2 originals

19-8823 No. ORIGINAL

Supreme Court of the United States

JOSEPH ALEX PEDRIN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Joseph Alex Pedrin
Petitioner
14661-196
P.O. Box 3000
Pine Knot, KY 42635

QUESTIONS PRESENTED

Government agents lured Petitioner Joseph Alex Pedrin into a plan to rob a fictitious stash house by dangling before him a scheme that was "rich in pay off," and involved little work or risk. At the time the government approached him, it had no evidence supporting any predisposition by Mr. Pedrin to commit such a crime and, in fact, Mr. Pedrin did NOT go through with the scheme. While the agents videotaped their interaction with Mr. Pedrin, a substantial portion of the video, which included highly exculpatory evidence, was deleted or missing. *United States v. Pedrin*, 806 F.3d 1009 (9th Cir. 11-23-15) (Noonan dissenting from denial of rehearing en banc) While Mr. Pedrin implored counsel to hire an expert to investigate the video, counsel did not do so. While Mr. Pedrin implored counsel to obtain the testimony of a key witness, counsel did not do so. Mr. Pedrin was found guilty, sentenced to 210 months incarceration and his appeal was denied. He filed a 28 U.S.C. § 2255 motion raising the foregoing claims of ineffective assistance of counsel but that was denied. On appeal, a Certificate of Appealability was denied without any kind of analysis, explanation or reviewable record.

1.) Was Mr. Pedrin prejudiced by both the individual and cumulative impact of multiple deficiencies or errors by counsel during the pretrial, plea, trial, sentencing and direct appeal process?

2.) Did Mr. Pedrin receive careful consideration and plenary processing of his claims, including a full opportunity for presentation of the relevant facts as required by this Court's decisions in *Blackledge v. Allison* and progeny?

3.) Should the Court of Appeals have provided some kind of statement of reasons or a reviewable record as to why it denied the Certificate of Appealability?

PARTIES TO THE PROCEEDINGS

IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of Appeals for the Ninth Circuit.

More specifically, the Petitioner Joseph Alex Pedrin and the Respondent United States of America are the only parties. Neither party is a company, corporation, or subsidiary of any company or corporation.

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PETITION FOR A WRIT OF CERTIORARI

Joseph Alex Pedrin, the Petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above entitled case on 11-18-19.

OPINIONS BELOW

The 11-18-19 opinion of the Court of Appeals for the Ninth Circuit, whose judgment is herein sought to be reviewed, is an unpublished decision reported at 2019 U.S. App. LEXIS 34301 and is reprinted in the separate Appendix A to this Petition.

A petition for rehearing was timely filed and was denied by the Court of Appeals for the Ninth Circuit on 1-10-20. This opinion is an unpublished decision reported at 2020 U.S. App. LEXIS 910 and is reprinted in the separate Appendix C to this Petition.

The prior opinion and judgment (Judgment & Commitment Order) of the United States District Court for the District of Arizona, was entered on 11-22-11, is an unpublished decision, and is reprinted in the separate Appendix B to this Petition.

The prior opinion and judgment of the United States Court of Appeals for the Ninth Circuit in the direct appeal in this case, was entered on 8-17-15, is reported at 797 F.3d 792 *; 2015 U.S. App. LEXIS 14409 and is reprinted in the separate Appendix D to this Petition.

The prior opinion and judgment of the United States District Court for the District of Arizona, denying Mr. Pedrin's motion pursuant to 28 U.S.C. § 2255, was entered on 4-3-19, is an unpublished decision reported at 2019 U.S. Dist. LEXIS 57134 *; 2019 WL 1469259 and is reprinted in the separate Appendix E to this Petition.

The prior opinion and judgment of the United States District Court for the District of Arizona, denying Mr. Pedrin's Request for Certificate of Appealability, was entered on 5-14-19, is an unpublished decision, and is reprinted in the separate Appendix F to this Petition.

The prior opinion of the United States Court of Appeals for the Ninth Circuit, Dissenting from Denial of Rehearing on Direct Appeal was entered on 11-23-15, is reported at 806 F.3d 1009 *; 2015 U.S. App. LEXIS 20275 and is reprinted in the separate Appendix G to this Petition.

The prior opinion and judgment of the United States District Court for the District of Arizona Dismissing Mr. Pedrin's Request for Advisory Opinion was entered on 8-21-19, is an unpublished decision reported at 2019 U.S. Dist. LEXIS 142952 and is reprinted in the separate Appendix H to this Petition.

The prior opinion and judgment of the Supreme Court on Mr. Pedrin's Direct Appeal was entered on 5-31-16, is is reported at 2016 U.S. LEXIS 3550 *; 136 S. Ct. 2401; 195 L. Ed. 2d 771; and is reprinted in the separate Appendix I to this Petition.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on 11-18-19. A petition for rehearing was timely filed and was denied by the Court of Appeals for the Ninth Circuit on 1-10-20. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides in relevant part:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury... nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ... *Id.*

The Sixth Amendment to the Constitution of the United States provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense. *Id.*

28 U.S.C. § 2255 provides:

> **§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.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(g) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255 (As amended effective June 25, 1948, ch. 646, 62 Stat. 967; May 24, 1949, ch. 139, §114, 63 Stat. 105; Pub. L. 104–132, title I, §105, Apr. 24, 1996, 110 Stat. 1220; Pub. L. 110–177, title V, §511, Jan. 7, 2008, 121 Stat. 2545.)

STATEMENT OF THE CASE

Petitioner Joseph Alex Pedrin was initially charged in federal court on 9-16-09 with violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(A)(ii) and 21 U.S.C. § 846 (conspiracy to possess with intent to distribute 5 kilograms or more of cocaine from July 2009 to 8-21-09) (Count 1).

The case arose when government agents lured Mr. Pedrin into a plan to rob a fictitious stash house by dangling before him a scheme that was "rich in pay off," and involved little work or risk. At the time the government approached him, it had no evidence supporting any predisposition by Mr. Pedrin to commit such a crime and, in fact, Mr. Pedrin did NOT go through with the scheme. While the agents videotaped their interaction with Mr. Pedrin, a substantial portion of the video, which included highly exculpatory evidence, was deleted or missing. *United States v. Pedrin*, 806 F.3d 1009 (9th Cir. 11-23-15) (Noonan dissenting from denial of rehearing en banc) While Mr. Pedrin implored counsel to hire an expert to investigate the video, counsel did not do so.

On 2-17-11, he was found guilty after a plea of not guilty.

On 11-21-11, he was sentenced to 210 months incarceration. (Appendix B)

On 8-17-15, the Court of Appeals for the Ninth Circuit affirmed his conviction and sentence. *United States v. Pedrin*, 797 F.3d 792 *; 2015 U.S. App. LEXIS 14409 (9th Cir. 8-17-15) (Appendix D) On 11-23-15, the Court of Appeals denied rehearing. *United States v. Pedrin*, 806 F.3d 1009 (9th Cir. 11-23-15). (Appendix G)

On 5-31-16, this Court denied certiorari. *Pedrin v. United States*, 2016 U.S. LEXIS 3550 *; 136 S. Ct. 2401; 195 L. Ed. 2d 771 (5-31-16) (Appendix I)

On 5-15-17, Petitioner filed a motion pursuant to 28 U.S.C. § 2255. In this motion, he pleaded, *inter alia*:

> (1) Trial counsel Rafael F. Gallego provided constitutionally ineffective assistance in failing to conduct an independent investigation into the facts and law of the case, resulting in prejudice to the Petitioner.
>
> (2) Trial counsel Rafael F. Gallego provided constitutionally ineffective assistance when he failed to contact, interview, secure and call a critical defense witness whose testimony refuted the government's case in chief and proved entrapment.
>
> (3) Trial counsel Rafael F. Gallego provided constitutionally ineffective assistance in failing to prepare and call Pedrin as a witness for his own defense at trial.
>
> (4) Trial counsel Rafael F. Gallego provided constitutionally ineffective assistance in failing to raise and pursue an entrapment defense at the jury trial.
>
> (5) The above four grounds establish cumulative error in this case and renders attorney Gallego's representation constitutionally deficient and prejudicial to Pedrin

(Section 2255 motion, Attachment) (USDC Docket 4:09-cr-2073-CKJ-2, Entry #421)

On 4-3-19, the District Court denied the motion pursuant to 28 U.S.C. § 2255 without an evidentiary hearing. (Appendix E)

A timely Notice of Appeal and Request for Certificate of Appealability was filed.

On 5-14-19, the District Court denied the Request for Certificate of Appealability. (Appendix F) In denying the Request for Certificate of Appealability, the District Court order was mostly boilerplate and then added:

> This Court determined that Petitioner's counsel was not ineffective for failing to: (1) interview a potential defense witness; (2) prepare and call Petitioner as a witness at trial; and (3) present an entrapment defense. (Doc. 25). In addition, the Court determined that Petitioner was not a victim of selective prosecution. Id. The Court finds that reasonable jurists would not find this Court's assessment of the constitutional claims debatable or wrong.

(Appendix F)

On 11-18-19, the Court of Appeals denied Mr. Pedrin's Request for Certificate of Appealability for his appeal of the denial of his motion pursuant to 28 U.S.C. § 2255. In denying a Certificate of Appealability the Court of Appeals simply held:

> ORDER The request for a certificate of appealability is denied because appellant has not made a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); see also Miller-El v. Cockrell, 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003). Any pending motions are denied as moot. DENIED.

(Appendix A)

Counsel timely filed a petition for rehearing. On 1-10-20, the Court of Appeals denied rehearing as follows:

> ORDER Appellant's "Motion for Panel Rehearing and Rehearing En Banc" (Docket Entry No. 12) is construed as a motion for reconsideration and motion for reconsideration en banc. So construed, the motion for reconsideration is denied and the motion for reconsideration en banc is denied on behalf of the court. See 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11. Appellant's "Ex Parte Motion for Video/Audio Retrieval Expert for Discoverable Evidence of Video" (Docket Entry No. 11) is also denied. No further filings will be entertained in this closed case.

(Appendix C)

Mr. Pedrin demonstrates within that this Court should grant his Petition For Writ Of Certiorari because the court of appeals for the Ninth Circuit has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

REASONS FOR GRANTING THE WRIT

1.) THIS COURT SHOULD GRANT MR. PEDRIN'S PETITION FOR WRIT OF CERTIORARI BECAUSE THE COURT OF APPEALS FOR THE NINTH CIRCUIT HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

Supreme Court Rule 10 provides in relevant part as follows:

> **Rule 10.**
> **CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI**
>
> A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:
>
> **(a)** a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision ... *Id.*

Supreme Court Rule 10(a).

This Court has never hesitated to exercise it's power of supervision where the lower courts have substantially departed from the accepted and usual course of judicial proceedings with resulting injustice to one of the parties. *McNabb v. United States,* 318 U.S. 332 (1943).[1] As the Court stated in *McNabb:*

> ... the scope of our reviewing power over convictions brought here from the federal courts is not confined to ascertainment of Constitutional validity. Judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence.

---

[1] See also *GACA v. United States*, 411 U.S. 618 (1973); *United States v. Jacobs*, 429 U.S. 909 (1976); *Rea v. United States*, 350 U.S. 214 (1956); *Benanti v. United States,* 355 U.S. 96 (1957); *United States v. Behrens*, 375 U.S. 162 (1963); *Elkins v. United States*, 364 U.S. 206 (1960)..

McNabb, 318 U.S. at 340.

1A.) Mr. Pedrin Was Prejudiced By Both The Individual And Cumulative Impact Of Multiple Deficiencies Or Errors By Counsel During The Pretrial, Plea, Trial, Sentencing And Direct Appeal Process

Even where no *single* error by counsel is sufficient to vacate the conviction and/or sentence of the defendant, prejudice may result from the cumulative impact of multiple deficiencies or errors by counsel during the trial process. *Stewart v. Wolfenbarger*, 468 F.3d 338, 361 (6th Cir. 2006) (When determining if there is a reasonable probability of a different outcome, the Court must weigh counsel's errors cumulatively against the evidence as a whole); *Mackey v. Russell*, 148 F. App'x 355, 368-69 (6th Cir. 2005) ("Here, the clear mandate of *Strickland* and several other Supreme Court cases is that the effect of all counsel's errors is to be considered in toto, against the backdrop of the totality of the evidence in the case.").[2]

While Mr. Pedrin respectfully submits that each of the multiple professionally unreasonable acts and omissions of counsel set forth in his Section 2255 motion prejudiced him

---

[2] See also *Williams v. Taylor*, 529 U.S. 362, 398, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000) ("[T]he State Supreme Court's prejudice determination was unreasonable insofar as it failed to evaluate the totality of the available mitigation evidence . . . in reweighing it against the evidence in aggravation."); *United States v. Haynes*, 729 F.3d 178; 2013 U.S. App. LEXIS 18453 ** (2nd Cir. 2013); *United States v. Russel*, 2002 U.S. App. LEXIS 9538 (4th Cir. 5-20-02) (vacating denial of motion pursuant to 28 U.S.C. § 2255 and remanding on claim of cumulative error of counsel); *Killian v. Poole*, 282 F.3d 1204; 2002 U.S. App. LEXIS 3887 (9th Cir. 2001); *Johnson v. Newland*, 1999 U.S. Dist. LEXIS 427 (ND Cal. 1-15-99); *United States v. Van Dyke*, 14 F.3d 415, 417-424 (8th Cir. 1994); *Harris By and Through Ramseyer v. Blodgett*, 853 F.Supp. 1239 (W.D. Wash. 1994); *Harris v. Wood*, 64 F.3d 1432 (9th Cir. 1995); *Mak v. Blodgett*, 970 F.2d 614; 1992 U.S. App. LEXIS 15964 (9th Cir. 1992); *United States v. Ramsey*, 323 F. Supp. 2d 27; 2004 U.S. Dist. LEXIS 12462 (D DC 2004) (granting new trial due to multiple deficiencies of counsel); *United States v. Bowling*, 619 F.3d 1175, 1188 (10th Cir. 2010) ("A cumulative error analysis aggregates all errors found to be harmless and analyzes whether their cumulative effect on the outcome of the trial is such that collectively they can no longer be determined to be harmless.")(quotation marks and citation omitted); *United States v. Arny*, 137 F. Supp. 3d 981, 990-991 (ED KY 2015), *affirmed*, *United States v. Arny*, 831 F.3d 725, 2016 U.S. App. LEXIS 13872 (6th Cir. 2016).

within the meaning of *Strickland*, he was clearly prejudiced by the cumulative impact of the multiple deficiencies and errors.

While the lower courts have held that the cumulative impact of multiple deficiencies or errors by counsel during the trial process can amount to reversible error, their holdings vary substantially and this Court has never decided that issue. Mr. Pedrin's case would be the perfect vehicle for this Court to use as guidance for the lower courts.

Based on all of the foregoing, Mr. Pedrin respectfully asks this Honorable Court to **GRANT** certiorari and set this case for argument. Alternatively, Mr. Pedrin asks this Court to **VACATE** his judgment of conviction and sentence due to ineffective assistance of counsel.

1B.) The Lower Courts Failed To Provide Careful Consideration And Plenary Processing Of Mr. Pedrin's Claims, Including A Full Opportunity For His Presentation Of The Relevant Facts Of His Section 2255 Motion At An Evidentiary Hearing

In *Blackledge v. Allison*, 431 U.S. 63; 97 S. Ct. 1621; 52 L. Ed. 2d 136 (1977), this Court held that a federal habeas corpus petitioner is entitled to careful consideration and plenary processing of his claims, including full opportunity for presentation of the relevant facts. As part of the holding, the Court held that a defendant is entitled to an opportunity to substantiate habeas claims at an evidentiary hearing where the allegations relate primarily to purported occurrences outside the courtroom and are not so vague or conclusory as to permit summary disposition. *Id.*

When a petitioner makes a motion under 28 U.S.C. § 2255, the decision to order a hearing is committed to the "sound discretion of the district court." *Virgin Islands v. Forte*, 865 F.2d 59, 62 (3rd Cir. 1989). When making this determination, the District Court must accept as true all nonfrivolous allegations in the petition and order a hearing unless the record as a whole conclusively shows that the petitioner is entitled to no relief. *United States v. Thomas*, 221 F.3d 430, 437 (3rd Cir. 2000); *United States v. Dawson*, 857 F.2d 923, 927 (3d Cir. 1988); *United States v. Hearst*, 638 F.2d 1190, 1195; 1980 U.S. App. LEXIS 13056 **15 (9th Cir. 1980); *United States v. Schaflander*, 743 F.2d 714, 717; 1984 U.S. App. LEXIS 18273 (9th Cir. 1984); *Blackledge v. Allison*, 431 U.S. 63, 76, 52 L. Ed. 2d 136, 97 S. Ct. 1621 (1977) (§ 2254 petition); *Machibroda v. United States*, 368 U.S. 487, 495-96, 7 L. Ed. 2d 473, 82 S. Ct. 510 (1962).[3] "The

[3] See also *United States v. Arguelles*, 78 Fed. Appx. 984; 2003 U.S. App. LEXIS 21945 (5th Cir. 2003) (evidentiary hearing required unless Section 2255 motion, files, and trial record conclusively show petitioner entitled to no relief); *United States v. Grist*, 1998 U.S. App. LEXIS 20199; 1998 Colo. J. C.A.R. 4384 (10th Cir. 1998) (evidentiary hearing required unless Section 2255 motion, files, and trial record conclusively show petitioner entitled to no relief; court cannot choose between affidavits); *United States v. Blaylock*, 20 F.3d 1458, 1465 (9th Cir. 1994) (evidentiary hearing required unless Section 2255 motion, files, and trial record "conclusively show" petitioner entitled to no relief); *Virgin Islands v. Weatherwax*, 20 F.3d 572, 573 (3rd Cir.

standard essentially is whether the movant has made specific factual allegations that, if true, state a claim on which relief could be granted ... A hearing must be granted unless the movant's allegations, when viewed against the record, do not state a claim for relief or are so palpably incredible or patently frivolous as to warrant summary dismissal." *United States v. Schaflander*, 743 F.2d 714, 717; 1984 U.S. App. LEXIS 18273 (9th Cir. 1984) (citing *United States v. Hearst*, 638 F.2d 1190, 1194 (9th Cir. 1980), *cert. denied*, 451 U.S. 938, 68 L. Ed. 2d 325, 101 S. Ct. 2018 (1981) and *Blackledge v. Allison*, 431 U.S. 63, 76, 52 L. Ed. 2d 136, 97 S. Ct. 1621 (1977) and *Baumann v. United States*, 692 F.2d 565, 571, 581 (9th Cir. 1982)).

1994) (petitioner entitled to evidentiary hearing on ineffective assistance of counsel claim where facts viewed in light most favorable to petitioner would entitle him to relief); *Stoia v. United States*, 22 F.3d 766, 768 (7th Cir. 1994) (same); *Ciak v. United States*, 59 F.3d 296, 306-07 (2nd Cir. 1995) (same); *Shaw v. United States*, 24 F.3d 1040, 1043 (8th Cir. 1994) (same); *Nichols v. United States*, 75 F.3d 1137, 1145-46 (7th Cir. 1996) (petitioner entitled to evidentiary hearing on claim of ineffective assistance of counsel when record inconclusive on issue); *United States v. Witherspoon*, 231 F.3d 923; 2000 U.S. App. LEXIS 27778 (4th Cir. 11-6-00) (petitioner entitled to evidentiary hearing when motion presented colorable claim and unclear whether counter affidavit disputed defendant's allegations); *Guy v. Cockrell*, 343 F.3d 348; 2003 U.S. App. LEXIS 16632 (5th Cir. 2003) (disputed issues of material fact require evidentiary hearing); *Paprocki v. Foltz*, 869 F.2d 281, 287 (6th Cir. 1989) (if there are factual issues in dispute in a section 2255 petition and the record is insufficient to enable the district court to resolve the issue of whether a claim of ineffective assistance of counsel is meritorious, the district court must hold an evidentiary hearing); *Buenoano v. Singletary*, 963 F.2d 1433; 1992 U.S. App. LEXIS 12462 (11th Cir. 1992) ("An evidentiary hearing ... is ... necessary if Buenoano's petition alleges facts that, if true, establish a right to relief.") (citing *Agan v. Dugger*, 835 F.2d 1337, 1338 (11th Cir.1987) and *Tejada v. Dugger*, 941 F.2d 1551, 1559 (11th Cir.1991)); *Ellison v. United States*, 324 F.2d 710; 1963 U.S. App. LEXIS 3595 (10th Cir. 1963); *United States v. Gonzalez*, 98 Fed. Appx. 825; 2004 U.S. App. LEXIS 10946 (10th Cir. 2004); *United States v. Malcolm*, 432 F.2d 809, 812 (2nd Cir. 1970); *Young Hee Choy v. United States*, 344 F.2d 126, 127-28 (9th Cir. 1965); *Baumann v. United States*, 692 F.2d 565; 1982 U.S. App. LEXIS 24530 **8-10 (9th Cir. 1982); *Contreras Quintero v. United States*, 33 F.3d 1133; 1994 U.S. App. LEXIS 23653 **2-3 (9th Cir. 1994) (collecting cases). *Cf. De Vincent v. United States*, 602 F.2d 1006; 1979 U.S. App. LEXIS 12875 (1st Cir. 1979) (denial of claim of unlawful indictment vacated and remanded because defendant's allegations sufficiently described violation and were not conclusively refuted by the record; Court of Appeals pointed out that the District Court "can order the government to supplement its answer ... it can permit discovery ... it can direct that the record be expanded ... It can order a full transcript of the grand jury minutes, if it thinks this might be illuminating"),

In the instant case, Mr. Pedrin pleaded and supported multiple prima facie claims of ineffective assistance of counsel sufficient to entitle him to an evidentiary hearing. In spite of Mr. Pedrin's pleadings and evidence, the District Court summarily denied the Section 2255 motion without an evidentiary hearing.

The District Court erred by failing to provide careful consideration and plenary processing of his claims, including full opportunity for presentation of the relevant facts. *Blackledge v. Allison*, 431 U.S. 63; 97 S. Ct. 1621; 52 L. Ed. 2d 136 (1977). Since the Court of Appeals simply affirmed the District Court's decision, that court also erred. *Id.*

Based on all of the foregoing, Mr. Pedrin respectfully asks this Honorable Court to **GRANT** certiorari and set this case for argument. Alternatively, Mr. Pedrin asks this Court to **VACATE** his judgment of conviction and sentence due to ineffective assistance of counsel.

1C.) The Court Of Appeals Should Have Provided Some Kind Of Statement Of Reasons And A Reviewable Record As To Why It Denied Mr. Pedrin's Appeal.

It is well settled law that, when a District Court denies a Section 2255 motion or habeas corpus petition without providing a reviewable record, the proper procedure is for the Court of Appeals to vacate and remand such decisions to the District Court with instructions that the lower court explain its reasoning. *United States v. Edwards,* 711 F.2d 633, 634 (5th Cir. 1983); *United States v. Counts*, 691 F.2d 348, 349 (7th Cir. 1982); *United States v. Marr,* 856 F.2d 1471, 1472-73 (10th Cir. 1988); *Clisby v. Jones*, 960 F.2d 925; 1992 U.S. App. LEXIS 8906 (11th Cir. 1992).

In granting a summary judgment motion in a civil case or a motion to dismiss under Fed. R. Civ. P. 12(b), a district court is not required to explicitly detail findings and conclusions to support its decision, even though such might be helpful to a reviewing court. However, if the district court's underlying holdings would be otherwise ambiguous or unascertainable, the courts hold that the reasons for entering summary judgment should be stated somewhere in the record. The courts reason that a dismissal order that fails to disclose the district court's reasons runs contrary to the interest of judicial efficiency by compelling the appellate court to scour the record. It also increases the danger that litigants will perceive the judicial process to be arbitrary and capricious. *Couveau v. American Airlines, Inc.*, 218 F.3d 1078, 1081 (9th Cir. 2000); *Cable Elec. Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 1020 (Fed. Cir. 1985) (same). *Cf. Blackledge v. Allison*, 431 U.S. 63; 97 S. Ct. 1621; 52 L. Ed. 2d 136 (1977) (a federal habeas corpus petitioner is entitled to careful consideration and plenary processing of his claims).

In Mr. Pedrin's case, as set forth above, the Court of Appeals simply denied his appeal without any analysis what-so-ever.

As set forth above, a federal habeas corpus petitioner is entitled to careful consideration and plenary processing of his claims. *Blackledge v. Allison*, 431 U.S. 63; 97 S. Ct. 1621; 52 L. Ed. 2d 136 (1977). Absent a reasoned analysis by the lower courts, this Court cannot determine whether Mr. Pedrin received his rights 28 U.S.C. § 2255 and the Great Writ. *Id.*

Based on the foregoing, the decision by the Court of Appeals for the Ninth Circuit has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision. *Id. McNabb v. United States,* 318 U.S. 332 (1943); *GACA v. United States*, 411 U.S. 618 (1973); *United States v. Jacobs*, 429 U.S. 909 (1976); *Rea v. United States*, 350 U.S. 214 (1956); *Benanti v. United States,* 355 U.S. 96 (1957); *United States v. Behrens*, 375 U.S. 162 (1963); *Elkins v. United States*, 364 U.S. 206 (1960).

Based on all of the foregoing, Mr. Pedrin respectfully asks this Honorable Court to **GRANT** certiorari and set this case for argument. Alternatively, Mr. Pedrin asks this Court to **VACATE** his judgment of conviction and sentence due to ineffective assistance of counsel.

CONCLUSION

For all of the foregoing reasons, Petitioner Joseph Alex Pedrin respectfully prays that his Petition for Writ of Certiorari be **GRANTED** and the case set for argument on the merits.

Alternatively, Petitioner respectfully prays that this Court **GRANT** certiorari, **VACATE** the denial of his Request for Certificate of Appealability and **REMAND**[4] to the court of appeals for reconsideration in light of the cases set forth herein and in Mr. Pedrin's Section 2255 motion.

Joseph Alex Pedrin

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Date: 3-30-20

[4] For authority on "GVR" orders, see *Lawrence v. Chater*, 516 U.S. 163, 167-68, 133 L. Ed. 2d 545, 116 S. Ct. 604 (1996).