

No:

**In the
Supreme Court of the United States**

EDWIN JASSIEL PERALTA-CASTRO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

Edwin Jassiel Peralta-Castro
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QUESTIONS PRESENTED FOR REVIEW

Did the Fifth Circuit Court of Appeals err in determining there was no “Substantial Showing of Denial of a Constitutional Right” – Failure to Explain to Peralta-Castro his sentencing exposure prior to advising him to plead guilty, thus reaching a level of ineffectiveness.

Did the Fifth Circuit Court of Appeals err in determining there was no “Substantial Showing of Denial of a Constitutional Right” – The allegations of ineffectiveness during the pre-trial stage which encouraged the matter to proceed further.

**PARTIES TO THE PROCEEDINGS
IN THE COURT BELOW**

In addition to the parties named in the caption of the case, the following individuals were parties to the case is the United States Court of Appeal for the Fifth Circuit and the United States District Court, Southern District Texas.

None of the parties is a company, corporation, or subsidiary of any company or corporation.

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Edwin Jassiel Peralta-Castro, the Petitioner herein, respectfully prays that a Writ of Certiorari is issued to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled cause.

OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit, whose judgment is herein sought to be reviewed, is an unpublished opinion *United States v. Peralta-Castro*, 804 F. App'x 291 (5th Cir. 2020), entered on May 13, 2020 and is reprinted as Appendix A to this Petition.

The opinion of the United States District Court, Southern District of Texas, whose judgment is herein sought to be reviewed, is an unpublished opinion *United States v. Peralta-Castro*, 2019 U.S. Dist. LEXIS 92216 (S.D. Tex. June 3, 2019) is reprinted as Appendix B to this Petition.

STATEMENT OF JURISDICTION

The Fifth Circuit Court of Appeals opinion was entered on May 13, 2020. The Jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND RULES 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 offense 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. Fifth Amendment U.S. Constitution

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 witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Id. Sixth Amendment U.S. Constitution

Title 28 U.S.C. § 2255 provides in pertinent part:

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.

* * * * *

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.

Id. Title 28 U.S.C. § 2255

Title 28 U.S.C. § 2253 provides in pertinent part:

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

Id. Title 28 U.S.C. § 2253

STATEMENT OF THE CASE

A. Course of Proceedings in the Lower Courts

On September 9, 2015, a two-count Superseding Indictment was filed in the United States Court for the Southern District of Texas, Houston Division, naming Edwin Jassiel Peralta-Castro and eleven other co-defendants. Count 1 of the indictment charged all of the defendants with conspiracy to possess with intent to distribute 1 kilogram or more of heroin and 50 grams or more of methamphetamine, from early 2013 through the date of the Superseding Indictment, in violation of 21 U.S.C. §§ 846, 841(a)(1), 841 (b)(1)(A)(I), and (viii).

Count Two of the Superseding Indictment charged Christopher Glen Clark and Jessica Soto Eriza with the laundering of monetary instruments, which occurred from mid-2013 to on or about late January 2014, in violation of 18 U.S.C. § 1956(a)(2)(A), and (2). On April 27, 2016, a one-count Superseding Information was filed in the United States District Court for the Southern District of Texas, Houston Division, naming Peralta-Castro, as the defendant. Count 1 charged the defendant with engaging in monetary transactions in property derived from specified unlawful activity, on or about June 20, 2013, in violation of 18 U.S.C. § 1957. On May 12, 2016, Peralta-Castro appeared before United States District Judge, Hon. Sim Lake, for a re-arraignment. Peralta-Castro entered a plea of guilty to Count 1 of the Superseding Information, under a Rule 11(c)(1)(A) and (B) written Plea Agreement. The Plea Agreement was sealed. The Court accepted the Peralta-Castro's guilty plea and ordered the preparation of a Presentence Investigation Report.

The Presentence Investigation Report stated that Peralta-Castro was an average participant and wholly failed to provide a minor role adjustment. Peralta-Castro filed objections to the Presentence Investigation Report, mainly to ¶¶'s 12 and 19, because it sought to hold Peralta-Castro accountable for the relevant conduct of the underlying offense (drug trafficking) after he had entered a plea of guilty to engaging in monetary transactions in property derived from specified unlawful

activity in violation of 18 U. S. C. §1957. The Presentence Investigation Report provided for an advisory guideline range of imprisonment of 121 - 151 months, however, under U. S. S. G. § 5G1.1(a), the guideline range became the statutory authorized maximum term of 120 months imprisonment. Peralta-Castro's objections were overruled and the district court sentenced him to the statutory authorized maximum term of imprisonment of 120 months.

STATEMENT OF THE FACTS

According to the Presentence Investigation Report, in early 2013, law enforcement officials in Houston, Texas determined that a drug trafficking organization based in Michoacan, Mexico, was recruiting individuals to drive vehicles fitted with hidden compartments filled with narcotics, across the Mexican border with the Southern District of Texas. Once those vehicles entered the United States, they were driven from Texas to their ultimate destinations. One of those destinations was New York, where the drivers would give possession of the vehicle to a specified individual who would take the vehicle for a day or so, the return the vehicle to the driver. At the time of the vehicle's return, it would have United States currency concealed in its hidden compartment. The vehicle would then be driven back to Mexico. During 2013, several drugs and/or currency seizures in the Southern District of Texas was linked to the Mexican drug trafficking organization. In 2014, Maria Carranza, a co-defendant, was identified as a member

of the drug trafficking organization that assisted in the flow of drugs and money. In March 2016, and an undercover officer had been introduced into the drug trafficking organization by a confidential source. The undercover officer was in telephone contact with an individual known as "Rodolfo" one of the narcotics suppliers in Mexico. Agents received information from the confidential source that the drug trafficking organization was operating a stash house at 14907 Leila Oaks in Houston, Texas. Agents conducted surveillance at the residence and determined that Peralta-Castro was an occupant of the house. On June 3, 2013, law enforcement agents observed a Volvo parked at the house. The Volvo was registered to A.O. The next day, the same Volvo was stopped in Beaumont, Texas. The driver of the vehicle was identified as M.S.

A search of the vehicle revealed 16 kilograms of methamphetamine hidden in a secret compartment of the Volvo. The investigation revealed that A.O. had multiple international crossings at the U. S. Border in Brownsville, Texas, and had crossed the border several times with Christopher Clark. When interviewed, M.S. advised the law enforcement agents that she gave the Volvo to the Peralta-Castro on June 3, 2013, who kept the vehicle for several hours. Peralta-Castro returned the Volvo to M. S. Later that evening and also provided M. S. with money to travel to Atlanta, Georgia. A review of telephone records confirmed cellular phone

contact between M. S. and Peralta-Castro during a particular time. M.S. admitted that she had been hired by an individual to drive the drugs to Atlanta, Georgia.

On June 7, 2013, Christopher Glen Clark was a passenger in a vehicle driven by A.O. The vehicle was a black Dodge Journey SUV and had been registered to Christopher Glen Clark in May 2013. The officers that conducted a traffic stop on the vehicle recovered 10 kilograms of heroin from a hidden compartment. Law enforcement agents had previously observed the black Dodge Journey SUV at 14907 Leila Oaks, Houston, Texas. A.O. admitted working for the drug trafficking organization for approximately three months. A.O. stated she was paid between \$2,000.00 and \$3,000.00 per trip and admitted to making multiple trips from Mexico to various points in the United States. A.O. stated that on several of her trips, she dropped off the stash vehicle with Peralta-Castro for a short time before leaving Houston and again upon her return to Houston. Christopher Glen Clark confirmed that Peralta-Castro assisted with the pickup and delivery of the vehicles from the drug trafficking organization. Telephone records confirmed multiple contacts between Christopher Glen Clark, A. O., and Peralta-Castro.

On June 20, 2013, Peralta-Castro purchased a Honda Pilot SUV from Spring Branch Honda in Houston, Texas for \$14,149.68 in cash. On June 21, 2013, the vehicle was registered to B.H. On July 18, 2013, B.H. was arrested at the United

States Border Patrol checkpoint in Sarita, Texas. Law enforcement officers recovered 16 kilograms of heroin in an aftermarket compartment located under the vehicle. B.H. was interviewed and admitted driving the vehicle to New York, picking up money, and driving the loaded vehicle to Mexico. B.H. stated that she traveled to Houston and picked up the Honda Pilot in the direction of Peralta-Castro. Both M.S. and A.O. identified Peralta-Castro as the person in Houston who delivered load cars to them and provided expense money. Peralta-Castro gave them \$1,000 and \$2,000.00 per trip for expenses.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD ISSUE A WRIT OF CERTIORARI BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT HAS INTERPRETED A FEDERAL STATUTES IN A WAY THAT CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT

Supreme Court Rule 10 provides in relevant part as follows:

Rule 10 CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI

(1) 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 therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

(a) When 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.

(b) When a ... United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decision of this Court.... *Id.*

Id. Supreme Court Rule 10.1(a), (c)

QUESTIONS PRESENTED

Did the Fifth Circuit Court of Appeals err in determining there was no “Substantial Showing of Denial of a Constitutional Right” – Failure to Explain to Peralta-Castro his sentencing exposure prior to advising him to plead guilty, thus reaching a level of ineffectiveness.

Basic research is the fundamental process of a criminal defense attorney's practice. Had counsel done basic research and properly understood the relevant Sentencing Guidelines as applied to Peralta-Castro's case, counsel would have realized his sentencing exposure exceeded the statutory maximum for the offense. Instead, counsel misunderstood the Guidelines and advised Peralta-Castro that he faced at most 15 to 21 months in prison, and to therefore plead guilty. Peralta-Castro followed counsel's advice and was sentenced to the statutory maximum. Had he received correct legal advice from counsel, Peralta-Castro would not have pleaded guilty but would have gone to trial. In a hand-written note, counsel advised Peralta-Castro that his sentencing exposure was just 15 to 21 months under

the Guidelines. (Cr.Dkt. 577).¹ Counsel's advice, however, was premised on his ignorance of the relevant Guidelines applicable to Peralta-Castro. Counsel believed that Peralta-Castro's conduct in the underlying drug conspiracy could not be considered in determining his Guidelines sentencing range ("GSR") because he was not convicted of that drug conspiracy. Counsel's belief was because he misread the Guideline, which clearly showed Peralta-Castro's aiding and abetting the drug operation was a valid basis for determining the GSR for his conviction for laundering the proceeds of that operation. Counsel easily convinced Peralta-Castro of the 15 to 21 month GSR by pointing to his codefendants who, for the same conviction, later received low sentences. For example, Jessica Soto Eriza was sentenced to 60 days in prison plus 3 years of supervised release, and Christopher Glen Clark received 38 months in prison, plus 3 years of supervised release. Even Peralta-Castro's codefendants who were convicted for the drug operation were mostly sentenced to low sentences: Jose De La Virgen, time served; Armando Martinez, a year and a day in prison; Miguel Carranza, time served; and five others ranging from four to thirteen years in prison. Peralta believed counsel when he told him he would get at most 15 to 21 months in prison. Counsel's misunderstanding can be supported by the District Court's record.

¹ "Cr.Dkt." refers to the criminal docket in USDC Southern District of Texas, 4:14cr35

The United States Sentencing Guidelines ("USSG") § 2S1.1(a) establishes the base offense level for money laundering based on "(1) the offense level for the underlying offense from which the laundered funds were derived, if (A) the defendant committed the underlying offense (or would be accountable for the underlying offense under subsection (a)(1)(A) of § 1B1.3 (relevant conduct)); and (B) the offense level for the offense can be determined; or (2) 8 plus the number of offense levels from the table in § 2B1.1 ... corresponding to the value of the laundered funds, otherwise." One point is also added under the Guideline if the conviction was under 18 U.S.C. § 1957. Counsel ignored the fact that he told Peralta-Castro to admit to being an integral part of the drug operation and to sign the plea agreement stating so. The government did not have to provide a "scintilla" of any evidence that Peralta-Castro aided and abetted the underlying drug operation to establish the base offense level under § 2S1.1(a) – he admitted to it in his plea agreement. The only provision under § 2S1.1(a) to establish the base offense level for Peralta-Castro's conviction was (1)(A) because, while Peralta-Castro may not have technically committed the underlying drug offense, he pleaded guilty to "aiding and abetting" that drug offense. The factual basis for the plea agreement intimately details Peralta-Castro's involvement in the underlying drug operation, where he provided vehicles with secret compartments to transport the drugs and proceeds. Still, counsel was adamant that Peralta-Castro would not

get more than 15 to 21 months in prison if he signed the plea agreement. After counsel's objections to the Presentence Report ("PSR") were flatly rejected by the District Court, Peralta-Castro was sentenced to the statutory maximum under 18 U.S.C. § 1957, because his GSR under § 2S1.1(a) -- derived from the drug table in § 2D1.1 -- was well-beyond the 120 month maximum for the offense. In his direct appeal brief, the basis for counsel's bad advice to Peralta-Castro became evident. He argued that because Peralta-Castro was not convicted of the underlying drug offense, the District Court erred in applying § 2S1.1(a)(1), instead of (a)(2). Further, counsel argued that the District Court "wholly failed to consider and apply Application Note 2(C) of USSG § 2S1.1," and therefore incorrectly considered Peralta-Castro "relevant conduct in the underlying offense." Brief, at 10 (emphasis added). Counsel's arguments were legally baseless. Finally, counsel's ignorance of the relevant points of law in Peralta-Castro's case that the U.S. Court of Appeals for the Fifth Circuit spent most of its opinion criticizing his errors. The Court pointed out that counsel's "briefing on critical aspects of his claim of error" was so bad, he effectively "waived" any arguments on behalf of Peralta-Castro. See *United States v. Peralta-Castro*, 2017 U.S. App. LEXIS 21217, *2-3 (5th Cir. 2017). The Court also called counsel's briefing "inadequate" and noted that Peralta-Castro "is not entitled to a liberal construction of his arguments because he is represented by counsel." Id., at 3. "An attorney's ignorance of a point of law that is

fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under Strickland."

Hinton v. Alabama, 134 S. Ct. 1081, 1089 (2014) (citing *Strickland v. Washington*, 466 U.S. 668 (1984), and collecting cases). The U.S. Supreme Court has also held that counsel is constitutionally ineffective when his "failure to investigate thoroughly resulted from inattention, not reasoned strategic judgment." *Wiggins v. Smith*, 539 U.S. 510, 526 (2003). As the Sixth Circuit has explained: "In a system dominated by sentencing guidelines, we do not see how sentence exposure can be fully explained without completely exploring the cases of penalties under likely guideline scoring scenarios, given the information available to the defendant and his lawyer at the time." *Smith v. United States*, 348 F.3d 545, 553 (6th Cir. 2003). And that counsel's "complete ignorance of the relevant law under which his client was charged, and his gross misadvise to his client regarding the client's potential sentence, certainly fell below an objective standard of reasonableness under prevailing professional norms." *Magan v. Hofbauer*, 263 F.3d 542, 550 (6th Cir. 2001).

Second, counsel argued, both in his PSR objections and on appeal, the wrong legal arguments, again because of his ignorance of the Guidelines. This type of error is what *Cronic* pointed to when it held that, in addition to actual lack of counsel being a constitutional violation, "although counsel is available to assist the

accused," counsel's assistance was of no help. The "actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice."

Cronic, 466 U.S., at 659; *Strickland*, 466 U.S., at 692.

Peralta-Castro's assertion in his affidavit that his guilty plea was driven by his counsel's assurance that he faced no more than 15 to 21 months in prison and that he would not have pleaded guilty but gone to trial had he known the correct sentence faced, establishes prejudice in the guilty plea context. See *Hill v. Lockhart*, 474 U.S. 52, 59 (1985) (*Strickland*'s prejudice prong "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process"). Moreover, Peralta-Castro need not prove counsel's deficient advice "more likely than not" altered the outcome; instead, "he need only demonstrate that the chances of prejudice were better than negligible" to meet *Strickland*'s standard. *Julian v. Bartley*, 495 F.3d 487, 500 (7th Cir. 2007). "This [Peralta-Castro] has done." *Id.*

B. Did the Fifth Circuit Court of Appeals err in determining there was no "Substantial Showing of Denial of a Constitutional Right" – The allegations of ineffectiveness during the pre-trial stage which encouraged the matter to proceed further.

Where a clear and distinct record exists, the court was required to hold an evidentiary hearing. Here, the allegations of ineffectiveness were substantial. To prevail on ineffective assistance of counsel claim, Peralta-Castro must show that (1) counsel's performance fell below an objective standard of reasonableness and

(2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *see also Missouri v. Frye*, 566 U.S. 134, 147, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012). "[A] court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Strickland*, 466 U.S. at 697; *see also United States v. Stewart*, 207 F.3d 750, 751 (5th Cir. 2000). "The likelihood of a different result must be substantial, not just conceivable," *Harrington v. Richter*, 562 U.S. 86, 112, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011), and movant must prove that counsel's errors "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Cullen v. Pinholster*, 563 U.S. 170, 189, 131 S. Ct. 1388, 179 L. Ed. 2d 557 (2011) (quoting *Strickland v. Washington*, 466 U.S. 668, 686 (1984)). Judicial scrutiny of this type of claim must be highly deferential and Peralta-Castro must overcome a strong presumption that his counsel's conduct falls within the wide range of reasonable professional assistance. *Strickland*, 466 U.S. at 689. Simply making conclusory allegations of deficient performance and prejudice is not sufficient to meet the *Strickland* test. *Miller v. Johnson*, 200 F.3d 274, 282 (5th Cir. 2000). *Melanson v. United States*, 2019 U.S. Dist. LEXIS 61522, at *5-6 (N.D. Tex. Apr. 10, 2019). Here Peralta-Castro § 2255 alleged clear, distinct facts

that were supported by the record and files of the case. The pleadings included affidavits, exhibits, and references to the record to show the Peralta-Castro received ineffective assistance. As presented by the Court in *Sorto v. Davis*, 672 F. App'x 342, 346 (5th Cir. 2016) (reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'") Here the original § 2255 petition and all the exhibits support and encourage the matter to proceed further.

Because a reasonable jurist could disagree with the District Court's conclusion, without granting a hearing or expanding the record, a writ of certiorari should be granted on the constitutional issues identified herein.

CONCLUSION

Based on the foregoing, this Court should grant this request for a Writ of Certiorari and remand order the Court of Appeals for the Fifth Circuit.

Done this 7, day of August 2020.

Respectfully submitted,



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