

No. 20-5473

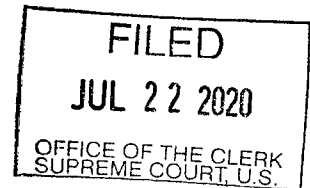
ORIGINAL

IN THE SUPREME COURT
FOR THE UNITED STATES

ANDRES CHAVEZ,
Petitioner/Defendant,

v.

UNITED STATES OF AMERICA,



On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Andres Chavez, pro-se

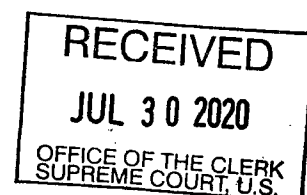
Register Number: 57654-177

FCI Texarkana

FEDERAL CORRECTIONAL INSTITUTION

P.O. BOX 7000

Texarkana, TX., 2020.



QUESTIONS PRESENTED

I. WHETHER CHAVEZ WAS DENIED DUE PROCESS WHEN HE WAS MISLEAD INTO ENTERING A GUILTY PLEA; BECAUSE COUNSEL FAILED TO REVIEW THE PSR WITH HIM AND FAILED TO SUBMIT A SENTENCING MEMORANDUM?

LIST OF THE PARTIES

All parties appear in the caption of the case on the cover page.

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STATEMENT OF THE CASE

On August 28, 2018, Chavez was charged in four counts in a sixteen Count Sealed Indictment with two counts of Conspiracy to Possess with Intent to Distribute a Controlled Substance (Violation of 21 U.S.C. Section 846) and two counts of Possession with Intent to Distribute a Controlled Substance (Violation of 21 U.S.C. Section 841(b)(1)(C)). Chavez plead guilty to one count (Count 15) of this Indictment at a re-arraignment on April 2, 2019. With a criminal history score of 1, and a resulting Criminal History Category of I, this resulted in a sentence range of 262 to 327 months. At the Sentencing Hearing the Court considered the objections on file, the facts of the case, and the 18 U.S.C. Sect. 3553 factors on the record and sentenced Chavez to the sentencing guideline range of 240 months. Thereafter, the Fifth Circuit Court of Appeals affirmed Chavez's conviction and sentence.

PRO-SE STANDARD OF REVIEW

Chavez's pleadings are entitled to a liberal construction because he is a pro se litigant. *Jackson v. Reese*, 608 F.2d 159, 160 (5th Cir. 1979) ("It is axiomatic that courts are required to liberally construe pro se complaints."). See, also *Estelle v. Gamble*, 429 U.S. 97, 106 (1975) (quoting *Haines v. Kerner*, ... explaining that the Court should construe a pro se complaint to make the best arguments that the allegations suggest.

I. CHAVEZ WAS DENIED DUE PROCESS WHEN HE WAS MISLEAD INTO ENTERING A GUILTY PLEA; BECAUSE COUNSEL FAILED TO REVIEW THE PSR WITH HIM AND FAILED TO SUBMIT A SENTENCING MEMORANDUM

DISCUSSION

Relevant Facts:

On August 28, 2018, Chavez was charged in four counts in a sixteen Count Sealed Indictment with two counts of Conspiracy to Possess with Intent to Distribute a Controlled Substance (Violation of 21 U.S.C. Section 846) and two counts of Possession with Intent to Distribute a Controlled Substance (Violation of 21 U.S.C. Section 841(b)(1)(C)).

Chavez plead guilty to one count (Count 15) of this Indictment at a re-arraignment on April 2, 2019.

A Pre-Sentence Report was prepared which set the Base Offense Level at 38. Chavez was given several two-point enhancements (4 points total) as follows:

35. Specific Offense Characteristics: Pursuant to USSG Section §2D1.1(b)(5), if the offense involved importation of methamphetamine and Chavez is not subject to a mitigating role adjustment, increase by 2 levels. The methamphetamine possessed by Chavez was imported directly from Mexico and the defendant did not receive a mitigating role adjustment. +2

36. Specific Offense Characteristics: Pursuant to USSG Section §2D1.1(b)(12), if the defendant maintained a premise for the purpose of storing or distributing a controlled substance, increase by 2 levels. In

this case, Chavez maintained the premises located at 2109 Ruea Street in Grand Prairie, Texas, for the storage and distribution of controlled substances; therefore, 2 levels are added. +2

From this offense level Chavez was given a three-point credit for acceptance of responsibility, bringing his total offense level down to 39. With a criminal history score of 1, and a resulting Criminal History Category of I, this resulted in a sentence range of 262 to 327 months which was reduced to the statutory maximum sentence of 240 months. The PSR was furnished to Chavez, defense counsel, and the Government not less than 35 days before Sentencing. The Pre-Sentence Report was served on Chavez's Counsel on June 7, 2019. The sentencing hearing was held on July 31, 2019.

In response to the PSR, Chavez made several objections: (1) Chavez objected to the amount of methamphetamine attributed to him, (2) the enhancement for importation. (3) the enhancement for maintaining a premise for storing and distributing a controlled substance, (4) Chavez claimed qualification for the "safety valve" consideration, (5) and related lower offense levels and sentencing guideline range based on the above objections. At the Sentencing

Hearing the Court considered the objections on file, the facts of the case, and the 18 U.S.C. Sect. 3553 factors on the record and sentenced Chavez to the sentencing guideline range of 240 months. Chavez timely appealed, and his sentence and conviction were affirmed by the Fifth Circuit Court of Appeals.

The Statutory Maximum in this case was 20 years (240 months); Chavez was sentenced to 240 months, so it does not exceed the Statutory

Maximum. Chavez receive no benefits for his plea deal. Chavez was misled into entering guilty plea; his counsel failed to review the contents of the Presentence Report with him and request for a Rule 11(c)(1)(C) plea; and counsel failed to submit a sentencing memorandum. Thus, Chavez was denied Due Process of Law.

CONCULSION

For all the reasons stated in herein this Honorable Court should grant the instant petition for writ of certiorari.

Dated: July 21, 2020.

Respectfully Submitted,

Andres Chavez
Andres Chavez, pro-se