

No. _____

19-8896

IN THE

SUPREME COURT OF THE UNITED STATES

MELODIO REYES — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Melodio Reyes

(Your Name)

P.O. Box 26040

(Address)

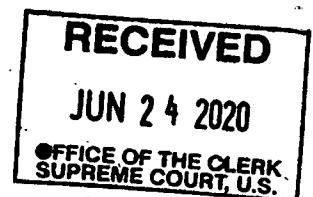
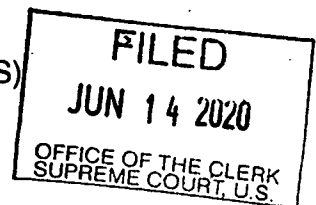
Beaumont, Texas 77720

(City, State, Zip Code)

None

(Phone Number)

ORIGINAL



QUESTION(S) PRESENTED

1) Was Petitioner denied Effective Assistance of Counsel?

a) Whether Trial Counsel failed to present an effective defense to the Prosecutor's improper invocation of Criminal History Enhancement Clause based on Bogus Prior Convictions and/or Statutorily Barred Prior Conviction for Burglary of Building (Pasc. #35: 11-18-97)

2) Did the Sentencing Court create a procedural error by adjudicating Petitioner with the False + Unsubstantiated Prior Conviction and/or Statutorily Barred Conviction?

3) Did the Sentencing Court create procedural error by [mis]constructing the alleged, unsubstantiated prior convictions in the Sentencing Guidelines?

4) Did the Sentencing Court create procedural error by [mis]constructing the statutorily Barred Prior Conviction: 1997-Burg. of Building in the Sentencing Guidelines?

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:

Petitioner: Melodio Reyes #09838023

Defense Counsel: Mr. Ruben Peña Jr.

Trial Judge: Honorable Randy Crane

Assistant Prosecutor: Jan Doe

RELATED CASES

Strickland Vs. Washington, 46 U.S. 668, 104 S.Ct. 2052

Powell Vs. Alabama, 281 U.S. 45

Criminal History Enhancement Clause: U.S.S.G. § 4A1.3

Re: Mix, 422 F. 2d 1195

Re: Contell, 433 F. 3d 1299

U.S. vs. Sue Ellen Stoten, 450 F.3d. 384

Equal Protection Clause: U.S. Cons. Amend. 14th.

Due Process Clause: U.S. Cons. Amend. 14th.

Right To Effective Assistance of Counsel: U.S. Cons. Amend. 6th.

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EXHIBITS LIST

- 1) Fifth Circuit Court of Appeals Affirmation of Conviction
- 2) Petition For Rehearing
- 3) Deputy Clerk's Letter Declining Filing of Petition For Rehearing
- 4) 28 U.S.C. § 2255: Motion Denied
- 5) Motion To Amend The Record
- 6) Deputy Clerk's Letter Declining Filing of Motion To Amend
- 7) Deputy Clerk's Letter Declining Filing of Documents
- 8) Petition For Post Conviction Relief
- 9) Counsel's Transmittal of Anders Brief

TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

<u>U.S.S.G. § 4A1.3-Departure Based On Inadequacy of Criminal History</u>	<u>p. 3</u>
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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 141A 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 4 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 April 6th 2020.

☐ 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: 4-14-20, and a copy of the order denying rehearing appears at Appendix 12.1.

☐ 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

U.S. Cons. Amend. 6th: Right To Effective Assistance Of Counsel

U.S. Cons. Amend. 14th: Right To Due-Process Of Law

Equal Protection Clause:

Liberty Interest Clause:

Criminal History Enhancement Clause: U.S.S.G. § 4A1.3

Prohibition based on said policy:

STATEMENT OF THE CASE

On 6-6-19, Petitioner was convicted for Transporting Illegal Aliens in the U.S. District Court for Southern Texas, Honorable Randy Crane and sentenced to Thirty Three Months Prison Term followed by Three Years Probation.

On 6-13-19, Petitioner appealed conviction contending Ineffective Assistance of Counsel & Improper Enhancement.

On 6-19-19, Appointed Counsel: Mr. Roberto Balli submitted Petitioner's Answer Brief, [mis]stating the facts and/or issues.

On 10-7-19, Petitioner submitted a subsequent appeal attaching documents supporting contentions, case-cites for precedence, justification.

On 10-16-19, said motion was denied as premature.

On 11-7-19, Petitioner submitted a Motion To Amend The Record.

On 11-18-19, Deputy Clerk: Ms. Jana M. Wynne, advised petitioner of Her refusal to file said Motion To Amend The Record.

On 4-6-20, the Fifth Circuit Court of Appeals Affirmed Conviction.

On 4-14-20, Petitioner submitted His Petition For Rehearing.

On 4-20-20, Deputy Clerk: Ms. Wynne declined to file said Petition For Rehearing.

On 6-14-20, Petitioner submitted His Petition For Writ of Certiorari requesting a New Hearing.

REASONS FOR GRANTING THE PETITION

In America's Jurisprudence the main flow of the vein is the Due Process of Law: Equal Justice Under The Law.

Unfortunately, Petitioner has been incapable to reach justification for "Improper Enhancement." Wherefore, due to Defense Counsel's deficiency, the District Court erroneously invoked the Criminal History Enhancement Clause.

Hence, Appellate Agencies have been to no avail wherefore, Appellate Counsel misconstrued the facts and/or issues contended by petitioner. Thus, the Court of Appeals ruled on incorrect priors. (See exhibit # 1A)

Therefore, the "Miscarriage of Justice" and a matter of Great Public Importance exists. Hence, the controversial rulings and/or "Conflict of Laws," require this Higher Court to exercise its Supervisory Powers.

Thus, will this Honorable Court take the appropriate action and justify Petitioner?

IN THE UNITED STATES SUPREME COURT

MELDIO REYES,
Petitioner,

VS.

CAUSE No. _____
PETITION FOR WRIT OF CERTIORARI

UNITED STATES,
Respondents.

Melodio Reyes, respectfully presents this Petition For Writ of
Certiorari pursuant 28 U.S.C. § 1254(1)

On 6-6-19, Petitioner was convicted for Transporting Illegal Aliens in the
U.S. District Court for Southern Texas, by the Honorable: Randy Crane. Thus,
sentenced to 33 months Prison Term followed by 3 Yrs. Probation.

On 6-13-19, Petitioner appealed conviction contending Ineffective
Assistance of Counsel and Improper Enhancement. (See Ex #8)

On 6-19-19, Appointed Counsel: Mr. Roberto Balli submitted Petitioner's
Anders Brief, mistrusting the facts and/or issues. (See Ex #9)

On 10-7-19, Petitioner submitted a subsequent appeal attaching documents
supporting contentions, case cites for precedence, justification.

On 10-16-19, said motion was denied as premature. (See Ex #4)

On 11-7-19, Petitioner submitted a Motion To Amend The Record. (Ex #5)

On 11-18-19, Deputy Clerk: Ms. Jana M. Wyant, advised petitioner of her refusal
to file said motion. (See Exhibit #6)

On 4-6-20, the Fifth Circuit Court of Appeals (Erroneously) Affirmed. (See Ex #1)

On 4-14-20, Petitioner submitted His Petition For Rehearing. (See Ex #2)

On 4-20-20, Deputy Clerk declined to file Petition For Rehearing. (See Ex #3)

Hence, "In The Best Interest of Justice," Petitioner hereby requests
reconsideration based on the record.

Respectively, submitted this 14 day of JUNE, 2020.

Melodio Reyes

Melodio Reyes #09838023

Petitioner Pro-Se

PETITION FOR WRIT OF CERTIORARI

P.1

IN THE UNITED STATES SUPREME COURT

MELODIO REYES,
Petitioner,

VS.

UNITED STATES,
Respondents.

CAUSE No. _____

MEMORANDUM IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI

Melodio Reyes, respectfully presents this Memorandum in Support of
Petition For Writ of Certiorari pursuant 28 U.S.C. § 1254(U).

"CAUSE OF ACTION"

On 6-6-19, Petitioner was convicted for Transporting Illegal Aliens by
the Honorable Randy Crane (Southern District of Texas). Thus, sentenced to
Thirty Three months Prison Term followed by Three Years Probation.

On 6-13-19, Petitioner submitted His Initial Petition For Post-Conviction Relit
citing Ineffective Assistance of Counsel & Improper Enhancement.

On 6-19-19, Appointed Counsel: Mr. Roberto Balli submitted Petitioner's Answer's
Brief. Unfortunately, counsel misconstrued Petitioner's contentions, i.e.
bogus & invalid (alleged) prior convictions.

On 10-7-19, Petitioner submitted a subsequent Motion For Post-Conviction
Relit.

On 10-16-19, said Motion For Post-Conviction Relit was denied
as premature.

On 11-7-19, Petitioner submitted His Motion To Amend The Record.

On 11-18-19, the Deputy Clerk refused to file Motion To Amend.

On or about 11-25-19, Petitioner informed counsel of said declination.

On 4-6-20, the Court of Appeals (Erroneously) Affirmed Conviction, i.e.
debated wrong prior convictions.

On 4-14-20, Petitioner submitted His Petition For Rehearing.

On 4-20-20, the Deputy Clerk declined to file said petition.

Hence, will this Higher Court order a Rehearing?

MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI P.1

"GROUNDS FOR RELIEF"

1) Ineffective Assistance of Counsel:

U.S. Const. Amend. 6th.

In all criminal prosecutions the accused shall be afforded the right to effective and/or adequate assistance of counsel.

a) Was petitioner denied effective assistance of counsel?

Strickland Vs. Washington, 466 U.S. 668, 104 S.Ct. 2052

In Strickland, the Supreme Court held that an accused shall be provided with effective assistance of counsel during all phases of prosecution.

Powell Vs. Alabama, 287 U.S. 45

In Powell, the Court held that an attorney has an "Ethical-Obligation," to provide client with the utmost professional representation of his capability. However, in order to reach this end, counsel must first familiarize himself with Defendant's case and all controlling authorities. Hence, proceed with the client's most favorable overviews.

In the present case, "BUT-FOR" Counsel's: Mr. Ruben Peña Jr.'s deficiencies, emissions and/or omissions, Petitioner's trial most probably would have differentiated. Wherefore, Counsel failed: a) to clarify para. #35: Burglary of Building reflects 11-18-97 P/G + [11-18-04] sentenced to six years in the Texas Penal System.

Hence, the record is inaccurate. Wherefore, on or about 9-10-02, prior to Petitioner's extradition from the state of Florida's Penal System to the state of Idaho's Penal System, the state of Texas declined custody and/or extradition to Texas. Thus, granted Petitioner an "UNCONDITIONAL RELEASE." Therefore, the statute of limitations bars invocation of same.

b) Additionally, counsel [also] failed to object and/or present an effective defense to Prosecutor's improper Criminal History Enhancement wherefore the [alleged] prior convictions for Agg. Aslt on L.E.O. dated 6-29-86 & Armed Robbery dated 5-13-93 which were [mis]applied for Enhancement are Bogus/nonexistent. Therefore, said information is unreliable and invalid for Enhancement purposes.

2) Denial/Violation of Due-Process of Law:

U.S. Cons. Amend. 14th.

No State shall make or enforce any laws which abridges the rights or privileges of the U.S. Citizens. Nor, deprive any person of life, liberty, or, property; without due-process of law. Nor, deny to any person within its jurisdiction, the "Equal Protection of Law."

Did the Sentencing Court err by invoking the Criminal History Enhancement clause?

U.S.S.G. § 4A1.3-Departure Based On Inadequacy of Criminal History:

a) Upward Departures:

1) Standard for Upward Departures: "IF, '[reliable]' information indicates that Defendant's criminal history category [substantially] underrepresents the seriousness of the Defendant's criminal history or the likelihood that the defendant will commit other crimes, an upward departure may be warranted."

3) "PROHIBITION," A prior [arrest record] itself "shall not be considered" for purposes of an Upward Departure under this policy statement.

In Re: Mix, 422 F.3rd 1195

In Mix, the Court held: "IF," the District Court incorrectly construed the Sentencing Guidelines, we [must] vacate the sentence and remand for resentencing.

In Re: Contrell, 433 F.3rd 1279

In Contrell, the Court held: "IF," there was material error in the Guidelines Calculation that serves as the starting point for the District Court's sentencing decision, we will remand for resentencing.

U.S. Vs. Suz Ellen Staten, 450 F.3rd 384

In Staten, the District Court sentenced Staten by applying the Substantial Risk of Harm Enhancement, based on facts not admitted by Staten in her plea, but, rather found by the court at the sentencing hearing, based on post-plea submission of evidence and expert testimony. On remand the court may determine to do so again "IF" the "REQUISITE FACTS" are established.

4) Equal Protection Clause:

U.S. Cons. Amend. 14th.

Wherefore similarly circumstanced, defendants [shall] receive equal treatment.

Hence, is it reasonable to believe that similarly to Mix, Contrell + Staten: violation of Procedural Due-Process, Petitioner's Conviction should be remanded for resentencing?

Denial and/or Violation of Due-Process of Law:

5) Did the District Court error by invoking prior conviction for Burglary of Building (Para. #35) in the points system?

6) Liberty Interest Clause:

Wherefore Liberty Interest exists, the record shall not be tainted by presentation of false evidence, "stating the facts," or, omission of vital statistics.

a) In the present case, similarly to the aforementioned defendants, the District Court incorrectly construed the Sentencing Guidelines by considering incorrect information: Para. #35, Burg. of Building, Unconditional Release granted prior to extradition from the state of Florida's Penal System (Apr. 9-10-02) to the state of Idaho's Penal System.

Moreover, the alleged prior convictions: Agg. Aslt. On L.E.O., dated 6-29-86 + Armed Robbery, dated 5-13-93 which were invoked for Enhancement are BOGUS/NONEXISTANT.

Therefore, said information is unreliable and/or invalid for Enhancement Purposes. In accordance with existing case law, the enhancement [must] be supported by facts established by clear and convincing evidence.

b) Ultimately, is it reasonable to believe that Petitioner's prior conviction which was identical and statutorily barred for said enhancement, wouldn't the same rules apply to present conviction?

"ARGUMENT"

In the present case, Petitioner is contending improper invocation of the Criminal History Enhancement Clause.

Wherefore, Prosecutors are invoking ~~BOGUS~~ ~~UNSUBSTANTIATED~~ prior convictions.

Thus, the record initially reflected (alleged) prior convictions: Agg. Aslt. On L.E.D., dated 6-29-86, Armed Robbery, dated 5-13-93 & Burglary of Building, dated 11-18-97. (Para #35)

Hence, the Fifth Circuit Court of Appeals Prosecutor is misconstruing, obfuscating the facts of the case. Wherefore, the contended Agg. Aslt. On L.E.D. originally dated 6-29-86. Thus, the record presently reflects: Batter On Police Officer, dated: 2013 & Misdemeanor. Moreover, the alleged Armed Robbery, dated 5-13-93 is bogus and/or unsubstantiated. Petitioner was never arrested, much less convicted for said offense.

Moreover, the record additionally reflects (incorrectly), that petitioner is contending a Burglary of Building, dated 1991. "IF," that were so, the statute of limitations bars same. However, petitioner is contending a prior conviction for Burg. of Build, dated 11-18-97. Wherefore, prior to Petitioner's extradition from the state of Florida's D.O.C. to the state of Idaho's D.O.C., the state of Texas declined to extradite petitioner. Hence, granted an Unconditional Release. (Appr. 9-10-02) Therefore, the statute of limitations bars, precludes consideration of same.

A thorough review of the record [shall] conclude that Petitioner is entitled for a Rehearing On The Merits, i.e. Sentence - Reduction to original proposal: 24 Months.

MEMORANDUM IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI P. 7

"SUMMATION"

In America's Jurisprudence the main flow of the vein is the Due-Process of Law: Equal Justice Under The Law.

Unfortunately, Petitioner has been incapable to reach justification for "Improper Enhancement." Wherefore due to Defense Counsel's deficiency, the District Court erroneously invoked the Criminal History Enhancement Clause.

Hence, Appellate Avenues have been to no avail. Wherefore, Appellate Counsel misconstrued the facts and/or issues contended by petitioner. Thus, the Court of Appeals ruled on incorrect prior convictions.

Therefore, the "miscarriage of Justice" and a matter of Great Public Importance exists. Hence, the controversial rulings and/or the "Conflict of Laws," require this Higher Court to exercise its Supervisory Powers.

Thus, will this Honorable Court take the appropriate action and justify Petitioner?

"PRAYER FOR RELIEF"

WHEREFORE ALL PREMISES CONSIDERED, Petitioner, Melodio Ryzs, Prays;
this Honorable Court will Grant Relief as follows: Grant this
Petition For Writ Of Certiorari, Remand For Resentencing, Issue
An Order For Time-Served, Or, As This Court Deems Just & Proper.

"CERTIFICATE OF SERVICE"

I HEREBY CERTIFY, that on this 14th day of June, 2020, I
did place into the U.S. Mail System, My True & Correct Petition
For Writ Of Certiorari, Memorandum & Declaration In Support Of
Same, Motion For Re-Appointment Of Counsel & Motion To Pro-
ceed In Forma-Pauperis, addressing said documents to the
following party(s):

United States Supreme Court

Clerk for Court:

1 First Street N.E.

Washington, D.C. 20543

Respectively,

Melodio Ryzs

Melodio Ryzs #09838023

Petitioner Pro-Se

IN THE UNITED STATES SUPREME COURT

MELODIO REYES,
Petitioner,

VS.

UNITED STATES,
Respondent.

Case No.

DECLARATION IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI

"OATH AND CONFIRMATION"

I, Melodio Reyes, solemnly swear under the penalty of perjury:
78 U.S.C. § 1746, to the FOR/APT, Information and/or Documentation
as being True, Correct + "In The Best Interest of Justice."

- 1) That I make this Declaration In Support Of My Petition —
For Writ Of Certiorari.
- 2) That I'm being Denied / Violated the right to Due-
Process of Law.
- 3) That I was unlawfully convicted
- 4) That I request redress of same.
- 5) Furthermore, Petitioner sayeth naught.

Respectively, submitted this 14th day of June, 2020.

Melodio Reyes
Melodio Reyes #09838023
Petitioner Pro-Se

DECLARATION IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI P.1

IN THE UNITED STATES SUPREME COURT

MELODIO REYES,
Defendant,
VS.

CAUSE NO.
MOTION FOR RE-APPOINTMENT OF COUNSEL

UNITED STATES,
Respondent.

Comes now, Melodio Reyes, Defendant in the above entitled cause,
Whom, pursuant to Federal Rules of Appellate Procedure, Move;
this Honorable Court to Grant this Motion For Re-Appointment
of Counsel on the grounds stated herein.

"OATH AND CONFIRMATION"

I, Melodio Reyes, solemnly swear under the penalty of perjury:
28 U.S.C. § 1746, to the following information as being True —
+ Correct.

- 1) That I make this Declaration in support of my Motion —
For Re-Appointment of Counsel.
- 2) That I can not afford to hire private counsel.
- 3) That the complexity of my case, severity of infringements —
require professional representation.
- 4) That my right to due-process is being Denied/Violated.
- 5) That I request redress of same.
- 6) Furthermore, Defendant sayeth naught.

Respectively, submitted this 14th day of June, 2020.

Melodio Reyes

Melodio Reyes #09833023

Defendant Pro-Se

MOTION FOR RE-APPOINTMENT OF COUNSEL

PI