

20-6309

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

OCT 30 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

EMILIO URENA-VILLA

— 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 NINTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Emilio Urena-Villa

(Your Name)

Register #85410-408

(Address) 37910 N. 45th Avenue

Phoenix, Arizona 85086-7055

(City, State, Zip Code)

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(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER APPOINTED COUNSEL WAS INEFFECTIVE, FOR FAILURE TO FILE VIABLE MOTION TO SUPPRESS PURSUANT TO FOURTH AMENDMENT CLAIM UNDER: KIMMELMAN v. MORRISON, 477 U.S. 365 (1986) AND STRICKLAND v. WASHINGTON, 466 U.S. 668 (1984) RESPECTIVELY?

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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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 No. 19-10276 (9th Cir. JUL 16 2020); 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☒ is unpublished.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 4:17-cr-01860-CKJ-BGM-1 (D.C.Tuc.Az); 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 July 16, 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

UNITED STATES CONSTITUTIONAL PROVISIONS:

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy 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 witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Emilio Urena-Villa was charged with several offenses related to a subsequent superseding Indictment for the purchase of nine weapons and-or ammunition counts; Mr. Urena-Villa however, plead to count-1 of the superseding indictment charging him as a prohibited possessor of ammunition, in violation of 18 U.S.C. § 922(g) and 18 U.S.C. § 924(a)(2); see Plea Agreement.¹

Mr. Urena-Villa received the high end of a stipulated and agreed upon sentencing range of 21-months to 46-months pursuant to Fed. R. Crim. P. 11(c)(1)(C), followed by a maximum term of 3-years supervised release; see ER/Sentencing Hearing 25-35.

After sentencing the Petitioner's appointed trial counsel filed a timely notice of appeal on August 14, 2019, raising two issues after what counsel stated: "After a conscientious search of the record, appellant's counsel can find no meritorious issues for appeal and believes the appeal is wholly frivolous; pursuant to Anders v. California, 386 U.S. 738 (1967)." see ER/AOB 1-30.

Thereafter, on February 11, 2020, the Ninth Circuit ORDER that Appellant may file a pro se supplemental opening brief, "raising in his own words, any issues in this case." see ER/1 of 2.

On March 27, 2020, Urena-Villa filed his Pro Se Supplemental Opening Brief, raising three issues, with his principal argument being that "but for counsel's unprofessional errors, the proceeding would have been different." see ER/1-15.

¹ ER refers to the Excerpts of Record Urena-Villa filed in the Ninth Circuit in case number 19-10276. AOB refers to Urena-Villa's pro se supplemental opening brief in that case, which has a more detailed summary of the background of this case.

Issue[s] two and three, in essence go toward Urea-Villa's ineffective assistance of counsel regarding law enforcement officers lack of probable cause to arrest and charge the defendant and a meritorious fourth amendment claim, where counsel's failure to file a motion to suppress unlawfully obtain evidence, which shows prejudice. see ER/1-15.

The Ninth Circuit overlooked facts, within Urea-Villa's plea agreement where issues reserved included "ineffective assistance of counsel and Granted the government's motion to dismiss the appeal," and declined to address on direct appeal pro se claim of ineffective assistance of counsel. see ER/1 of 2.

REASONS FOR GRANTING THE PETITION

- I. Whether Appointed Counsel was ineffective for failure To File An Viable Motion to Suppress Evidence Protected Under The Fourth Amendment, Which Protects People From Unreasonable Searches of Their Persons, Houses, Papers, And Effects?

In order to show ineffective assistance of counsel, a defendant must establish that (1) counsel's performance was so deficient that "counsel was not functioning as the counsel' guaranteed the defendant by the Sixth Amendment;" and (2) counsel's "deficient performance prejudiced the defence" in that counsel's errors "deprived the defendant of a fair trial, a trial whose result is reliable." Strickland v. Washington, 466 U.S. 668, 687, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1983).

Under the first prong of Strickland, "the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances." *Id.*, at 688.

Here, in district court as well as the court of appeals counsel's assistance was unreasonable based on the following:

1. Before, during plea negotiation's and on direct appeal; counsel failed to review the evidence in order to make any well informed decisions as to file motion regarding the arrest and search of an american citizen.

2. Counsel failed to recognize that Law Enforcement Officers had any probable cause to arrest and charge the defendant according to to event[s] leading up to the arrest and whether the historical facts, viewed from the standpoint of an objectively reasonable police officer, amounted to probable cause. And,

3. Moreover, where, as here, the defendant's ineffective-assistance claim is based on counsel's failure to file any motion to suppress, in order to show or prove prejudice, the petitioner

must prove that the "Fourth Amendment claim is meritorious" and "that there is a reasonable probability that the verdict would have been different absent the excludable evidence." Kimmelman v. Morrison, 477 U.S. 365, 375, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986).

From "a big picture perspective," the issue[s] presented: Urena-Villa's ineffective-assistance claim is based on counsel's failure[s] to file motions to suppress, and motion to dismiss all counts of the indictment, because law enforcement officials lack probable cause to arrest the Petitioner in the first place.

There is a reasonable probability that the verdict would have been different absent the excludable evidence in this case. See Kimmelman v. Morrison, 477 U.S. 365 (1986); see also Moore v. Czerniak, 534 F.3d 1128 (9th Cir. 2005).

The Petitioner further contends, that counsel's failure[s] caused certain evidence to come into play during plea negotiations which further violated his due process rights, when counsel did file an incomplete motion ... only filing to suppress the gun store security camera footage related to the prior purchases by him, yet, failed to motion for full blown suppression hearing to raise the petitioner's rights regarding his privacy rights as to law enforcement's lack of probable cause to even have arrested the petitioner, to examine the events leading up to the arrest, and to then decide "whether these historical facts, viewed from the standpoint of an objectively reasonable police officer amount[ed] to probable cause." See Maryland v. Pringle, 540 U.S. 366 (2003).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Emilio Urena-Villa, In pro se
Register #85410-408

Date: October 14, 2020.