

20-5955 ORIGINAL
No.

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

Supreme Court, U.S.
FILED

AUG 04 2020

OFFICE OF THE CLERK

CHARLES LYNCH PETTIS - PETITIONER

V.S.

EIGHTH CIRCUIT COURT OF APPEALS - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE EIGHTH
CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CHARLES LYNCH PETTIS

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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.

FOR CASES FROM FEDERAL COURTS:

THE OPINION OF THE UNITED STATES COURT OF APPEALS APPEARS AT APPENDIX A-2 TO THE PETITION AND IS REPORTED AT U.S. V. PETTIS, 19-2120 SUBMITTED APRIL 10, 2020 IS UNPUBLISHED.

THE OPINION OF THE UNITED STATES DISTRICT COURT APPEARS AT APPENDIX A-1 TO THE PETITION AND IS REPORTED AT UNITED STATES V. PETTIS, 888 F.3d 962 (8TH CIR. 2019), Cert. denied, 139 S.Ct. 1258 (2019). IS PUBLISHED.

JURISDICTION

FOR CASES FROM FEDERAL COURTS:

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS DECIDED MY CASE WAS APRIL 15, 2020. A TIMELY PETITION FOR REHEARING WAS DENIED BY THE UNITED STATES COURT OF APPEALS ON THE FOLLOWING DATE: MAY 18, 2020 AND A COPY OF THE ORDER DENYING APPEAL AT APPENDIX A-3.

AN EXTENSION WAS GRANTED BY LETTER FOR 60 DAYS DUE TO INCOMPLETE FORMS AT APPENDIX A-4

THIS JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. 1254 (1).

QUESTION(S) PRESENTED

1. IS A DEFENDANT'S PLEA OF GUILTY VALID WHERE THERE IS NO UNDERSTANDING OF THE ESSENTIAL ELEMENT OF A STATUTE OR THE ESSENTIAL ELEMENT AT THE TIME OF THE PLEA DID NOT EXIST.
2. DOES THE GOVERNMENT HAVE TO PROVE BOTH THAT THE DEFENDANT KNEW HE POSSESSED A FIREARM AND THAT HE KNEW HE BELONGED TO THE RELEVANT CATEGORY OF PERSONS BARRED FROM POSSESSING A FIREARM.
3. WHETHER THE COURT OF APPEALS ERRORED BY NOT ALLOWING MR. PETTIS TO RELEASE ATTORNEY, ROBERT MEYER, DUE TO A CONFLICT OF INTEREST, AND THEREBY GRANTING AN ANDERS BRIEF.

LIST OF PARTIES

ROBERT MEYER

JEFFREY PAULSEN

PATRICK J. SCHULTZ

MS. KATE M. FOGARTY

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STATEMENT OF THE CASE

CHARLES LYNCH PETTIS APPEALS AFTER THE DISTRICT COURT RESENTENCED HIM PURSUANT TO THE EIGHTH CIRCUIT COURT OF APPEALS REMAND ORDER IN UNITED STATES V. PETTIS, 888 F.3d 962 (8TH CIR. 2018), cert. denied, 139 S.Ct. 1258 (2019). SEE APPENDIX A, EXHIBIT (1). ATTORNEY, ROBERT MEYERS FILED (AGAINST MR. PETTIS' WISHES) A SIMPLE BRIEF LETTER OF MR. PETTIS' LIFE HISTORY AND A EIGHT MONTH DEPARTURE REQUEST. THE DEFENDANT INFORMED HIS COUNSEL OF THE NEW DECISION IN REHAIF V. UNITED STATES, — U.S. —, 139 S.Ct. 2191, 2195, 2198 (2019), AND REQUEST HIS ATTORNEY TO MAKE AN ARGUMENT IN LIGHT OF THE NEW INFORMATION. MR. MEYERS DENIED HIS CLIENT'S REQUEST. MR. PETTIS THEN SOUGHT TO HAVE COUNSEL RELEASED THROUGH JUDGE PATRICK J. SCHILTZ, WHO IN TURN DENIED THE DEFENDANT'S REQUEST TO RELEASE MR. MEYERS DUE TO A CONFLICT OF INTEREST. SEE DOCKET ENTRY 6/5/2019, # 163-164; CASE NO. 0:15-cr-00233-PJS-FLN. MR. MEYERS LATER FILED AN ANDERS BRIEF THEREBY MAKING VOID, MR. PETTIS' ARGUMENT REGARDING REHAIF, FOLLOWING LOCKHART AND GARY. THE COURT HELD THAT SUCH A LETTER BRIEF FROM DEFENDANT'S COUNSEL "CAN NOT BE AN ADEQUATE SUBSTITUTE FOR THE RIGHT TO FULL APPELLATE REVIEW". *Id.* (QUOTING *ESKRIDE V. WASHINGTON STATE Bd.*, 357 U.S. 214, 215, 78 S.Ct. 1061, 2 L.Ed. 2d (1958)). MR. MEYERS WAS GRANTED HIS REQUEST TO WITHDRAW UNDER ANDERS. SEE APPENDIX A, EXHIBIT (2) MR. PETTIS THEN FILED REHEARING EN BANC IN LIGHT OF REHAIF V. UNITED STATES, — U.S. —, 139 S.Ct. 2191, 2195, 2198 (2019); UNITED STATES V. LOCKHART, 947 F.3d 187 (4TH CIR. 2020); AND GARY V. UNITED STATES, [NO. 18-4578] 954 F.3d 194 (2020), AND WAS DENIED. SEE APPENDIX A, EXHIBIT (3)

SEVERAL CIRCUITS ARE IN CONFLICT REGARDING, "WHETHER A STANDALONE REHAIF ERROR REQUIRES AUTOMATIC VACATUR OF A DEFENDANT'S [GUILTY] PLEA, OR WHETHER SUCH ERROR SHOULD BE REVIEWED FOR PREJUDICE UNDER [U.S. V.] OLANDE, 507 U.S. 725, 732, 113 S.Ct. 1770, 123 L.Ed. 2d 508 (1993)]." LOCKHART, 947 F.3d 26196. THE EIGHTH CIRCUIT CLAIMS THAT DEFENDANTS IN IT'S CIRCUIT HAS NOT ESTABLISHED ENTITLEMENT TO PLAIN-ERROR UNDER REHAIF, BECAUSE, AT A MINIMUM, DEFENDANTS HAVE NOT SHOWN ANY ERROR AFFECTED THEIR SUBSTANTIAL RIGHTS. SEE U.S. V. PETTIS, 888 F.3d 962 (8TH CIR. 2018), cert. denied, 139 S.Ct. 1258 (2019); U.S. V. JAWHER, 950 F.3d 576, 579 (8TH CIR. 2020). IN U.S. V. GARY, THE

COURT FOUND THAT A STANDALONE REHAIF ERROR SATISFIES PLAIN ERROR REVIEW BECAUSE SUCH AN ERROR IS STRUCTURAL, WHICH PER SE AFFECTS A DEFENDANT'S SUBSTANTIAL RIGHTS. THE COURT FURTHER FOUND THAT THE ERROR SERIOUSLY AFFECTED THE FAIRNESS, INTEGRITY AND PUBLIC REPUTATION OF THE JUDICIAL PROCEEDINGS AND THEREFORE MUST EXERCISE OUR DISCRETION TO CORRECT THE ERROR. SEE OLANO, 507 U.S. 36 732, 113 S.C.B. 1770] [954 F.3d 194 (2020)].

BOUSEY V. UNITED STATES, 523 U.S. 614 (1998), IS ON ALL FOURS. TWO YEARS AFTER HE PLEAD GUILTY TO "USING" A FIREARM IN VIOLATION OF 18 U.S.C. 924(C)(1), THE SUPREME COURT CLARIFIED THAT THE "USE" ELEMENT "REQUIRED THE GOVERNMENT TO SHOW ACTIVE EMPLOYMENT OF THE FIREARM." Id. at 61 (QUOTING BAKER V. UNITED STATES, 516 U.S. 137, 144 (1995)). BOUSEY ARGUED THAT NEITHER HE, NOR HIS COUNSEL, NOR THE COURT CORRECTLY UNDERSTOOD THE ESSENTIAL ELEMENTS OF HIS OFFENSE WHEN HE PLEAD GUILTY. Id. at 618. THE COURT HELD, IF PROVEN, HIS CLAIM WOULD MEAN HIS GUILTY PLEA WAS "CONSTITUTIONALLY INVALID." Id. at 618-19.

LIKEWISE, THE RECORD SHOWS THAT MR. PETTIS, HIS COUNSEL OR COUNSEL, NOR THE COURT UNDERSTOOD THE STATUS ELEMENT WHEN HE PLEAD GUILTY. THE GOVERNMENT RELIED IF ANY THREE ELEMENTS DURING HIS PLEA COLLOQUY, AND STIPULATED THE SAME. THE STATUS ELEMENT WAS "HE BEEN CONVICTED OF A FELONY CRIME PUNISHABLE BY A TERM OF IMPRISONMENT OF MORE THAN ONE YEAR. HIS STIPULATION TO THIS FACT MERELY SHOWS HE KNEW BY THE TIME HE PLEAD GUILTY THAT HE QUALIFIED FOR THIS STATUS. REVIEWING HIS INDICTMENT WOULD NOT HAVE CUEED HIM IN. IN THE INDICTMENT, THE WORD "KNOWINGLY" MODIFIED "POSSESS" AND IT OBJECTS "A FIREARM." IT DID NOT MODIFY THE PROCEEDING, INDEPENDENT, "HAVING BE CONVICTED" CLAUSE. Id. ITS CITATION TO THE STATUTE WOULD NOT HAVE WARNED HIM OF THE ELEMENT EITHER - AT BEST THE LANGUAGE WAS UNCONCLUSIVE, AS SHOWN BY THE BINDING PRECEDENT AT THE TIME CONSTRUING "KNOWINGLY" NOT TO APPLY TO THE STATUS. SEE JACKSON, 120 F.3d 1226.

WHEN PETTIS POSSESSED A FIREARM, THE PRIOR COURTS, ATTORNEYS, PROSECUTORS, AND OR PROBATION/PAROLE AGENTS, FAILED TO INFORM HIM THAT HE WAS STIPULATING TO KNOWING THAT HIS PRIOR CONVICTIONS TRIGGERED A BARR ON HIS POSSESSION OF A FIREARM. REHAFF, 139 S. Ct. AT 2194, SUGGEST HE MUST POSSESS THIS KNOWLEDGE. IT FRAMED THE ISSUE AS WHETHER THE GOVERNMENT MUST PROVE THAT THE DEFENDANT KNOWS OF HIS STATUS AS A BARRED PERSON FROM POSSESSING A FIREARM. WHEN THE GOVERNMENT RELIED ON "WHETHER" OR "THE WELL-KNOWN MAXIM THAT 'IGNORANCE OF THE LAW' (OR A MISTAKE OF THE LAW) IS NO EXCUSE," THE COURT RESPONDED THAT THIS "MAXIM DOES NOT NORMALLY APPLY WHERE A DEFENDANT HAS A MISTAKEN IMPRESSION CONCERNING THE LEGAL EFFECT OF SOME COLLATERAL MATTER AND THAT MISTAKE

RESULTS HIS MISUNDERSTANDING OF THE SIGNIFICANCE OF HIS CONDUCT, ' THEREBY NEGATING AN ELEMENT OF THE OFFENSE." Id. at 2198.

HENCE, MR. PETTIS HAD TO KNOW THE "LEGAL EFFECT" OF HIS PRIOR CONVICTIONS TO UNDERSTAND THE "SIGNIFICANCE OF HIS CONDUCT" IN POSSESSING A FIREARM. LACKING THIS UNDERSTANDING WOULD "NEGATE AN ELEMENT OF HIS OFFENSE" - THE REHAFF ELEMENT. HE DID NOT STIPULATE TO KNOWING THE COLLATERAL EFFECT OF HIS PRIOR CONVICTIONS - THAT HE WAS BARRED FROM POSSESSING FIREARMS.

FINALLY, EVEN IF HE HAD KNOWN, AS A FACTUAL MATTER, ABOUT HIS STATUS AND THE FIREARM PROHIBITION, THIS WOULD NOT MEAN HE UNDERSTOOD THAT THIS KNOWLEDGE WAS AN ELEMENT, SO HE COULD NOT VOLUNTARILY WAIVE HIS RIGHTS ASSOCIATED WITH PUTTING THE GOVERNMENT TO IT'S BURDEN OF PROVING THE ELEMENT. HE DID NOT POSSESS AN UNDERSTANDING OF THE LAW IN RELATION TO THE FACTS [7] " SO HIS GUILTY PLEA VIOLATED DUE PROCESS AND WAS VOID. MCCARTHY, 394 U.S. at 466.

B. CONSTITUTIONALLY INVOLUNTARY GUILTY PLEAS ARE PER SE REVERSIBLE UNDER BOYKIN V. ALABAMA, 395 U.S. 238 (1969), AND CONTEMPORARY STRUCTURAL ERROR DOCTRINE.

" BECAUSE A PLEA OF GUILTY IS A CONVICTION, ANYTHING LESS THAN AN AFFIRMATIVE SHOWING THAT IT WAS MADE INTELLIGENTLY AND VOLUNTARILY AMOUNTS TO PLAN ERROR." PARQUE V. BURTON, 26 F.3d 1093, 1096 (11TH CIR. 1994) (QUOTING BOYKIN V. ALABAMA, 395, U.S. 238, 243 (1969)). IN BOYKIN, 395 U.S. at 243, THE COURT REFUSED TO PRESUME THE DEFENDANT'S PLEA WAS KNOWING AND VOLUNTARY BASED ON A SILENT RECORD, AND REVERSED. SUBSEQUENT DECISIONS HAVE CHARACTERIZED A VIOLATION OF BOYKIN AS CREATING A "PRESUMPTION IN INVALIDITY," PARKE V. RALEY, 506 U.S. 20, 28 (1992), A "PRESUMPTION OF PREJUDICE," UNITED STATES V. OWENS, 15 F.3d 995, 1001 (11TH CIR. 1994), OR AS SHOWING THAT THE GUILTY PLEA WAS "PRESUMPTIVELY VOID." UNITED STATES V. MEDLOCK, 12 F.3d 185, 189 (11TH CIR. 1994). JUSTICE ALITO RECOGNIZED THE CATEGORICAL IMPLICATION OF THE REHAFF HOLDING, STATING "THOSE FOR WHOM DIRECT REVIEW HAS NOT ENDED WILL LIKELY BE ENTITLED TO A NEW TRIAL."

139 S. Ct. at 2213 (ALITO, J., DISSENTING. MR. PETTIS WAS IN FACT IN DIRECT VIEW AT THE TIME OF THIS KILLING AND ARGUED THIS SAME ISSUE

THUS, UNLIKE RUN-OF-THE-MILL VIOLATIONS OF FEDERAL RULE OF CRIMINAL PROCEDURE 11, NO SHOWING OF PREJUDICE IS REQUIRED. THE SUPREME COURT RECOGNIZED THIS IN UNITED STATES V. DOMINGUEZ-BENITEZ, 542 U.S. 74 (2004), WHEN IT ARTICULATED THE SHOWING OF PREJUDICE NECESSARY UNDERPlain Error REVIEW OF A RULE 11 ERROR. IT FOUND THAT THE DEFENDANT WOULD HAVE TO SHOW A REASONABLE PROBABILITY THAT FOR THE OR THAT BUT FOR THE ERROR HE WOULD NOT HAVE PLEADED GUILTY. Id. at 83. IT FLAGGED A "POINT ON CONTRAST WITH THE CONSTITUTIONAL QUESTION OF WHETHER A DEFENDANT'S GUILTY PLEA WAS KNOWING AND VOLUNTARY." Id. at 84, N. 10. COURTS REVIEWING A RULE 11 VIOLATION SHOULD CONSIDER... ANY RECORD EVIDENCE TENDING TO SHOW THAT A MISUNDERSTANDING WAS TRIVIAL OR INCONSEQUENTIAL TO A DEFENDANT'S DECISION, OR EVIDENCE INDICATING THE RELATIVE SIGNIFICANCE OF THE OTHER FACTS THAT MAY HAVE BORNE ON HIS CHOICE REGARDLESS OF ANY RULE 11 ERROR." Id. at 84. BUT A CONVICTION BASED ON A CONSTITUTIONALLY INVOLUNTARY GUILTY PLEA MUST BE REVERSED [7] DESPITE "OVERWHELMING EVIDENCE THAT THE DEFENDANT WOULD HAVE PLEADED GUILTY REGARDLESS." Id. at 84, N. 10; SEE ALSO UNITED STATES V. SONES, 266 F. APP'X 901, 902 (11TH CIR. FEB. 26, 2008) (RECOGNIZING THAT INVOLUNTARY GUILTY PLEAS, UNLIKE RULE 11 VIOLATIONS, ARE REVERSIBLE NOTWITHSTANDING "OVERWHELMING EVIDENCE OF GUILT," OR PROBABILITY THAT THE DEFENDANT WOULD HAVE ENTERED GUILTY PLEA ABSENT ERROR).

THE BOYKIN PER SE RULE APPLIES TO GUILTY PLEAS ENTERED WITHOUT KNOWING THE ELEMENTS. IN HENDERSON V. MORGAN, 426 U.S. 637, 639 (1976), THE DEFENDANT DID NOT UNDERSTAND THAT "INTENT TO KILL" WAS AN ELEMENT WHEN HE PLEADED GUILTY TO SECOND DEGREE MURDER. REJECTING THAT THIS WAS A "TECHNICALLY," THE COURT FOUND, EVEN IF "THE PROSECUTOR HAD OVERWHELMING EVIDENCE OF GUILT," NOTHING IN THE RECORD COULD "SUBSTITUTE FOR EITHER A FINDING AFTER TRIAL, OR A VOLUNTARY ADMISSION, THAT RESPONDENT HAD THE REQUISITE INTENT." Id. at 644, 646. LIKEWISE, HERE, THE WEIGHT OF THE EVIDENCE IS

IS IRRELEVANT. AN ADMISSION IN THE CONTEXT OF A GUILTY PLEA IS "MORE THAN A CONFESSION," IT IS A STIPULATION THAT NO PROOF BY THE PROSECUTION NEED BE ADVANCED. BOYKIN, 395 U.S. at 242-243, AND N.Y. EVEN IF THERE WAS OVERWHELMING EVIDENCE OF THE REHAB ELEMENT, MR. PETTIS DID NOT VOLUNTARILY STIPULATE TO THIS ELEMENT IN PLEADING GUILTY.

PUT ANOTHER WAY, THE ERROR IS STRUCTURAL. PREJUDICE IS IRRELEVANT, BECAUSE THE ERROR OFFENDS AN INTEREST INDEPENDENT OF THE NEED TO PROTECT THE DEFENDANT FROM ERRONEOUS CONVICTION. *WEAVER V. MASSACHUSETTS*, — U.S. —, 137 S. Ct. 1899, 1907 (2017). A NUMBER OF STRUCTURAL ERROR CASES PROTECT A DEFENDANT'S RIGHT TO MAKE CERTAIN DECISIONS AUTONOMOUSLY. IN *MCKASKLE V. WIGGINS*, 465 U.S. S. Ct. OR 465 U.S. 167, 177, N. 8 (1984), THE COURT FOUND THAT THE RIGHT TO SELF-REPRESENTATION WAS STRUCTURAL, EVEN THOUGH IT'S EXERCISE "USUALLY INCREASES THE LIKELY OR LIKELIHOOD OF A TRIAL OUTCOME UNFAVORABLE" TO HIM. IT STRESSED "THE RIGHT TO APPEAR PRO SE EXISTS TO AFFIRM THE DIGNITY AND AUTONOMY OF THE ACCUSED." *Id.* at 176, 177; SEE ALSO *WEAVER*, 137 S. Ct. at 1908 (NOTING "THE FUNDAMENTAL LEGAL PRINCIPLE THAT A DEFENDANT MUST BE ALLOWED TO MAKE HIS OWN CHOICES ABOUT THE PROPER WAY TO PROTECT HIS OWN LIBERTY."); *UNITED STATES V. GONZALEZ-LOPEZ*, 548 U.S. 140 (2006) (DENIAL OF COUNSEL OF CHOICE IS STRUCTURAL ERROR); *CF. MCCOY V. LOUISIANA*, — U.S. —, 138 S. Ct. 1500, 1508 (2018) (DISCUSSING DECISIONS REVERSED FOR DEFENDANT). MR. PETTIS WAS NOT PERMITTED TO DECIDE WHETHER TO CONTEST THE REHAB ELEMENT, TO INVESTIGATE THE GOVERNMENT'S EVIDENCE OF IT OR TO NEGOTIATE HIS STIPULATION TO IT. WITHOUT UNDERSTANDING THE ELEMENT, HE WAS NOT ABLE TO MAKE HIS OWN CHOICE ABOUT THE PROPER WAY TO PROTECT HIS OWN LIBERTY. *WEAVER*, 137 S. Ct. at 1908.

MOREOVER, IT WILL "ALWAYS BE FUNDAMENTALLY UNFAIR," TO TELL A DEFENDANT THAT, BY HIS GUILTY PLEA, HE IS STIPULATING TO ONE THING, ONLY FOR HIM TO FIND OUT LATER THAT HIS GUILTY PLEA REPRESENTED A STIPULATION TO SOMETHING ADDITIONAL. THE IMPLICATIONS OF THIS ERROR ARE EVEN MORE PROBLEMATIC THAN THOSE ERRORS THAT THE *WEAVER* COURT CONSIDERED TO BE ALWAYS... FUNDAMENTALLY UNFAIR": THE DENIAL OF THE RIGHT TO COUNSEL, AND THE GIVING OF AN ERRONEOUS REASONABLE DOUBT INSTRUCTION. (CITING *GIDEON V. WAINWRIGHT*, 372 U.S. 335, 343-345 (1963) AND *SULLIVAN V. LOUISIANA*, 508 U.S. 275, 279 (1993)). AT LEAST.

DEFENDANT'S WITHOUT COUNSEL, OR DEFENDANT'S BURDENED BY A MISLEADING REASONABLE DOUBT INSTRUCTION, STILL RETAIN THE BASIC DECISION OF WHETHER TO ADMIT OR CONTEST AN ESSENTIAL ELEMENT.

C. ALTERNATIVELY, MR. PETTIS'S INVOLUNTARY GUILTY PLEA CAUSED PREJUDICE.

EVEN IF WE AVOID LABELING INVOLUNTARY GUILTY PLEAS AS "STRUCTURAL" ERROR, THIS INVOLUNTARY PLEA CAUSED PREJUDICE. PERHAPS SOME INVOLUNTARY GUILTY PLEAS, SUCH AS GUILTY PLEAS ENTERED WITHOUT BEING INFORMED OF A PARTICULAR RIGHT WAIVED, WOULD NOT BE PREJUDICE OR PREJUDICIAL. BUT THE ERROR HERE - A GUILTY PLEA WITHOUT KNOWLEDGE OF AN ESSENTIAL MENS REA ELEMENT THAT SEPARATED WRONGFUL FROM INNOCENT ACTS [.] REHAFF 139 S. CT. 2196, IS MORE PERVASIVE, IMPLICATING EVERY RIGHT WAIVED. DOMINGUEZ BENITEZ, 542 U.S. 268 4 N. 10., AT LEAST MADE CLEAR THAT WHATEVER SHOWING IS NECESSARY TO REVERSE INVOLUNTARY GUILTY PLEAS IS NOT THE SAME AS THE PREJUDICE INQUIRY RELEVANT TO RULE 11 VIOLATIONS. HENCE, THE ISSUE IS NOT WHETHER MR. PETTIS WOULD HAVE ENTERED A GUILTY PLEA NOTWITHSTANDING THE UNEXPLAINED ELEMENT, AND THE WEIGHT OF THE EVIDENCE AS TO THE OR THAT ELEMENT REMAINS IRRELEVANT. MR. PETTIS WAS PREJUDICED IN A DIFFERENT WAY. HE UNKNOWINGLY STIPULATED TO AN ELEMENT WITHOUT HAVING AN OPPORTUNITY TO INVESTIGATE THE GOVERNMENT'S EVIDENCE OF THAT ELEMENT TO THE JURY. THE REASONS THE ERROR WAS PREJUDICIAL ARE ANALOGOUS TO THE REASONS HE ARGUES IT WAS STRUCTURAL, BUT THIS COURT NEED NOT HOLD THAT CONSTITUTIONALLY INVOLUNTARY GUILTY PLEAS ARE ALWAYS REVERSIBLE TO FIND THAT THE ERROR HERE PREJUDICED MR. PETTIS'S RIGHT TO DEFEND HIS INTERESTS.

D. FAILING TO CORRECT THE ERROR WOULD SERIOUSLY AFFECT THE FAIRNESS, INTEGRITY, OR PUBLIC REPUTATION OF THE JUDICIAL PROCESS OR PROCEEDINGS.

THIS COURT SHOULD EXERCISE ITS DISCRETION TO REVERSE BECAUSE THE INVOLUNTARY GUILTY PLEA HERE SERIOUSLY AFFECTS THE FAIRNESS, INTEGRITY OR PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS. UNITED STATES V. OLANO, 507 U.S. 725, 736 (1993) IT IS

DIFFICULT TO IMAGINE A PRACTICE THAT COULD MORE COMPLETELY DISCREDIT THE CRIMINAL PROCEEDINGS THAN TO ATTRIBUTE TO A GUILTY PLEA, A STIPULATION TO AN ELEMENT OF WHICH THE DEFENDANT WAS UNAWARE. ALTHOUGH THE REHAIF ELEMENT IS A NEW DEVELOPMENT, A "JUDICIAL CONSTRUCTION OF A STATUTE IS AN AUTHORIZTATIVE STATEMENT OF WHAT THE STATUTE MEANT BEFORE AS WELL AS AFTER THE DECISION OF THE CASE GIVING RISE TO THAT CONSTRUCTION." RIVERS V. ROADWAY EXP., 511 U.S. 298, 312-313 (1994). ATTRIBUTING THE GUILTY PLEA A STIPULATION THAT THE DEFENDANT DID NOT KNOWINGLY MAKE MIGHT BE PERCEIVED AS A BAIT-AND-SWITCH OR SWITCH, WHICH IS UNIVERSALLY PERCEIVED AS UNFAIR. IT WOULD BE OR SEEM EVEN MORE UNFAIR WHEN NOT HAVING THE KNOWLEDGE OF WHAT MAKES A MAGA PROHIBIA OFFENSE A CRIME "IS ALMOST AS INT OR INSTRUCTIVE AS THE CHILD'S FAMILIAR EXCULPATORY 'BUT I DIDN'T MEAN TO [.]'" MORISSETTE V. UNITED STATES, 342 U.S. 246, 251 (1952).

THE NOVELTY OF REHAIF ELEMENT DOES NOT MEAN THIS COURT COME OR SHOULD CONVICTIONANCE FAILING, TO FAILING TO CORRECT THE ERROR, ROSALES-MIRELES V. UNITED STATES, — U.S. —, —, 138 S. Ct. 1897, 1906 (2018), MADE CLEAR THAT ERRORS CAN BE SUFFICIENTLY DISREPUTABLE WITHOUT "SHOCKING THE CONSCIENCE." EVEN "INADVERTENT OR UNINTENTIONAL ERRORS" CAN TARNISH THE JUDICIAL PROCEEDINGS THAT TOLERATE THEM (NOTING "IT REPEATEDLY HAS REVERSED" THESE TYPES OF ERRORS UNDER PLAIN ERROR REVIEW), NOR MAY IT LIMIT REVERSAL TO "CIRCUMSTANCES IN ACTUALLY OR IN WHICH A MIS-CARRIAGE OF JUSTICE WOULD RESULT," THAT IS TO SAY, WHERE DEFENDANT IS ACTUALLY INNOCENT. "AFFIRMING MR. PETTIS' CONVICTION AND GUILTY PLEA, THOUGH HE DID NOT HAVE THAT UNDERSTANDING WHEN HE PLEAD GUILTY, WOULD DEGRADE THE INTEGRITY OF THE CRIMINAL PROCESS."

(2) DOES THE GOVERNMENT HAVE TO PROVE THAT THE DEFENDANT KNEW HE POSSESSED A FIREARM AND THAT HE KNEW HE BELONGED TO THE RELEVANT CATEGORY OF PERSONS BARRED FROM POSSESSING A FIREARM.

THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, IN CONFLICT WITH THE 4TH, 7TH, AND 11TH CIRCUITS (GARY V. UNITED STATES (NO. 18-4578) 954, F.3d 194 (4TH CIR. 2020); U.S. V. LOCKHART, 947 F.3d 187 (4TH CIR. 2020); U.S. V. TRIGGS, 347 F. SUPP. 3d 385, 2018 U.S. DIST. LEXIS 188891 (W.D. WIS., 7TH CIR. NOV. 2, 2018; DECIDED JULY 1, 2020); AND REHAFF V. U.S., — U.S. —, 139 S. Ct. 2191, 2195, 2198 (2019)), STATED IN ITS JUDGMENT THAT MR. PETTIS HAS NOT ESTABLISHED HE IS ENTITLED TO PLAIN-ERROR RELIEF UNDER REHAFF (CITING U.S. V. JAWHER, 950 F.3d 576, 579 (8TH CIR. 2020); U.S. V. COX, 796 Fed. Appx. 322 (8TH CIR. 2020); AND U.S. V. DAVIES, 942 F.3d 871, 874 (8TH CIR. 2019). THE CONFLICT BETWEEN THE CIRCUITS NEED TO BE ADDRESSED BY REVERSING MR. PETTIS' PLEA AND CONVICTION.

IN GARY UNDER THE SUPREME COURT'S RATIONALES, IT WAS FOUND THAT THE DISTRICT COURT'S ERROR IS STRUCTURAL. FIRST, THE ERROR VIOLATED GARY'S RIGHT TO MAKE A FUNDAMENTAL CHOICE REGARDING HIS OWN DEFENSE IN VIOLATION OF THE SIXTH AMENDMENT AUTONOMY INTEREST. INDEED, THE SIXTH AMENDMENT CONTEMPLATES THAT "THE ACCUSED ... IS THE MASTER OF HIS OWN DEFENSE," AND THUS CERTAIN DECISIONS, INCLUDING WHETHER TO WAIVE HIS RIGHT TO A JURY TRIAL AND TO PLEA GUILTY, ARE RESERVED FOR THE DEFENDANT. MCCOY, 138 S. Ct. 1508; U.S. V. GARY, 954 F.3d 194, NOTE 24 (2020). MR. PETTIS' ATTORNEY REFUSED HIS WANT OF USING REHAFF ELEMENT DEFENSE IN HIS DIRECT REVIEW (DIRECT APPEAL) CLAIMING THE ARGUMENT CONTAINS NO MERIT. IN REHAFF V. U.S., — U.S. —, 139 S. Ct. 2191, 2195, 2198 (2019), THE SUPREME COURT HELD THAT THE "KNOWINGLY" VIOLATION OF 18 U.S.C. 924(a)(2), APPLIES NOT ALONE OR NOT ONLY TO THE POSSESSION OF THE FIREARM, BUT ALSO TO THE UNLAWFUL STATUS AND ITS COLLATERAL CONSEQUENCES. REHAFF OVERRULED ALL OF THE "COURTS OF APPEALS TO ADDRESS THE QUESTION." 701 ab 2210 (ALITO, J., DISSENTING); SEE, E.G., UNITED V. JACKSON, 120 F.3d 1226 (11TH CIR. 1997). THE EIGHTH CIRCUIT COURT OF APPEALS WAS NOT EXCLUDED FROM THE REHAFF DECISION.

(3). WHETHER THE COURT OF APPEALS ERRORED BY NOT ALLOWING MR. PETTIS TO RELEASE ATTORNEY ROBERT MEYER, DUE TO A CONFLICT OF INTEREST, THEREBY GRANTING AN ANDERS BRIEF.

ANDERS IS THE SUPREME COURT'S LANDMARK PRONOUNCEMENT SETTING FORTH COURT-APPOINTED APPELLATE COUNSEL'S DUTY TO FURTHER A CLIENT'S CASE AFTER DETERMINING THE APPEAL TO BE WITHOUT MERIT. ANDERS, INVOLVED THE SITUATION WHERE AN INDIGENT DEFENDANT'S APPOINTED COUNSEL, AFTER CONCLUDING AN APPEAL WAS FRIVOLOUS, FILED A LETTER BRIEF SO INFORMING THE COURT. HOWEVER, MR. PETTIS REQUESTED DISTRICT JUDGE, PATRICK J. SCHILTZ TO REMOVE ROBERT MEYER AS COUNSEL (06/05/2019, DOCKET #: 0:15-CF-0023-PJS-FLN-1-DOCKET NO. 163). DISTRICT JUDGE WAS AWARE OF MR. PETTIS'S AND MR. MEYER'S TALKS REGARDING NEW AND PENDING COURT OPINIONS THAT MAY WEIGH GOOD IN PETTIS'S FAVOR AND HOW HE DID NOT AGREE THAT HIS ATTORNEY'S ARGUMENT SO OR SHOULD FOCUS ON HIS FAMILY HISTORY AND A IRRELEVANT EIGHT MONTH DOWNWARD VARIANCE. WITH THIS KNOWLEDGE OF THESE DIFFERENCES THE JUDGE DENIED (06/05/2019, DOCKET CASE # 0:15-CF-0023-PJS-FLN-1, DOCKET NO. 164) MR. PETTIS KNOWING MR. MEYER WOULD THEN FILE AN ANDERS BRIEF, THEREFORE MAKING MR. PETTIS'S ARGUMENT'S REGARDING NEW AND PENDING CASE LAW USE, VOID

(14)

ATTORNEY, ROBERT MEYER'S LEGAL ANALYSIS CONSIST OF A BRIEF

WHERE (NINE PAGES LONG) HE ARGUED THAT MR. PETTIS'S FAMILY HISTORY SHOULD GRANT HIM A DOWNWARD VARIANCE, IN WHICH MR. PETTIS DISAGREED THAT IT WAS AN ARGUMENT AT ALL. (MR. PETTIS REQUESTED RECORDED CALLS FOR THE COUNTY JAIL AND ETC - OKLAHOMA CITY FEDERAL TRANSFER CENTER BUT, WAS DENIED THE RECORDS WITHOUT JUDGE'S ORDER)

THE COURT IN ANDERS OUTLINED THE APPROPRIATE PROCEDURE AS FOLLOWS:

THE CONSTITUTIONAL REQUIREMENT OF SUBSTANTIAL EQUALITY AND FAIR PROCESS CAN ONLY BE ATTAINED WHERE COUNSEL ACTS IN THE ROLE OF AN ACTIVE ADVOCATE IN BEHALF OF HIS CLIENT, AS OPPOSED TO THAT OF AMICUS CURIAE. THE NOMERIT LETTER AND THE PROCEDURE IT TRIGGERS DO NOT REACH THAT DIGNITY. (EMPHASIS ADDED) COUNSEL SHOULD, AND WITHOUT OR AND CAN WITHOUT, I MEANT AND CAN WITH HONOR AND WITHOUT CONFLICT, BE OF MORE ASSISTANCE TO HIS CLIENT AND TO THE COURT. HIS ROLE AS ADVOCATE REQUIRES THAT HE SUPPORT HIS CLIENT'S APPEAL TO THE BEST OF HIS ABILITY. (EMPHASIS ADDED) OF COURSE, IF COUNSEL FINDS HIS CASE TO BE WHOLLY FRIVOLOUS AFTER A CONSCIENTIOUS EXAMINATION OF IT, HE SHOULD SO ADVISE THE COURT AND REQUEST PERMISSION TO WITHDRAW. THAT REQUEST MUST, HOWEVER, BE ACCOMPANIED BY A BRIEF REFERRING TO ANYTHING IN THE RECORD THAT MIGHT BE ARGUABLE OR ARGUABLY SUPPORT THE APPEAL. (EMPHASIS ADDED); (UNITED STATE V. MONTGOMERY, 101

F. 3d 1218, 1224 (8th Cir. 2012) A COPY OF COUNSEL'S BRIEF SHOULD BE FURNISHED THE INDIGENT AND TIME ALLOWED HIM TO RAISE ANY POINTS THAT HE CHOOSES; THE COURT - NOT COUSE OR COUNSEL - THEN PROCEED, AFTER A FULL EXAMINATION OF ALL THE PROCEEDINGS, TO DECIDE WHETHER THE CASE IS WHOLLY FRIVOLOUS. (EMPHASIS ADDED) IF IT SO FINDS IT MAY GRANT COUNSEL'S REQUEST TO WITHDRAW AND DISMISS THE APPEAL INsofar AS FEDERAL REQUIREMENTS ARE CONCERNED, OR PROCEED TO A DECISION ON THE MERITS, IF STATE LAW SO REQUIRES. ON THE OTHER HAND, IF IT FINDS ANY OF THE LEGAL POINTS ARGUABLE ON THEIR MERITS (AND THEREFORE NOT FRIVOLOUS OR FRIVOLOUS) IT MUST, PRIOR TO DECISION, AFFORD THE INDIGENT THE ASSISTANCE OF COUNSEL TO ARGUE THE APPEAL. ANDERS, 386 U.S. at 744, 87 S. Ct. 1396.

MR. MEYER NEVER COMPLETED A FULL REVIEW OF MR. PETTIS'S CASE (EVEN WITH THE DEFENDANT INFORM OR INFORMING HIS ATTORNEY OF PENDING AND NEW CASE LAW IN CLIENT'S FAVOR.). HE SIMPLY QUOTED THE DEFENDANT'S UPBRINGING (FAMILY HISTORY) AND IGNORED POINTS THAT MR. PETTIS WERE ALLOW TO RAISE. (CONVERSATIONS ON RECORDED COUNTY JAIL AND FTC - OKLAHOMA CALLS SUPPORT THE ARGUMENT BUT, CANNOT BE OBTAINED WITHOUT JUDGE'S ORDER) ROBERT MEYER SIMPLY WROTE A LETTER BRIEF. THE COURT HELD THAT SUCH A LETTER BRIEF FROM THE DEFENDANT'S COUNSEL "CANNOT BE AN ADEQUATE SUBSTITUTE FOR THE RIGHT TO FULL APPELLATE REVIEW."

10. (QUOTING ESKIZOGUE V. WASHINGTON STATE Bd., 357 U.S. 214, 215, 78 S.Ct. 1061, 2 L.Ed. 2d 1269 (1958)).

IF ANY CONTENTION RAISED IS REASONABLY ARGUABLE, NO MATTER HOW THE COURT FEELS IT WILL PROBABLY BE RESOLVED, THE COURT MUST APPOINT ANOTHER COUNSEL TO ARGUE THE APPEAL. (PEOPLE V. FEGGANS, SUPRA, 67 CAL. 2d 26 447-48, 62 CAL. RPT. AT 421, 432 P. 2d at 23). "

MR. PETTIS'S CONTENTION WERE OR CONTENTIONS WERE REASONABLY ARGUABLE. (1), HE ARGUED THAT IN LIGHT OF REHAFF V. U.S., — U.S. —, 139 S.Ct. 2191, 2195, 2198 (2019) A STRUCTURAL ERROR EXISTED, DUE TO THE FACT THAT, THE SUPREME COURT HELD THAT THE "KNOWINGLY" MEN REA OF 18 U.S.C. 924(a)(2), APPLIES NOT ONLY TO THE POSSESSION OF THE FIREARM (922(g)(1), BUT ALSO TO THE UNLAWFUL STATUS AND IT'S COLLATERAL CONSEQUENCES (2), THAT DUE TO THAT STATUTES NEW INTERPRETATION HIS VIOLATION AND CONVICTION BY GUILTY PLEA IS CONSTITUTIONALLY INVOLUNTARY. (BOUSLEY V. U.S., 523 U.S. 614 (1998); BOYKIN V. ALABAMA, 395 U.S. 238 (1969); HENDERSON V. MORGAN, 426 U.S. 637, 639 (1976); U.S. V. GARY, NO. 18-4578, 2020 WL 1443528 (4TH CIR. (MAR. 25, 2020).

DUE TO THE ARGUMENT ABOVE, MR. PETTIS SHOULD HAVE AT THE LEAST BEEN AFFORDED ANOTHER ATTORNEY TO ARGUE REASONABLY ARGUABLE MATTERS.

CONCLUSION

INDEED, UNDER THE PROVISIONS OF 922, THE DEFENDANT'S STATUS IS THE 'CRUCIAL ELEMENT' SEPARATING INNOCENT FROM WRONGFUL CONDUCT." REHAFF, 139 S. CB. 2197 (CITING UNITED STATES V. X-CLEMENT VIDEO, INC., 513 U.S. 64, 73, 115 S. CB. 464, 130 L. ED. 2D, 372 (1994)). YET THE DISTRICT COURT FAILED TO INFORM PETTIS THAT KNOWLEDGE OF HIS PROHIBITED STATUS WAS AN ELEMENT TO THE DEFENSE. PRIOR TO HIS PLEA AGREEMENT, MR. PETTIS NEVER KNEW THAT HE BELONGED TO A CERTAIN GROUP BARRED FROM POSSESSING FIREARMS DUE TO THE FACT THAT HIS CONVICTION OF HIS INSTANT OFFENSE (922 (g)(1) AND 924 (a)(2)) WAS IN FACT, HIS FIRST TIME POSSESSING A FIREARM HIS ENTIRE LIFE. HAD THE DEFENDANT KNOWN HE WAS BARRED (AS A FELON) FROM CARRYING A FIREARM, WHO'S TO SAY THAT PETTIS WOULD NEVER HAVE HAD A FIREARM, HAD HE KNOWN HIS STATUS PROHIBITED IT. SIMPLY STATED, HIS NON-EXISTENCE OF KNOWLEDGE REGARDING HIS STATUS, LEFT HIM WITHOUT REAL NOTICE" OF THE NATURE OF HIS CHARGE... GADDY V. LINAHAN, 780 F.2D 935, 943 (11TH CIR. 1986).

IN A NUT-SHELL, THE SUPREME COURT'S CLARIFICATION OF THE ELEMENTS OF THIS CRIME (922 (g)(1) AND 924 (a)(2)) MEANS THAT THE GOVERNMENT MUST A NEW BURDENSOME KNOWLEDGE ELEMENT. U.S. V. TRZGGS, 347 F. SUPP. 3D 385, 2018 U.S. DIST. LEXIS 188391 (W.D. WIS., HEAD NOTE 11, NOV. 2, 2018 - DECISION JULY 1, 2020). MR. PETTIS'S ATTORNEY WAS INEFFECTIVE AND HIS WAS INVOLUNTARY OR HIS PLEA WAS INVOLUNTARY AND THEREFORE VOID.

FOR THE REASONS ABOVE, THIS COURT SHOULD VACATE MR. PETTIS'S PLEA AND CONVICTION AND DISMISS HIS INDICTMENT.

RESPECTFULLY SUBMITTED

9-17-2020