accepted and usual course of judicial proceedings. Hayman; Sup.Ct.R. 10-(a).

31) This case should have been a very straightforward grant of CoA, and, reversal. But, unfortunately, a certain segment of the federal judiciary believes that the best way to deal with allegations of corruption is to declare them false without inquiry. And, of course, this attitude encourages corruption as attorneys who engage in the kind of behavior McKamey is accused of know that they will never be held to

account by the legal system that they have betrayed. Glenn pled his case properly, and, was entitled to Due Process in his habeas proceeding; the District Court, for reasons other than the merits of Glenn's case, entered a dismissal. This is a substantial departure from the accepted and usual course of judicial proceedings. It should have been corrected by the Circuit Court, but, unfortunately, the 11th Circuit decides CoAs with one judge, and, Glenn pulled the wrong one. This Court should now exercise its supervisory power, and, grant certiorari, reverse, and, remand this case for further proceedings.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Christopher G

Date: 8-26-2019