ORIGINAL

20-5889

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

In Re: Jesus Anaya

_____PETITIONER
(Your name)

VS.

United States of America

_____RESPONDENT(S)

ON PETITION FOR A WRIT OF PROHIBITION PURSUANT TO THE ALL WRITS ACT 28U.S.C. 1651(a) DIRECTED TO THE ASSOCIATE JUSTICE WITH SUPERVISORY CONTROL OVER THE FIFTH CIRCUIT, UNDER SUPREME COURT RULE 22-1

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULES ON YOUR CASE)

PETITIONER FOR WRIT OF PROHIBITION
JESUS ANAYA
FED.REG. # 57713-198
(Your name)

FEDERAL CORRECTIONAL INSTITUTION
LA TUNA
(Address)
P.O. BOX 3000, ANTHONY, NM/TX 88021
(City, State, Zip Code)

CONSTITUTIONAL QUESTION(S)

WHETHER TRIAL AND APPELLATE COUNSEL(S)' S INADEQUATE REPRESENTATION OF JESUS ANAYA CONSTITUTED, AT BEST, CONSTRUCTIVE DENIAL OF COUNSEL, WHERE TRIAL COUNSEL FAILED WOEFULLY TO SUBJECT THE GOVERNMENT'S CASE TO "STRICT ADVERSARIAL TESTING' WITH RESPECT TO JESUS ANAYA'S BASE OFFENSE LEVEL, AND APPELLATE COUNSEL FAILED TO ADEQUATELY ARGUE TO THE APPELLATE COURT, THAT (A) JESUS ANAYA'S CONSTITUTIONAL RIGHTS WERE VIOLATED IN THE DISTRACT COURT, AND FURTHER (B) JURISTS OF REASON WOULD CLEARLY DISAGREE WITH THE DECISION OF THE 'DISTRICT COURT', PURSUANT TO SLACK V. McDANIEL" (CITATIONS OMITTED).

LIST OF PARTIES

In re: Jesus Anaya

-V-

United States of America

THE NAMES OF ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE. THERE ARE NO ADDITIONAL PARTIES.

TABLE OF CONTENTS

INDEX TO APPENDICES

STATEMENT OF JURISDICTION

The Supreme Court of t he United States has original jurisdiction over three categories of cases. First, the Supreme Court can exercise original jurisdiction over "actions proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties," See, Maryland v. Louisiana, 451 U.S., 725, 737 (1981). Second, the Supreme court also possesses original jurisdiction for "(all) controversies between the United states and a State." 28 U.S.C. Section 1251 (b)(2). Finally, Section 1251 provides for original jurisdiction in the Supreme Court for "all actions or proceedings by a state against the citizens of another state or against aliens." See, e.g. Oregon v. Mitchell,, 400 U.S. 112 (1970); United States v. Louisiana, 339 U.S. 699 (1951); United States v. California, 332 U.S. 19 (1947).

The statutes defining the Supreme Court's jurisdiction between "appeals" and "certiorari" as vehicles for appellate review of the decisions of sate and lower federal courts. where the statute provides for "appeal" to the Supreme Court, the Court is obligated to take and decide the case when appellate review is requested. Where the state provides for review by "writ of certiorari "the Court has complete discretion to hear the matter.

The Court takes the case if there are four votes to grant certiorari. Effective September 25, 1988, the distinction between appeal and certiorari as a vehicle for Supreme Court review virtually eliminated. Now almost all cases to the supreme court by writ of certiorari. Pub.. L. No. 100-352, 102 Seat, 662 (1988).

WRIT OF PROHIBITION PURSUANT TO 28 U.S.C. SECTION 1651(a) IN AID OF THE SUPREME COURT'S JURISDICTION.

(A) The Supreme Court and all courts established in aid of their respective jurisdiction and agreeable to the usages and principles of law.

(B) An alternative writ or rule may be issued by a Justice (Chief Justice) to whom an application to a writ of prohibition is submitted may refer to the Court for determination.

JURISDICTION

[✓] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JUNE 22, 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: _____, 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. § 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

In conducting harmless error analysis of constitutional violations, including direct appeals and especially habeas generally, the Supeme Court reoeatedly has reaffirmed that "(s)ome constitutional violations ...by their very nature asr so mushd doubt on the fairness of the trerila prpcess that, as a matter of law, they can never be considered harmless. Safferwhite v. Texas, 486 U.S. 249, 256 (1988); accord Neder v. United States, 527 U.S. 1, 7 (1999)("We have recognized a limited class of fundamental constitutional errorss tht defy anaklysisby "harmless error," standards"...Errors of this typte are so intribsically garnfuk as to require automatic reversal(i.e. affect substantial rights) without regard to their effect on tha outcome.")

Sullivan v. Louisiana, 508 U.S. 275, 279 (1993))"Although most constiotutuionasl errors have been held to harmless error analysis, some will always invalidate the conviction" (citations omitted), Id. at 183 (Rehnquist, C.J. concurring); United States v. Olano, 507 U.S. 725, 735 (1993); rOSE V. cLARK, 478 u.s. 570, 577-78 (1986)("some comstitutional r=errors require reversal without regard to the evidence in the particulat=r case...because they render a trial fundamentally unfair");
Vasquez v. Hillery, 474 U.S. 254, 283-264 (1986); Chapman v. Caslifornia, 386 U.S. 18, 23 (1967)("there are =some constitutional arihgts so basic to a fair trrial that their infracion can nevce be treated as harmless er ror").

JUIDICIAL NOTICE/STATEMENT F ADJUDICAIVE FACTS PURSUAT TO T=RULE 201 OF THE FEDERAL RILES OF EVIDENCE.

The right to effective assistance of counsel. See, Kyles v. Whitley, 514 U.S. at 435- 436; United Sttes v. cronic, 466 U.S. 648, 654-57 (1984); Hill v. Lockhart, 28 F.2d 832, 839 (8th Cir. 1994)("It is unnecessry to add a separate layer of h=amless-error analysis ato bar ecaluation of whether a petitioner has presented a constitutionally significant claim for ineffecrive assistance of counsel).

LAW RELATED TO STRUCTURAL ERROR

Included in the rights granted by the U.S. constitution, is the protection agaisnt prosecutorial suppression or manipulation of exculpatory evidence and aathe prosecutorial and judicial failures that amount to fruad upon the court. Failure to make available to defendant's cpounsel,'information tht cpuld well lead to the assertion of an affirmative defense is material, when 'materiality' is defeoined as at least a 'rasonable probability thty has the evidence been diclosed to the defense, the result of the judicial proc eedsings would have been diferent. Kyles v. Whit;ley, 514 U.S. at 435 (quoting Unitred States v. Bagley, 473 U.S. 667, 682 (1985)(plurality opinion); Id. at 685 (White, J. concurring in judgment)). Counsel impermissibly withheld evidence of strictissimi juris).

In addition to Bagley whjich addresses cliams of prosecutporial suppreession of evidnece, the decisions listed below, all arising in 'whart might be loosely be called the area of constitutionally guaranteed access ot evidence," Arizona v. Youngblood, 488 U.S. 51`, 55 (1988)(quoting U.S. v. Valenzula-Bernal, 458 U.S. 856, 867 (1982) or require proof of "matariality" or prejudice.

Yhe standard of materiality adopted in each case is not alwsys clear, but if that standard required ar least a "reasonable probability" of a different outcome, irts satisfaction also automatically satisfies the Btrecht harmless errro rule. See, e.g. Arizona v. Youngblood, supra at 55 (reognizing athe due process vioaltion basesd on state's loss or destruction befoe trril of material evidence); Pennsylvania v. Ritchie, 480 U.S. 39, 57-58 (1987)(recognizing due process violation bases on state agency's refusal to turn over material social services records' "information is material" if it "probably would have changed the outcome of histrial "citing United States v. Bagley, supra at 685 (White, J. concurring in judgement).

Ake v. Oklahoma, 470 U.S. 68, 83 (1985)(denial of access by indigent defendat to expert psychaitrist violates Deu Process Clause when defednat's mental condition is "significant factor" atguilt-innocence or captial sentencing phase of trial); Californai v. Trombetta, 467 U.S. 479, 489-90 (1984)(destruction of blood sasmples might violate Due Process Clause, if there were more than slim chance tt evidence would affect outcome of trial and if there wasre no alternative meeans of demsostrating innocence.)United Stsates v. Valenzuaela-Bernal, supra at 873-874 ("As in other cases concerning the loss (by staste or goivernment of material evidnece, sanctions will be warranted for deportation of alien witness only if there is a reasonable likelihood tht the testimony could have affected the judgment of the Trie of Fact. "Chambers v. Mississippi, 40 U.S. 284, 302 (1973)(evidentiary process."); Washoington v. Texaas, 388 U.S. 14, 16 (1967)(violation of Compulszory Process Clause when it arbitrarily deprived defednant of "testimony (that) would have been relevant and material, and ..,.vital to his defense.").

LAW RELATED TO STRUCTURAL ERROR

Included in the rights granted by the U.S. constitution, is the protection against prosecutorial suppression or manipulation of exculpatory evidence and the prosecutorial and judicial failures that amount to fraud upon the court. Failure to make available to defendant's counsel, information that could well lead to the assertion of an affirmative defense is material, when 'materiality' is defined as at least a 'reasonable probability that has the evidence been disclosed to the defense, the result of the judicial proceedings would have been different. Kyles v. Whitley, 514 U.S. at 435 (quoting United States v. Bagley, 473 U.S. 667, 682 (1985) (plurality opinion); Id. at 685 (White, J. concurring in judgment)). Counsel impermissibly withheld evidence of strictissimi juris).

In addition to Bagley, which addresses claims of prosecutorial suppression of evidence, the decisions listed below, all arising in 'what might be loosely be called the area of constitutionally guaranteed access to evidence," Arizona v. Youngblood, 488 U.S. 51`, 55 (1988)(quoting U.S. v. Valenzula-Bernal, 458 U.S. 856, 867 (1982) or require proof of "materiality" or prejudice.

The standard of materiality adopted in each case is not always clear, but if that standard required at least a "reasonable probability" of a different outcome, its satisfaction also automatically satisfies the Utrecht harmless error rule. See, e.g. Arizona v. Youngblood, supra at 55 (recognizing the due process violation based on state's loss or destruction before trail of material evidence); Pennsylvania v. Ritchie, 480 U.S. 39, 57-58 (1987)(recognizing due process violation bases on state agency's refusal to turn over material social services records' , "information is material" if it "probably would have changed the outcome of his trial "citing United States v. Bagley, supra at 685 (White, J. concurring in judgement).

Ake v. Oklahoma, 470 U.S. 68, 83 (1985)(denial of access by indigent defendant to expert psychiatrist violates Due Process Clause when defendant's mental condition is "significant factor" at guilt-innocence or capital sentencing phase of trial); California v. Trombetta, 467 U.S. 479, 489-90 (1984)(destruction of blood samples might violate Due Process Clause, if there were more than slim chance evidence would affect outcome of trial and if there was no alternative means of demonstrating innocence.)United States v. Valenzuaela-Bernal, supra at 873-874 ("As in other cases concerning the loss (by states or government of material evidence, sanctions will be warranted for deportation of alien witness only if there is a reasonable likelihood that the testimony could have affected the judgment of the Trier of Fact. "Chambers v. Mississippi, 40 U.S. 284, 302 (1973)(evidentiary process."); Washington v. Texas, 388 U.S. 14, 16 (1967)(violation of Compulsory Process Clause when it arbitrarily deprived defendant of "testimony (that) would have been relevant and material, and ..,.vital to his defense.").

LAW RELATED TO STRUCTURAL ERROR FOR JUDICIAL BIAS WITH RESPECT TO THE FAILURE OF THE COURT TO DETECT FROM THE JUDICIAL PROCEEDINGS THAT IT MAY HAVE BEEN DIVESTED OF SUBJECT MATTER JURISDICTION.

Included in eh definition of structural errors, is the right to an impartial judge, i.e. the right to a judge who follows the constitution and Supreme Court precedent ad upholds the oath of the office. See, e.g. Neder v. United States, supra, 527 U.S., at 8. ("biased trail judge is "structural error" and this is subject to automatic reversal:)' Edwards v. Balisok, 520 U.S. 461, 469 (1997); Sullivan v. Louisiana, 508 U.S., at 279; Rose v. clerk, 478 U.S. 570, 577-78 (1986); Tunney v. Ohio, 273 U.S. 510, 523 (1927).

STATEMENT OF CASE

Jesus Anaya pleaded guilty to maintaining a drug stash house in violation of 21 U.S,.C. Section 856(a)(2) and was sentenced to a 135-month term of imprisonment. He appealed this sentence challenging the district court's denial of a base offense level reduction under U.S.S.G. Section 2D1.8(a)(2) and the substantive reasonableness of this so-called within-guidelines sentence. The Fifth Circuit Court of Appeals affirmed the district court's judgment.

Jesus Anaya filed a Section 2255 Motion to Vacate, Set Aside or reduce Sentence, challenging the sentence, an an amended Section 2255 motion through counsel jeremy Gordon, alleging ineffective assistance of counsel. The motion was denied by the District Court on procedurals grounds, and alternatively denied an application for a certificate of Appealability. In July 2019, the Fifth circuit court of Appeal denied a COA. Jesus Anaya then filed a petition for the writ of mandamus challenging his sentence and conviction on multiple grounds.

REASONS FOR GRANTING

HOW THE WRIT WILL BE IN OF THE COURT'S APPELLATE JURISDICTION IN GRANTING A WRIT OF PROHIBITION

As a threshold matter, Jesus Anaya, avers that the Writ of Prohibition which he has applied for here, is an extraordinary writ under the All Writs Act 28 U.S.C. Section 1651(a) which in pertinent part, states that, all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions, and agreeable to the usages and principles of law.

In the case at bar, Jesus Anaya contends that what he seeks is a "drastic and extraordinary remedy" reserved for really extraordinary causes such as this, "where through a combination of constructive denial of counsel, prosecutorial misconduct and a biased judge, he has been impermissibly denied his Fifth and Sixth Amendment right to Due Process. As here, the traditional use of the writ is in aid of appellate jurisdiction both in common law an in the federal court. It's use has been to confine the court(s) against which the writ is sought, to a lawful exercise of its prescribed jurisdiction. "Roche v. Evaporated Milk Association, 319 U.S. 21, 26, 87 L.Ed. 1185.

JESUS ANAYA'S CONTENTION THAT THE ALLEGATIONS HE MAKES CONSTITUTE "EXCEPTIONAL CIRCUMSTANCES' THAT WARRANTS THE INTERVENTION OF THIS COURT'S DISCRETIONARY POWERS.

Jesus Anaya pleaded guilty to maintaining a stash house in violation of 21 U.S.C. Section 856(a)(2) and was sentenced to a 135 month term of imprisonment. He appealed his sentence to the Fifth Circuit Court of Appeals, challenging the district court's denial of a base offense level reduction under U.S.S.G. Section 2D1.8(a)(2), and the substantive unreasonableness of his so-called within-guidelines sentence.

By reason of the constitutional violations committed by the District Court and the Court of Appeals for the Fifth Circuit, this Honorable Court should overturn his sentence and conviction because the District Court , effectively lost subject matter jurisdiction, by reason of the constitutional violations perpetuated against Jesus Anaya, while the Court of Appeals for the Fifth Circuit rubberstamped these errors of constitutional dimensions.

The use of a Writ of Prohibition is well settled. It is patently clear in two Supreme Court cases in Dairy Queen Inc. v. Wood, 469 U.S. L.Ed.2d 44 825 S.Ct. 894 (1962), and Beacon Theatres v. Wood, 359 U.S. L.Ed.2d 988, 79 S.Ct. 894 (1959), support the use of the writ of prohibition to correct an abuse of discretion by the district court. Personette v. Kennedy)in re Midgard Corp, 204 B.R.764, 768 (10th Cir. 1997).

Liker the case at bar, the following cases show that the distinct court "displayed a persistent disregard of the criminal and civil rules of procedure. "Moothart v. bell, 21 F.3d. 1499, 1504 (10th Cir. 19940(quoting McEwan v. City of Norman, 926 F.2d 1539, 1553-54 (10th Cir. 1991); Jennings v. Rivers, 394 F.3d 850, 854 (10th Cir. 2008)(appellate review of trial court's decision on pos judgment warrants voluntary dismissal with prejudice if it was not "free, calculated and a deliberate choice"). Hackett v. Barbhart, 475 F.3d 1166, 1172 (10th Cir. 2007)(quoting Kiowas Indian Tribe of Oklahoma v. Hoover, 150 F.3d 1163, 1165 (10th Cir. 1998) In re Graves, 609 F.3d 1153, 1156 (10th Cir. 2010); See Braunstein v. McCabe, 571 F.3d 108, 120 (1st. Cir. 2009) (giving courts broad discretion in preventing injustice or fairness.

The real issue at stake in this case is one of subject matter jurisdiction. Subject matter jurisdiction also refers to the competency of the court to hear or determine a particular category of cases. Federal district courts have "limited" jurisdiction in that they have no such jurisdiction as is explicitly conferred by federal statute. 3231 et seq.

Thus, given the totality of the claims raised by Jesus Anaya in this petition, he respectfully moves the Supreme court to determine if the District Court and the Court of Appeals for the Fifth Circuit properly exercised the jurisdiction conferred on it by 28 U.S.C. 3231 and 28 U.S.C. 1291 respectively, and whether the constitutional prohibition against Double Jeopardy, includes within it, the right of the defendant (but not the state) to plead 'collateral estoppel' and thereby preclude proof of some essential element of the state's case found in the defendant's favor.

CONSTITUTIONAL QUESTION

WHETHER TRIAL AND APPELLATE COUNSEL(S)'S INADEQUATE REPRESENTATION CONSTITUTED CONSTRUCTIVE DENIAL OF COUNSEL, WHERE TRIAL COUNSEL FAILED TO SUBJECT THE GOVERNMENT'S CASE TO 'STRICT ADVERSARIAL TESTING' WITH RESPECT TO THE BASE OFFENSE LEVEL, AND APPELLATE COUNSEL FAILED TO ARGUE TO THE APPELLATE COURT THAT, (A) THE DISTRICT COURT VIOLATED JESUS ANAYA'S CONSTITUTIONAL RIGHTS AND (B) THAT JURISTS OF REASON WOULD CLEARLY DISAGREE WITH THE DECISION OF DISTRICT COURT', PURSUANT TO SLACK V. McDANIEL (CITATIONS OMITTED)

STANDARD OF REVIEW

The Sixth Amendment right to counsel is the right to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771 McMann (1970). The benchmark for judging any claim of ineffective assistance of counsel, however, is whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. Strickland v. Washington, 466 U.S. 668, 688 (1984), See also Boykin v,. Wainwright, 737 F.2d 1539, 1542 (11th Cir. 1984).

Because a lawyer is presumed to be competent to assist a defendant, the burden is not on the accused to demonstrate the denial of he effective assistance of counsel. United States v. Cronic, 466 U.S. 648, 658 (1984). Ineffective assistance of counsel may be grounds for vacating conviction if;

(1) Counsel's performance fell below an objective standard of reasonable assistance and;

(2) the defendant was prejudiced by the deficient performance. Strickland, 466 U.S.. at 687, 694. "There is no reason for a court deciding an ineffective assistance of counsel claim ...to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 690.

In other words, when reviewing counsel's decisions, "the issue is not what is possible or "what is prudent or appropriate, but only what is constitutionally compelled," Chandler v. United States, 218 F.3d 1305, 131 (11th Cir. 2000.(en banc)(quoting Burger v. Kemp, 483 U.S. 776 (1987), cert denied, 531 U.S. 1204 (2001).

Furthermore, "(the burden of persuasion is on a petitioner to prove, by a preponderance of the evidence, that counsel's performance was unreasonable.)"Id. (citing Strickland, 466 U.S. at 688). The burden of persuasion, though not insurmountable, is a heavy one. See Id. at 1314 (citing Kimmelman v. Morrison, 477 U.S. 365 (1986)).

"Judicial scrutiny of counsel's performance must be highly deferential," and courts "must indulge (the) strong presumption of "that counsel's performance was reasonable and he counsel made all significant decisions in the exercise of reasonable professional judgment." Id. (quoting Strickland, 466 U.S. at 689-90). therefore, counsel cannot be adjudged incompetent for performing in a particular way in a case, as long as the approach taken "might be considered sound trial strategy." Id. (quoting Darden v. Wainwright, 477 U.S. 168 (1986).

If the record is incomplete or unclear about counsel's actions, then it is presumed that counsel exercised reasonable judgment. See Id at 1314-15 n.15. Thus, the presumption accorded counsel's performance "is not ...that the particular defense lawyer in reality focused on and, then deliberately decided to do or not to do a specific act." Id. Rather, the presumption is "that what the particular defense lawyer did at trial...were acts that some reasonable lawyers might do." Id.

Moreover, "(the reasonableness of counsel's performance is an objective inquiry.") Id. at 1315. For a petitioner to show deficient performance he "must establish that no competent counsel would have taken the action that his counsel did take. "Id. To uphold a lawyer's strategy." Id. at 1315 n. 16. Finally, "(no absolute rules dictate what is reasonable performance for lawyers." Id. at 1317.

Further, counsel does not provide ineffective assistance when frivolous arguments are not raised on appeal Jones v. Barnes, 463 U.S. 745 (1983), see also United States v. Winfield, 960 F.2d 970, 974 (11th Cir. 1992) (attorney not ineffective for failing to

argue a meritless issue).

American Bar Association standards are to be used only as "guides" in reviewing whether an attorney's performance is reasonable, reversing a finding of deficient performance where the lower court treated the ABA standards as "inexorable commands that attorneys must "fully comply with," United States v. Mooney, 497 F.3d 397, 404 (4th Cir. 2007)(counsel in criminal cases are charged with the responsibility of conducting investigations, both factual and legal, to determine if matters of defense can be developed).

The critical issue is whether, applying prevailing professional norms, trial counsel an objectively reasonable investigation to mitigating evidence. Porter v. McCallum, 558 U.S. 30, 40, 130 S.Ct. 447, 452-53, 175 L.Ed .2d 398. (2009); Kramer v. Kemna, 21 F.3d 305, 309 (8th Cir,. 1994)(failure to interview witnesses or discovering mitigating evidence may be a basis or finding ineffective assistance of counsel),"Hart v. Gomez, 174 F.3d 1067, 1070 (9th Cir. 1996)(a lawyer who fails adequately to investigate, and to introduce into evidence records that demonstrate his client's factual innocence, or that raises sufficient doubt as to that question to undermine confidence in the verdict, renders deficient performance)."

APPELLATE COUNSEL JEREMY GORDON WAS WOEFULLY DEFICIENT IN NOT ARGUING THE DISTRICT COURT'S DETERMINATION OF THE CASE VIOLATED JESUS ANAYA'S CONSTITUTIONAL RIGHTS, AND JURISTS OF REASON WOULD CLEARLY DISAGREE WITH THE DECISION OF THE DISTRICT COURT, PURSUANT TO SLACK V. McDANIEL (CITATIONS OMITTED).

As an initial matter, Jesus Anaya submits that, a certificate of appealability ("COA") must be obtained before an appeal can be taken from the denial of a Section 2255 petition. 28 U.S.C. Section 2253. In the case at bar, the district Court did sua sponte denied the application when it entered its final decision. Although, Jeremy Gordon did appeal to the Fifth Circuit when the COA was denied, he failed to articulate with any specificity that, in Jesus Anaya's case, the base offense level utilized in his client's case, amounted to clear error on the part of the judge, prosecutorial misconduct by the government, and more importantly, adherence to this constitutional error, would lead to a miscarriage of justice for Jesus Anaya.

"A substantial showing of the denial of a constitutional right" must be made before a COA will issue. 28 U.S.C,. Section 2253(c)(2). This requires a showing that "reasonable jurists could debate ...whether...the petition should have been resolved in a different manner, or that the issues presented were adequate to deserve encouragement to proceed further." Slack v., McDaniel, 529 U.S. 473, 484, 146 L.Ed.2d 542 (2000).

Jeremy Gordon's attempt before the Fifth Circuit to prove that before the issuance of of a COA, that some jurists would have granted the petition for habeas corpus, was error. Miller El c. Cockrell, 537 U.S. 322, 336, 154 L.Ed.2d 931 (2003). Indeed, 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 the petitioner will not prevail." Muller-El, 537 U.S. at 338. Another fatal error committed by appellate counsel Jeremy Gordon, was his failure to file a Petition for Rehearing to argue the fact that the Fifth Circuit itself in the consideration of the issue of issuing a COA, may have abused its discretion, by inverting the predicates for the issuance of a COA. It rubberstamped the District Court's denial of the COA, and never issued the COA itself before the merits of Jesus Anaya's case. See, Davis v. United States (citations omitted).

A CONSTRUCTIVE DENIAL OF COUNSEL - STANDARDS AND ARGUMENTS.

In United States v. Cronic, 466 U.S. 648, 658-59, 80 L.Ed.2d 757 (1984), the supreme Court held that "presumption of prejudice applied when counsel " entirely fails to subject the prosecutor's case to meaningful adversarial testing, where counsel is actually or constructively denied during critical stage of proceedings, or when there are "various kinds of state interference with counsel's assistance").

As an initial matter, Jesus Anaya was convicted pursuant to a plea agreement that stated he maintained a stash house. Not only was he not sentenced within the guideline range by reason of the defective base offense utilized in his case, trial Counsel did nothing about it, so did the appellate counsel woeful arguments were borderline frivolous on appeal.

To put it bluntly, Jesus Anaya was looking for an effective F. Lee Bailey type aggressive lawyer, what he got both on the trial level and appeal were a Barnum and Bailey travesty of a defense. A comedy of errors, pre-eminent of which was failure to subject the government's case to strict adversarial testing. Counsel, in fact followed a well scripted trial strategy, courtesy of the government, in which he gave a semblance of effective representation, without throwing any hard punches at the government's case. Most of Counsel's mishaps happened during critical aspects of the trial including at sentencing and appeal.

CONCLUSION

Traditionally, efficiency ad finality have carried less than fairness in the criminal context, because criminal sanctions may result in imprisonment and greater social stigma than civil sanctions. See, Stacy & Dalton, supra note 2, at 137 ("As our ...commitment to the availability of habeas corpus, finality and efficiency carry relatively less sway in criminal cases than in civil - a product of criminal defendant's countervailing liberty interest." (footnote omitted).

The category of errors known as trial errors can be harmless, if the government can show beyond a reasonable doubt that they did not contribute to the verdict. See id at 24, see also, Sullivan v. Louisiana, 508 U.S. 275, 279 (1993)(stressing that the test for harmlessness "is not whether, in a trial that occurred without the error, a guilty verdict would have surely have been rendered, but whether the guilty verdict rendered in this trial was surely unattributable to the error.")

The Supreme Court has recognized a narrow set of rights that, if denied are structural errors, the rights to counsel, see Gideon v. Wainwright, 372 U.S. 335, 343-45 (1963) and to counsel of choice, See United States v. Gonzalez-Lopez, 548 U.S. 140, 150 (2006)(deeming deprivation of counsel of choice a structural error.); the right of self-representation, see Mckaskle v. Wiggins, 465 U.S. 168, 177 n.8 (1984)(finding harmless error analysis inapplicable to deprivations of the right to self representation, because exercising the right increases the chance of a guilty verdict); the right to an impartial judge, see, Tunney v. Ohio, 273 U.S. 510, 534 (1927)(holding that trial before a biased judge "necessarily involves a lack of due process").

Also denominated in the narrow set of rights deemed structural error, is the freedom from racial discrimination, in grand jury selection. This denial has been found to undermine "the objectivity of those charged with bringing a defendant to judgment); the right to a public trial, see, Sullivan v. Louisiana, see Waller v. Georgia, 467 U.S. 30, 49 (1984)(:the defendant should not be required to prove specific prejudice in order to obtain relief for a violation of the public-trial guarantee"), and the right to accurate reasonable doubt instruction, see, Sullivan v. Louisiana, 508 U.S. 275, 280 (1993)(finding that because of an inadequate reasonable doubt instruction, no actual jury verdict could thus not apple harmless error analysis to determine whether error affected the verdict.)

By contrast, the list of trial errors is extensive. See Arizona v. Fulminante ,, 499 U.S. 279, 306-07 (1991)(declaring that "almost all constitutional errors can be harmless," and naming examples of rail error. While the list of structural errors have remained consistent, the Supreme Court's ethos of distinguishing errors is assessed by asking whether the error had "s substantial and injurious effect or influence in determining the jury's verdict." Bretch v. Abrahamson, 507 U.S., 619, 623, 113 S.Ct. 1710, 123 L.Ed,2d 353 (1993), See also Fry v. Piller, 551 U.S. 112, 119-120, 127 S.Ct. 2321, 168 L.Ed.2 16 (2007)(holding that the Bretch standard applies whether or not the state court recognized the error and reviewed it for harmlessness.)

RELIEF SOUGHT

WHEREFORE, PETITIONER JESUS ANAYA MOVES THIS HONORABLE COURT TO GRANT THE REQUESTED RELIEF.

DATE: SEPTEMBER 20, 2020

RESPECTFULLY SUBMITTED,
JESUS ANAYA