

The United States
Supreme Court

Lazaro Candelaria

(Petitioner)

Case # 19-8312

vs

United States of America

(Respondent)

Motion For Rehearing On En Banc
Pursuant to Rule 44 of the Supreme
Court

Comes Now, Petitioner Lazaro Candelaria files
this Motion for Rehearing on En Banc pro-se.

Petitioner is a layman of the law, unskilled in
the law, requests this Motion for Rehearing be
construed liberally. (Haines vs. Kerner 404 U.S. 519 (1972))

Factual Background

On May 18, 2020 Petitioner was denied his Petition for Writ of Certiorari Unjustly. Therefore Petitioner files this Rehearing on En Banc for the Denial of Petition in which all of Petitioner's questions presented have merit. Petitioner files this Rehearing in the Interest of Justice and in good faith and not for delay.

Pursuant to Rule 15.2 Petitioner Certiorari should have been granted and remanded back to the District court for Re-sentencing to a non-career offender Guideline Sentence.

On April 20, 2020 The Honorable Supreme Court gave the Solicitor General a court order pursuant to Rule 15.3 a due date for a brief in opposition which was Wednesday May 20, 2020. Rule 15.2 states that a brief in opposition should address any perceived misstatement of fact or law in the Petition that bears on what issues properly would be before the Honorable Court if Certiorari were granted. Counsel are admonished that they have an obligation to the court to point out in the brief in opposition and not later than 30 days after the Case is placed on the Docket any perceived Misstatement made in the Petitions unless the time is extended by the Court. Any objection to consideration of a question presented based on what occurred in the proceedings below may be deemed waived unless called to the courts attention in the brief in opposition.

In Petitioner Case in point the present Day was May 21, 2020 and the Government failed to adhere to the Honorable Supreme Court order to Respond with a brief in opposition. On this day Petitioner Sent a motion to the Honorable Court for the Government failure to adhere. In addition there was no waiver form Sent in the event the Govt. did not intend to File a response

to Petitioner's Petition, nor was there any filings by the Government for extension of Time. Therefore by not responding to Petitioner Petition for Writ of Certiorari the Government should be made to Concede to all of Petitioner's Questions presented which all have merit (US vs Clisby 960 F2d 925-932 (11th Cir 1992). Petitioner 5th, 6th, Amendment Rights were violated to adequate Representation Guaranteed by the 6th Amendment of the United States Constitution to effective assistance of Counsel. Counsel was Ineffective for promising Petitioner He would receive a 60 month Sentence, Not Arguing Petitioner prior Convictions which Do not qualify for career offender Enhancement, Pursuant to Shepard vs U.S. 544 U.S. 13, 26 (2005), Mathis vs U.S. 136 Sct 2246 (2016), Descamps vs U.S. 133 Sct 2276 (2013), Taylor vs U.S. 495 U.S. 575 (1990), Moncrieffe vs Holder Jr 130 Sct 1678 (2011), Shannon vs U.S. 631 F3d 1187, (2015), and Amendment 795. The Government introduced documents that were foreclosed by US. vs Canty 570 F3d 1251 (11th Cir 2009) - The Government in there Exhibits in Appendix "J" were never produced at Sentencing. The Magistrate Judge Concedes to this with his order to produce Shepard Documents. See Appendix "E" and "K". The Categorical approach is authorized and the least Acts criminalized should have been given. The District Court at Sentencing adopted 196 Days Credit Time Served as Petitioner's Sentence for his consolidated prior Convictions on August 3, 2004. Any other evidence presented after the Initial Sentencing is

inappropriate and forbidden, There was no shepard documents presented at Sentencing For case # 031544CF10A.

Petitioner's 5th, 6th Amendment Rights to Due process were violated by the lower courts pursuant to U.S. vs Canty (supra). Ignorance of the law is no excuse which has been stated by the Honorable Courts as well as the Supreme court. At Sentencing 196 Days Time Served was adopted at the Initial Sentencing hearing, there was no Shepard documents For case # 031544CF10A. For case # 07-20556A information states that Petitioner was in Possession of a controlled Substance and U.S. vs Salinas 126 Sct 1675 (2006) states Possession cannot be used for career offender enhancement. This was adopted by the Honorable court at Sentencing. Any other conclusion or fact of law is inappropriate. The Magistrate Judge violated US vs Canty (supra) and seriously affected the fairness, integrity, and Public reputation of these proceedings. All this information was available to counsel who did not Argue Petitioner's prior Convictions thereby making Counsel Ineffective violating Petitioner's 5th, 6th Amendment Rights to Adequate representation. All the proof is given to the Honorable Supreme Court in Petitioner original brief with all the appendixes which is Undeniable and is exactly what took place. It is not the Petitioner fault for the lower courts errors. Ignorance is no excuse of the law. That goes for the Government as well Not only defendants when its Convenient to the court.

That would be unfair, unjust, and a Double Standard by the Honorable Court if Arbitrary behavior is unchecked by the Honorable Supreme Court. Therefore In this instant Case plain Error occurred which affected Petitioner's Substantial Rights that seriously affected the fairness, integrity, and Public reputation of these Judicial proceedings. US vs Olano 113 Sct 1770 (1992). Petitioner prior convictions Do not qualify for career offender enhancement and Counsel was Ineffective for not Arguing Petitioner prior convictions based on all of the information given at Sentencing, Counsel was Ineffective for not Arguing Petitioner prior convictions on Appeal. All the proof is plainly there in Petitioner Writ for Certiorari with all the Appendixes as proof.

On May 18, 2020 The Honorable Supreme Court denied Petitioner Writ of Certiorari without any response by the Government or any waived form sent to Petitioner in the event the Government was not going to respond. Petitioner never received any brief in opposition nor is there any record at FCC Coleman Medium of any Response by the Government, but Petitioner received on May 29, 2020 a Denial letter from FCC Coleman denying Petitioner Writ of Certiorari. This is an Injustice because Petitioner was sent on April 20, 2020 a Notice giving the Government until May 20, 2020 to Respond to Petitioner brief in which the Government never did.

Supreme Court Rule 15.2 states any objection to consideration of a question presented based on what occurred in the proceedings below may be deemed waived unless called to the Courts attention in the brief in opposition. Since the Government never objected to any of Petitioner's questions presented there objection is deemed waived because they have no response with fact or law to contest Petitioner's 5th, 6th Amendment violation for Ineffective Assistance of Counsel and Concede that these violations occurred by the lower courts. Counsel was Ineffective for promising Petitioner a 60 month Sentence if Petitioner pled guilty and Counsel was Ineffective for not Arguing Petitioner prior convictions based on the Information that was presented at Sentencing neither did Counsel Argue this information on Appeal. Jurists of reason would find it debatable that Petitioner states a valid Claim of denial of a Constitutional Right and that Jurist would Conclude the issues presented are adequate to deserve encouragement to proceed further. *Miller vs Cockrell* 537 U.S. 322, 327 (2003), *Slack vs Daniels* 120 Sct 1595, 1604 (2000), *Buck vs Davis* 137 Sct 759 (2017). Therefore Petitioner grounds are limited to Intervening circumstances of Substantial or controlling effect and this Petition for rehearing is presented in good faith and not for delay.

Conclusion

Petitioner Hopes and prays that the Honorable Supreme Court will Grant Petitioner's En Banc hearing based on all of the above stated reasons for Ineffective Assistance of Counsel and the Government failure to adhere to the Supreme Court order to respond. Therefore Petitioner humbly requests that the Honorable Court will correct this injustice so it will prevent future abuse of discretion by the lower courts and bring fairness and order to these proceedings. Petitioner requests vacate and Remand back to the District Court with instructions for Re-sentencing with a non-career offender status.

Date 6/29/20

28 USC 1746

Respectfully Submitted

X. LgC

Lazaro Candelaria (B-1)

Reg # 05983-104 (B-1)

Federal Correctional Complex medium

Po Box 1032

Coleman FL 33521

Certificate of Service

I Hereby Certify that a true and correct
Copy was furnished by VIA U.S. Postal Service
on 29th Day of June 2020 To;

" Clerk of Court "

United States Supreme Court
1 First Street, N.E.
Washington, DC 20543

" Solicitor General "

950 Pennsylvania Ave. N.W.
Washington D.C. 20530

Date 6/29/20

22 USC 1746

Respectfully Submitted

X LgC

Lazaro Candelaria

Reg # 05983-104 (B-1)

Federal Correctional Complex-Medium

PO Box 1032

Coleman FL 33521

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

June 24, 2020

Lazaro Candelaria
#05983-104
FCC Coleman, Medium
P.O. Box 1032
Coleman, FL 33521

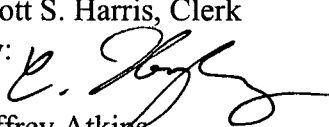
RE: Candelaria v. United States
No: 19-8312

Dear Mr. Candelaria:

The petition for rehearing in the above-entitled case was postmarked June 1, 2020 and received June 10, 2020 and is herewith returned for failure to comply with Rule 44 of the Rules of this Court. The petition must briefly and distinctly state its grounds and must be accompanied by a certificate stating that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

You must also certify that the petition for rehearing is presented in good faith and not for delay.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 15 days of the date of this letter, the petition will not be filed. Rule 44.6.

Sincerely,
Scott S. Harris, Clerk
By: 
Jeffrey Atkins
(202) 479-3263

Enclosures

