

No. 19-7654

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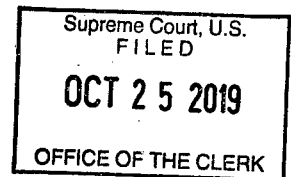
IN THE
SUPREME COURT OF THE UNITED STATES

Jean Roussel Eloi — 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 Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

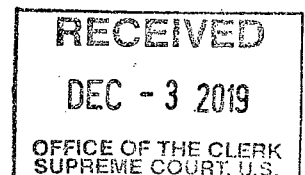
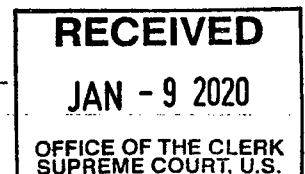
PETITION FOR WRIT OF CERTIORARI

Jean Roussel Eloi
(Your Name)

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Coleman, FL 33521-1032
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

- I.) Whether counsel was ineffective for not pursuing all the way through the appeal stages, the government's statement during closing arguments that it should convict Petitioner if there were no facts to support the defenses theory of this case?
- II.) Whether defense failed to object to the government's closing arguments?
- III.) Whether counsel was ineffective for failing to apply the proper guidelines to Petitioner's thirty (30) year sentence?
- IV.) Whether counsel was ineffective for not acquiring the sealed records and compelling, regarding the sealed records?
- V.) Whether counsel was ineffective for not allowing the Petitioner to see a sworn in jury?
- VI.) Whether counsel was ineffective for not providing the government unfactual evidence of Petitioner's and Mrs. Little's relationship?

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:

TABLE OF AUTHORITIES CITED

CASES

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<u>Cronic v. United States</u> , 466 U.S. 648 (1984).....	6,7
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<u>Strickland v. Washington</u> , 466 U.S. 668-687 (1984).....	6,7
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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

☒ 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 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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 5, 2019.

☐ 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: August 2, 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

Fifth Amendment of the United States Constitution.

STATEMENT OF THE CASE

A one-count indictment charged Mr. Eloi with using a facility of interstate commerce to attempt to entice a minor to engage in sexual activity. Mr. Eloi proceeded to trial where a jury found him guilty. The district court sentenced Mr. Eloi to imprisonment for a term of 360 months, to be followed by supervised release for a term of ten years. Mr. Eloi is currently incarcerated.

REASONS FOR GRANTING THIS PETITION

Petitioner clearly understands that the Honorable Supreme Court has jurisdiction as to what cases it wishes to accept for Certiorari. Petitioner's case is of national importance because Petitioner is actually innocent of the stated charges against him. No defendant should be charged and convicted for a crime that he is actually innocent of. In Petitioner's case in point, he is actually innocent of Title 18 USC §2242(b). Petitioner is, therefore serving an unconstitutional sentence and therefore requests that this Writ of Certiorari be granted.

ARGUMENT

Was it a fundamental error for the government to urge the jury during closing arguments that they should convict Petitioner, even if there was no lack, nor evidence to support the defense theory of their case?

In opening statement, the defense advanced two possible theories, (1) that Mr. Eloi and Nadirah Little were role-playing so Mr. Eloi thought he was communicating with an adult woman, and/or (2) that Kenneth Little was upset at finding out about his wife's relationship with Mr. Eloi and so called the police because he wanted to get Mr. Eloi into trouble with the police. Doc. 100 at 130-37. There was no evidence of role-playing, however, and Mr. Little was not called as a witness so his wife's testimony that he knew about her relationship with Mr. Eloi went uncontradicted. In closing argument, then, the prosecutor pointed to the lack of evidence to support the defense theories, which defense counsel agreed was a proper argument..Doc. 101 at 4-7, 8-14. While agreeing that the prosecutor could say "there's no evidence of role-playing," defense counsel expressed concern about any argument that "the defense has certain burdens." Id. at 5. The court was also concerned that the government argument may "come pretty close to the line." Id. at 7.

At the end of his closing argument, the prosecutor told the jury:

It's now your opportunity to listen to the defense. And what they have to say about the facts in this case. But when you listen to that, again, ask yourselves, where's the evidence? What are the facts to support that theory? And the answer ought to be nothing. And so you should convict. Thank you.

Doc. 101 at 15. This statement by the prosecutor arguably went beyond what is permissible because it told the jury th it "should convict" based on a lack of evidence to support the defense theories.

A jury should, of course, vote to convict only if it finds beyond a reasonable doubt that the prosecution has proven every element of the crime charged. This standard for conviction is not dependent upon the evidentiary support, or lack thereof, for any theory of defense. Instead, it is well-established that "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 1073 (1970). "A defendant has no burden of proof at any point during a criminal trial." United States v. Isnadin, 742 F.3d 1278, 1297 (11th Cir. 2014). Thus "prosecutors must refrain from making burden-shifting arguments which suggest that the defendant has an obligation to produce any evidence or to prove innocence. "United States v. Simon, 964 F.2d 1082, 1086 (11th Cir. 1992).

1) Counsel was ineffective for not pursuing this claim through the appeal stages. Counsel's refusal to do so caused Petitioner to be prejudiced against and consequently sentenced to 360 months in a federal prison. But for counsel's ineffectiveness and performance below the standards of representation, the proceedings would have been so much different. Strickland v. Washington, 466 U.S. 688-687 (1984),. Cronic v. United States, 466 U.S. 648 (1984),. Florida v. Nixon, 543 U.S. 175 (2004),. and Cuyler v. Sullivan, 446 U.S. at 350 (1980).

2) Defense counsel failed to object to the government's closing arguments, and the judge did not advocate or frame the government's closing argument. The Due Process

Clause protects Petitioner from such convictions In re Winship, 397 U.S. 358, 364, (1970),. Sandstrom v. Montana, 442 U.S. 510 (1979),. and United States v. Simon, 964 F.2d 1082, 1086 (11th Cir. 1992). The Fifth Amendment prohibits the government from commenting directly or indirectly on a defendant's failure to testify.

United States v. Knowles, 66 F.3d 1146, 1162-63 (11th Cir. 1995). The government's remarks violated the defendant's right to remain silent.

- 3) Counsel was ineffective for failing to frame the issue of whether the District Court applied the proper United States Sentencing Guidelines (USSG) enhancements because Petitioner's guidelines did not carry a thirty (30) year sentence.
- 4) Counsel was ineffective for not challenging the government's motion to compel regarding the sealed court records.
- 5) Counsel was ineffective for not showing Petitioner where the jury was sworn in because they were never sworn in in front of the Petitioner. This fact, thereby, prejudices the Petitioner and this causes ineffective assistance of counsel in this case.
- 6) Counsel was also ineffective for not testing government's case by providing the government evidence of the relationship Petitioner had with Mrs. Little, the victims mother, and not the victim.

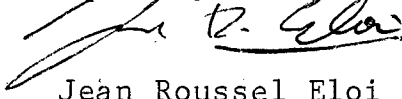
But for counsel's ineffectiveness and performance below the standards of representation, the proceedings would have been so much different. Counsel's above stated fundamental errors prejudiced the Petitioner and caused him a 30 year sentence in a federal prison. But for these fundamental errors, the proceedings would have been so much different. (Citing Strickland, Cronic, Guyler, and Florida v. Nixon).

Petitioner hopes and pray that this Writ of Certiorari will be granted and accepted based on all of the above stated reasons in this Writ.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Jean Roussel Eloi

Date: October 25, 2019

Mailbox Rule

Lack v. Houston, 487 U.S. 266 (1988)
Mailed on October 25, 2019
from the Prison Mailbox