No. 19-7492

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

INGER JENSEN (Inmate) — PETITIONER

vs.

UNITED STATES OF AMERICA — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

INGER JENSEN (Inmate # 72285053)

FCI DANBURY

FEDERAL CORRECTIONAL INSTITUTION

ROUTE 37

DANBURY, CT 06811

(203) 743-6471

QUESTIONS PRESENTED

A. 28 U.S.C. § 2255 states that "**Unless** the motion and the files and records of the case **conclusively show** that the prisoner is entitled to no relief, the court **shall** cause notice thereof to be served upon the United States attorney, **grant a prompt hearing** thereon, determine the issues and make findings of fact and conclusions of law with respect thereto." Here, the District Court's primary reason for denying Petitioner's claim was that "there is simply not enough evidence in the record to permit the Court to conclude that, but for her counsel's errors, Movant would have pled guilty", but not that the record conclusively shows that if Petitioner's claims are true, she would nonetheless be entitled to no relief. Did the District Court for the Northern District of Georgia err in denying Petitioner's request for an evidentiary hearing pursuant to 28 U.S.C. § 2255?

B. The denial of an evidentiary hearing in a § 2255 proceeding is reviewed for an abuse of discretion. The Eleventh Circuit acknowledged that the District Court's reasoning amounted to an abuse of discretion, stating that the District Court made "a misstatement because the question before the court was not whether there was enough evidence in the record to substantiate Jensen's claims, but whether Jensen had pleaded sufficient facts that, if true, would show that she was prejudiced by her attorney's deficient performance"; but then, in an unprecedented application of the harmless error rule, citing to inapplicable case law for support, the Eleventh Circuit completely disregarded the District Court's abuse of discretion error and engaged in its own *de novo* analysis to determine whether the District Court's dismissal was appropriate, ultimately, making the exact same error. Did the Eleventh Circuit erroneously overlook and misapprehend the appropriate standard of review as to the sole issue of whether the District Court for the Northern District of Georgia erred in failing to hold an evidentiary hearing on Petitioner's ineffective assistance of counsel claim?

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

Petitioner is unaware of any related cases.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

Petitioner wishes to submit her previous Brief (Appendix G) and Reply Brief (Appendix H) for Question A and her previous Petition for Panel Rehearing (Appendix I), and respectfully directs the Supreme Court of the United States to the Authorities Cited therein.

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

The opinion of the United States Court of Appeals for the Eleventh Circuit appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court for the Northern District of Georgia appears at Appendix B to the petition, Petitioner does not know if it is reported.

JURISDICTION

The date on which the United States Court of Appeals for the Eleventh Circuit decided my case was July 15, 2019. A timely petition for rehearing was denied by the United States Court of Appeals on September 16, 2019, and a copy of the order denying rehearing appears at Appendix D.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S. Code § 2255. Federal custody; remedies on motion attacking sentence

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

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the

judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

STATEMENT OF THE CASE

Petitioner wishes to submit her previous Brief (Appendix G) and Reply Brief (Appendix H) for Question A and her previous Petition for Panel Rehearing (Appendix I) for Question B, and respectfully directs the Supreme Court of the United States to the Authorities Cited therein.

Petitioner adds that

In erroneously conducting its *de novo* review, the Eleventh Circuit made similar mistakes as the District Court. For example, both the District Court and the Eleventh Circuit created an argument that Petitioner did not raise: whether there was a "formal" offer, as opposed to an informal offer. They then ignored cases that held that counsel's constitutional duty includes the obligation to inform a client about a plea offer, without the differentiation as to whether the plea offer was made "formally" or "informally." *See, e.g., Diaz v. United States*, 930 F.2d 832, 834 (11th Cir. 1991) (client must be involved in decision to accept or reject plea offer, and failure to inform client of offer constitutes ineffective assistance) (internal citation omitted); *compare Frye*, 132 S.Ct. at 1408 (holding that, as a general rule, defense counsel has the duty to communicate formal offers from the prosecution).

They then fault Petitioner for not presenting evidence of a formal offer, of which she could not have known and did not claim to know of. In fact, the nature of the relevant argument was specifically that Petitioner's ineffective trial counsel did not inform her of <u>any</u> offer communicated to him, despite him having claimed <u>after trial</u> that she was given one. Only he would know what offer was given and the manner in which is was given. Yet, the District Court and the Eleventh Circuit

ignored the focus of review on ineffective assistance of counsel from counsel's failures—which also included a failure to "assist the defendant actually and substantially in deciding whether to enter the plea." *Owens v. Wainwright*, 698 F.2d 1111, 1113 (11th Cir. 1983)—to Petitioner's inability to provide documentary proof of the non-existence of trial counsel's communication of the informal plea he expressly stated he was made aware of.

Additionally, the Eleventh Circuit noted that "Jensen asserted in her motion that "there is a reasonable probability that she would have accepted the plea," that Petitioner's ineffective trial counsel stated both that no offer existed and that Petitioner was "given an offer in the case", and was aware of the Magistrate Judge's findings that an informal offer was made, that Petitioner was not made aware of the offer by her ineffective trial counsel, and that the District Court recognized that there was "not enough evidence in the record to permit the Court to conclude" anything. Despite acknowledging that "a district court must hold a hearing if the movant has alleged "reasonably specific, non-conclusory facts that, if true, would entitle h[er] to relief," the Eleventh Circuit denied Petitioner her right to a hearing pursuant to 28 U.S.C. § 2255(b), even though it also did not find that her true allegations would nonetheless entitle her to no relief.

Finally, Petitioner would like to address the unjust determinations that hold statements made by her ineffective trial counsel as Petitioner's own statements. Petitioner attempted to be relieved of her ineffective trial counsel prior to her direct appeal and was denied, leaving her incarcerated and without a way to properly do

her own appeal. That resulted in her being stuck with the ineffective trial counsel who, consistent with his typical lack of communication with Petitioner and do-nothing efforts as her attorney during pre-trial and trial, made matters for Petitioner even worse by failing to actively and effectively communicate with her about the appeal while she was incarcerated (even by simple email), disregarding the issues she wanted raised on appeal, never sending her a draft of her appeal to discuss prior to filing, filing her appeal without her knowledge or consent, and waiving her right to oral argument without her knowledge or consent. It truly is unjust that Petitioner is now stuck with his terrible work and charged with arguments she truly did not make.

On the latter failure of counsel, it is clear (and should have always been so) that the fact that Petitioner managed to participate in oral argument because her co-defendant requested oral argument does not retroactively make Petitioner's ineffective trial counsel's blatant violation of Petitioner's constitutional right okay. It only serves as a prime example of how ineffective Petitioner's trial counsel was overall, requiring Petitioner to pray that her co-defendant's attorney asserted rights of its client that would also benefit Petitioner. In other words, if Petitioner's ineffective trial counsel did something that so boldly fails to meet an objective standard of reasonableness—but just so happened to not prejudice the Petitioner enough to deprive her of due process of law because the error was unintentionally corrected by her co-defendant's attorney—it is not a stretch to believe that he did not communicate the informal plea offer that he has simultaneously stated did not

exist but that Petitioner was given, and importantly that the Magistrate Judge found Petitioner was not made aware of.

The Supreme Court has made it clear that "the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." *Missouri v. Frye*, 132 S.Ct. 1399, 1406 (2012). Indeed, plea bargaining has become "so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages." *Id.* at 1407. The bottom line here is that District Court for the Northern District of Georgia was required to have a hearing because there remain unreconciled competing facts, including contradictory statements made by Petitioner's ineffective trial counsel; there was no evidence provided by Petitioner that he informed her of the informal plea he acknowledged the government advised him of; there has been no direct statement that Petitioner's ineffective trial counsel informed her of the plea or explained to her anything important about plea negotiations, but only the indirect answer that Petitioner, like every other defendant, hoped to secure a deal with no prison time; and most importantly, there was "not enough evidence in the record to permit the Court to conclude" that Petitioner is entitled to no relief.

REASONS FOR GRANTING THE PETITION

As stated in Rule 10, Petitioner understands that "review on a writ of certiorari is not a matter of right, but of judicial discretion" and that her "petition for a writ of certiorari will be granted only for compelling reasons." This petition for a writ of certiorari does not concern erroneous factual findings or the misapplication of a properly stated rule of law.

Petitioner believes that the decision of the District Court for the Northern District of Georgia, denying her request for the mandatory hearing under 28 U.S.C. § 2255(b) (clearly an important matter) where the record clearly lacked sufficient "evidence to permit the Court to conclude" the issues, is in conflict with the statute and decisions of courts binding on the District Court, and has so far departed from the accepted and usual course of judicial proceedings, as to call for the exercise of the Supreme Court's supervisory power.

Petitioner also believes that the decision of the Court of Appeals for the Eleventh Circuit, engaging in a *de novo* review to reach a decision on whether the District Court abused its discretion, is in conflict with decisions of courts binding on the District Court, in conflict with the decisions of other United States Courts of Appeals on the same important matter, and has so far departed from the accepted and usual course of judicial proceedings, as to call for the exercise of the Supreme Court's supervisory power.

Petitioner further believes that the decision of the Court of Appeals for the Eleventh Circuit, while engaging in the erroneous *de novo* review to reach a

decision on whether the District Court abused its discretion, reached the same defective result in denying Petitioner's request for the mandatory hearing under 28 U.S.C. § 2255(b) (clearly an important matter) where the record clearly lacked sufficient "evidence to permit the Court to conclude" the issues. Thus, in that regard, the decision is in conflict with the statute and decisions of courts binding on the District Court, in conflict with the decisions of other United States Courts of Appeals on the same important matter, and has so far departed from the accepted and usual course of judicial proceedings, as to call for the exercise of the Supreme Court's supervisory power.

More importantly, the Supreme Court of the United States should find these decisions extremely troublesome as they show a clear lack of understanding of the mandatory nature of an evidentiary hearing pursuant to 28 U.S.C. § 2255(b) where the record does not "conclusively show that the prisoner is entitled to no relief", a practice of courts in the Northern District of Georgia and the Eleventh Circuit of denying hearings to movants who are entitled to them by law, and a potential recurring failure by the Eleventh Circuit to apply the appropriate standard of review on appeal. These errors likely have already impacted and will continue to impact a vast number of movants who remain inmates in our country's notorious prison system, when they would otherwise have been set free or had their sentences reduced when the truth of their claims were brought to light at the hearing they were entitled to, but wrongfully denied.

Even more concerning is the exponential impact if other courts across the nation are wrongfully denying hearings granted under 28 U.S.C. § 2255(b) that the facts of their cases dictate are required, especially if "there simply is not enough evidence in the record to permit the Courts to conclude" the issues. There is a compelling need for the Supreme Court of the United States to remind the United States Courts of Appeals that they may not conduct a *de novo* review when the standard is abuse of discretion; but there is an even more compelling need for the Supreme Court of the United States to make clear that "Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall ... grant a prompt hearing thereon".

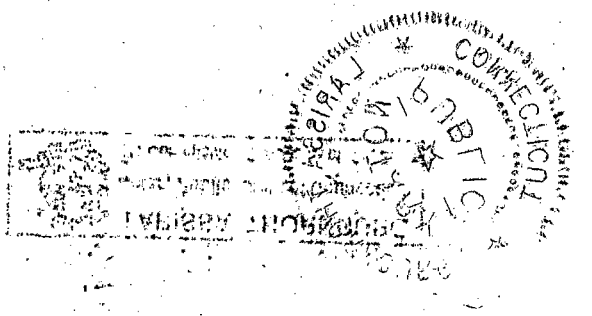
CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

INGER JENSEN (Inmate # 72285053)
FCI DANBURY
FEDERAL CORRECTIONAL INSTITUTION
ROUTE 37
DANBURY, CT 06811
(203) 743-6471

LARISSA THORNBURG
Notary Public, State of Connecticut
My Commission Expires Sept. 30, 2023


CONNECTICUT
LARISSA

TRULINCS 72285053 - JENSEN, INGER L - Unit: DAN-O-A

FROM: 72285053
TO: [redacted]
SUBJECT: service letter
DATE: 12/12/2019 12:54:54 PM

I, Inger Jensen 72285053; Inmate in Federal Prison Camp Danbury is servicing this petition to Solicitor General of the United States; Rm 5616; Department of Justice 950 Pennsylvania Ave. NW, Washington, DC 20530 on December 12, 2019. This petition is sent without the appendixes because the respondent has copies and I am unable to make copies of the entire petition.
Thank you.

Inger Jensen - 72285053