No: 20-5590

ORIGINAL

In the
Supreme Court of the United States

MANUEL CHACON-LARA,

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

Manuel Chacon-Lara
Register Number: 19198-198
Giles W. Dalby CI
805 North Avenue F
Post, TX 79356

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" - When Chacon-Lara argued that counsel was Ineffective when he failed to Request a Fast Track sentence reduction in his circumstances.

Did the Fifth Circuit Court of Appeals err in determining there was no "Substantial Showing of Denial of a Constitutional Right" – When the allegations of Ineffectiveness at the pre-trial stage suggest encouragement 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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PETITION FOR WRIT OF CERTIORARI

Manuel Chacon-Lara`, 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The opinion of the Court of Appeals for the Fifth Circuit, whose judgment is herein sought to be reviewed, is an unpublished opinion *United States v. Chacon-Lara*, 806 F. App'x 322 (5th Cir. 2020) entered on May 26, 2020 and is reprinted as Appendix A to this Petition.

The opinion of the United States District Court adoption the Magistrate Report and Recommendation from the Southern District of Texas, whose judgment is herein sought to be reviewed, is an unpublished opinion *Chacon-Lara v. United States,* 18-031 (S.D. Tex. December 11, 2018) is reprinted as Appendix B to this Petition.

The opinion of the United States District Court Magistrate Judge, Southern District of Texas, whose judgment is herein sought to be reviewed, is an unpublished opinion *Chacon-Lara v. United States,* 18-031 (S.D. Tex. November 16, 2018) is reprinted as Appendix C to this Petition.

STATEMENT OF JURISDICTION

The Fifth Circuit Court of Appeals opinion was entered on May 26, 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

On his Title 28 U.S.C. § 2255 challenge, Chacon-Lara argued that his counsel was ineffective for failing to request a "Fast Track" sentence mitigation for his case prior to sentencing. The court reasoned that the Fast-Track program was only available in his District, to "illegal re-entry offenses and transportation or harboring of alien cases." (Doc. 83 at 1). On the flip-side, Chacon-Lara argued that counsel was ineffective for not requesting the Fast Track sentence mitigation since it was up to the "United States Attorney's discretion to limit or deny Chacon-Lara's participation in the program." (Doc. 82, p. 23). The only limitation on the Fast-Track participation would be a prior "violent felony" conviction that Chacon-Lara does not possess. Other District Court's have applied for the Fast-Track program in situations such as Chacon-Lara's. Chacon lost on his Title 28 U.S.C. § 2255 ("2255") and his Title 28 U.S.C. § 2253 ("COA").

STATEMENT OF THE FACTS

On December 23, 2014, Chacon, was indicted for Conspiracy to Possess with Intent to Distribute Methamphetamine, 21 U.S.C. §846, 841(a)(1), and § 841(b)(1)(A)(viii) (Count I) and for Knowingly and Intentionally Possessing with Intent to Distribute Methamphetamine under 21 U.S.C. §841(a)(1) and § 841(b)(1)(A)(viii) (Count II). On November 24, 2015, Chacon plead guilty to Count II of the indictment. The Government recommended that the offense level

be decreased by two points, pursuant to sentencing guideline 3E1.1A if Chacon clearly demonstrated acceptance of responsibility, and that the remaining counts of the indictment, Count I, be dismissed at the time of sentencing. On November 24, 2015, Chacon was sentenced to 108 months incarceration and $ 100.00 dollar special assessment was imposed. No supervised release was imposed. Chacon's direct appeal was denied on May 31, 2017. *See, United States v. Chacon-Lara,* 690 F. App'x 166 (5th Cir. 2017).

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 not granting a Certificate of Appealabiltiy and determining there was no "Substantial Showing of Denial of a Constitutional Right" – When Chacon-Lara argued that Counsel was Ineffective when he Failed to Request a Fast Track Sentence Reduction in his Circumstances.

The District Court denied Chacon-Lara's since the Southern District of Texas was only applying the Fast-Track program to "illegal re-entry offenses and transportation or harboring of alien cases." (Doc. 83 at 1). However, this was not a restriction that was placed by the Attorney General at the time. The July 31, 2015, Attorney General Memorandum (Doc. 82, p. 32), establishes that the extent of the following *non-28 U.S.C. § 1326* fast track programs include sentencing guideline downward departure recommendations of no more than four levels . . . that are hereby re-authorized with the same restrictions for cases involving forced labor or child prostitution through August 1, 2017. Chacon-Lara does not meet any of these restrictions whatsoever. Based on the extension of the Fast Track programs in the District of Arizona, the Southern District of California and others should have triggered counsel to request the sentence reduction for Chacon-Lara

based on the Fast Track program in this District as well. Absent counsel's unawareness of the Fast Track program, this Court must agree that the granting of an evidentiary hearing or at a minimum, the request for a Certificate of Appealability should be permitted to determine whether the participation of the Fast Track program in the District of Arizona and in the Southern District of California, should have warranted counsel the opportunity to request Chacon-Lara's participation in this District as well. There was no logic why counsel for Chacon-Lara could be included, (or at a minimum, considered) for the sentence mitigation.

This Court's opinion in *Miller-El* made clear that whether to grant a COA is intended to be a ***preliminary*** inquiry, undertaken before full consideration of the petitioner's claims. *Miller-El v. Cockrell*, 123 S. Ct. 1029, 1039 (2003) (noting that the "threshold [COA] inquiry does not require full consideration of the factual or legal bases adduced in support of the claims"); *Id.* at 1040 (noting that "a claim can be debatable even though every jurist of reason might agree after the COA has been granted and the case has received full consideration, that petitioner will not prevail") (emphasis added); *Id.* at 1042 (noting that "a COA determination is a separate proceeding, one distinct from the underlying merits"); *Id.* at 1046-47 (Scalia, J., concurring) (noting that it is erroneous for a court of appeals to deny a COA only after consideration of the applicant's entitlement to habeas relief on the

merits). Indeed, such "full consideration" in the course of the COA inquiry is forbidden by § 2253(c). Id. at 1039 ("When a court of appeals side steps [the COA] process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is, in essence, deciding an appeal without jurisdiction."). *Swisher v. True*, 325 F.3d 225, 229-30 (4th Cir. 2003). Here this Court must only agree that based on the record, Chacon-Lara was entitled to have the case proceed further, not that he will be victorious on the merits of his claim. In fact, even if the District Court has denied all the claims without an evidentiary, (an error in this case) this Court has the authority to grant the relief and expand upon it. *Valerio v Dir. of the Dep't of Prisons,* 306 F3d 742 (9th Cir. 2002), cert den (2003) 538 US 994, 155 L Ed 2d 695, 123 S Ct 1788) (court of appeals not only has the power to grant COA where district court has denied it as to all issues but also to expand COA to include additional issues when district court has granted COA as to some but not all issues.)

B. Did the Fifth Circuit Court of Appeals err in determining there was no "Substantial Showing of Denial of a Constitutional Right" – When the allegations of Ineffectiveness at the pre-trial stage suggest encouragement to proceed further

To prevail on an ineffective assistance of counsel claim, Chacon-Lara 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 Chacon-Lara 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 Chacon-Lara's § 2255 alleged clear, distinct facts that were supported by the record and files of the case. The pleadings, exhibits, and references to the

record to show the Chacon-Lara 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.

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 18, day of August 2020.

Respectfully submitted,

Manuel Chacon-Lara
Register Number: 19198-198
Giles W. Dalby CI
805 North Avenue F
Post, TX 79356