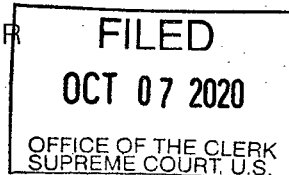


No. 20-6106

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Rafael Cruz — PETITIONER
(Your Name)



vs.

United States of America RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Rafael Cruz #52237-379
(Your Name)

P.O. Box 24550
(Address)

Tucson, AZ 85734-4550
(City, State, Zip Code)

(520) 663-5000
(Phone Number)

QUESTIONS PRESENTED

1) Did the Court of Appeals abuse its discretion when it denied to issue a Certificate of Appealability -- When the District Court did, without intervention, persuade and promise and cause the Defendant to unknowingly plead guilty to "Hostage Taking" when the record is without ambiguity that the Court knew that the Defendant believed he was guilty of kidnapping and the Court promised he could present his evidence and witness at sentencing, this extreme level of judicial interference which effectively denied both Fifth and Sixth Amendment Rights, does it affect the Voluntary and Knowing nature of a guilty plea?

2) When the district Court during a Rule 11 hearing clearly tells the Defendant: "you thought you were pleading to kidnapping, it very well may be that the Facts that's what's presented and that's how the agreement itself is proven", does the Court's clear acknowledgment of the Defendant's beliefs allow for any plea to anything but actual kidnapping?

3) When the district Court and Counsels present continuously referred to "Hostage Taking" as "Kidnapping", knowing that the Defendant believes he is there to plead to "Kidnapping", and Factoring in the Fact the Court was aware of the Defendant's documented mental disability where he has "trouble understanding" things, does this affect the knowing or voluntary nature of the plea?

4) At the point the Defendant said that he understood he was pleading "guilty to kidnapping, not exactly... that whole thing you read", did the Court abuse its discretion and act as an agent for the Government when the Court did, with intent, convince the Defendant that he could plead to kidnapping and be found to have entered a guilty plea to "Hostage Taking"?

LIST OF PARTIES

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

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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Federal Rules of Criminal Procedure Rule 11

OTHER

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.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 4, 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 INVOLVED

- Fifth Amendment Right against self-incrimination
- Sixth Amendment Right to impartial court.
- Sixth Amendment Right to present evidence at "trial".

STATEMENT OF THE CASE

* On February 4, 2014, the Petitioner entered a guilty plea to 18 U.S.C. 1203 "Conspiracy to take Hostage". On May 21, 2014 the petitioner was sentenced to 480 months imprisonment and Five (5) years supervised release. On May 11, 2015 the Court of Appeals affirmed the Conviction. On March 19, 2019 the District Court denied the merits of the Petitioner's 28 U.S.C. 2255 motion and declined to issue a Certificate of Appealability. On August 4, 2020 the Court of Appeals declined to issue a Certificate of Appealability.

* This Petition revolves around the Rule 11 hearing and whether the Petitioner's Plea was the result of Judicial interference, Coercion, Mistatement of law and False promises made directly by the Court. This interference is a result of Counsel's Failure to object, clarify, and further advocate honestly for his client. The record will clearly show that the judge informed the Petitioner that he would be Found guilty of § 1203 even if the elements only proved "kidnapping" and not "Conspiracy to take Hostage". Of this fact the record is

absolutely clear. During the Rule 11, the Court very clearly stated:

"So coming back to your question that you thought you were pleading guilty to kidnapping, it very well may be that in the Facts that's what's presented and that's how the agreement itself is proven."

This statement by the judge is unambiguous in its words. The judge clearly articulated that the Petitioner believed he was pleading guilty to only kidnapping. The judge then clearly states that the "agreement" for "hostage" taking could be proved through the "Facts" of "kidnapping".

To enhance this bad situation, the Court had already acknowledged that the Petitioner's mental health caused the Petitioner to have difficulty understanding what he was being told. The Government, Court, and Defense Counsel seized upon the obvious confusion by the Petitioner and used the confusion to force the guilty plea. To that end, the Court, knowing already the Petitioner was under the impression he was pleading to kidnapping, makes the following statement:

"you know, sometimes we use shorthand language for something so it maybe that, you know, if your lawyer or the Government may have used the term "Kidnapping", when we think of Kidnapping it basically is that you sort of kidnapped somebody to get somebody else to pay money, Okay? So, the two of you, this is the conspiracy, not the kidnapping, I'm using the shorthand term "Kidnapping"..."

The Honorable Justices and Chief Justice of this Supreme Court must not condone any lower court to create such an ambiguous colloquy. If a Defendant, especially one that has already made the court aware of diminished understanding, tells the court he believes he is pleading to kidnapping and "not the whole thing you read there" (which was "Hostage Taking") and the court states that Hostage taking and kidnapping are the same thing because "kidnapping" is "shorthand", no plea can be legally, under the Constitution, knowing and/or ~~voluntary~~^{Re} voluntary when a court interferes and appears to convince a Defendant to plead to one charge under the auspices of another charge.

Trial and Appellate Counsel's Failed to raise this issue. Appellate Counsel accused the judge of basically violating Rule 11(c)(1) by being a part of the plea agreement negotiations. This is not what occurred. At best, the judge "constructively amended" the charge. At worst, the judge acted in concert with the U.S. Attorney and convinced the Petitioner that he was pleading to one charge when he was in fact pleading to another charge. Utilizing sophistry and other tactics of deception, the Petitioner was persuaded and coerced into pleading to 18:1203 when his entire discussion proves he believed it was actually 18:1201 he was actually guilty of.

To insure this persuasion by the court was complete and resulted in an unknowing/involuntary guilty plea, when the Petitioner tried to tell the Court he had "like certain evidence" his lawyer cut in. So the Petitioner was told he could present evidence about why the crime was committed at sentencing. The Petitioner and Court discussed this:

Pet. "So, then my understanding is
at the time of sentencing I
can still bring up my evidence,
witness and like --

Ct: "As Far as the particulars, okay?"

Pet: "okay"

It is clear that any reasonable person, especially one that the Court knew had a difficult time understanding, would believe he could present evidence challenging the "particulars" of his case. Even this learned Court would take this as a leave to defend ones case at sentencing.

Realistically, one would understand the Defendant was asking for a Bench Trial. This was not in any form of imagination a valid Rule 11 plea. The Petitioner could not knowingly understand that he could no longer challenge the Government's evidence. He was told he could at sentencing. Counsel was clearly ineffective for allowing his client to be persuaded by the Court that he could. Based on the record of the Rule 11, The Government, Defense Counsel, and Court had a single goal... the goal was a guilty plea at any cost. These facts are beyond contestation.

REASONS FOR GRANTING THE PETITION

Pleading Guilty is perhaps the most Constitutionally dangerous action any Defendant can do. Federal Courts need Appellate Guidance From this Honorable Bench to prevent such persuasion by the Courts to ever occur. The District Court was obviously more and truly concerned with getting a guilty plea on the record and not ensuring that the Defendant who was Forfeiting Fifth and Sixth Amendment Rights was doing so on his own without any outside interference.

This is evidenced by legal deception by the Court. The District Judge presented that the instant Petitioner could be found guilty of "Hostage Taking" if the evidence and facts proved "Kidnapping". The Court further represented that the Petitioner could present the evidence and witnesses concerning the "particulars" of his case at sentencing. No reasonable person would come to any other conclusion.

Because 97% of Federal Convictions are based on guilty pleas, this Court must make it clear that judicial interference, persuasion or any deception by the Courts is unacceptable. Simply, how can a plea to "Hostage Taking" be truly said to be "Knowing" when the Defendant is clear

of his belief that he is pleading to kidnapping, and the Court and attorney for both sides use the word "kidnapping" when describing the evidence, yet tell the Defendant it really means "Hostage Taking". How can a plea be voluntarily Forfeiting Rights when the Court represents the plea as still allowing a Sixth Amendment and Due Process Right to present defense evidence at sentencing. Simply, no plea under these circumstances can be labeled as knowing or voluntary.

The Scales of Justice are supposed to be perfectly calibrated. The Constitution is supposed to be inflexible. Judges are supposed to be impartial. The Government's powers and methods to secure a conviction are supposed to be limited. Defense Attornies are supposed to protect their clients. In this case, none of these things were true.

The Honorable Members of this Court must exercise their ultimate Appellate Powers and vacate the Petitioner's guilty plea. This must be done to prevent any judge from persuading any Defendant to plead guilty. This Court

must step in and correct the District Court's decision that this Petitioner could somehow enter defense evidence at his sentencing. Counsel and Court knew that regardless of evidence at sentencing, any guilty plea stands. This Court must step in and prohibit with clarity that when a Court says "I know you think you are guilty of kidnapping and this is what you want to plead guilty to. The Facts might actually prove you are guilty of kidnapping but we will use those Facts to support a Hostage Taking Charge". So legal sophistry is now an authorized tactic of Federal Judges to secure convictions. The Supreme Court of the United States cannot allow such lower Court action be the Factor that deprives any citizen liberty.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert L. Carter

Date: 10-6-20